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### POPs, LRTAP POPs, AND PIC IMPLEMENTATION ACT OF 2003

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APRIL 29, 2004.—Ordered to be printed

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Mr. INHOFE, from the Committee on Environment and Public  
Works, submitted the following

### REPORT

[to accompany S. 1486]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1486) to amend the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act to implement the Stockholm Convention on Persistent Organic Pollutants, the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

Advances in chemical synthesis and production have been responsible for many important benefits currently enjoyed by modern society. However, improved scientific understanding has made clear that the continued production and use of certain chemicals and pesticides with particular traits pose inherent risks for human health and the environment. The chemicals of global concern addressed by these three International Agreements are often referred to as persistent organic pollutants (POPs). These chemicals share four basic characteristics that cause them to adversely affect human health and the environment: (1) they are toxic in very small quantities; (2) they persist in the environment for long periods of

time; (3) they circulate globally through the atmosphere and oceans to regions far from their point of origin; and (4) they biomagnify as they move up through the food chain, accumulating in the fatty tissues of higher organisms.

There is evidence of continuing transboundary deposition of POPs far from their sources. This Convention will reduce or eliminate certain POPs that continue to be released outside the United States and which pose a potential threat to U.S. public health and the environment.

The United States has already taken substantial action to address the risks associated with those POPs currently covered by the Convention.

The Stockholm Convention on Persistent Organic Pollutants, which the United States signed on May 23, 2001 along with 90 other nations, commits Parties to take significant steps, similar to those already taken by the United States, to eliminate or restrict the production, use and/or release of specified POPs. It identifies 12 chemicals, often referred to as the “dirty dozen.” Several of these are intentionally produced for use either as pesticides or industrial chemicals (e.g., DDT); some are produced and released as incidental byproducts of other processes (e.g., dioxins). Under the Convention, all of the intentionally produced POPs except DDT are slated for elimination of production and use. In recognition of the humanitarian need to use DDT for disease vector control, notably to fight malaria, the Convention allows an exemption for this purpose, while encouraging the development of effective and economically viable alternatives. The Convention also obligates Parties to develop action plans to address the release of byproduct POPs and to use best available techniques to reduce emissions from certain new sources of such POPs. It also imposes controls on the handling of POPs wastes and on trade in POPs chemicals. Additionally, it includes a science-based procedure to add new chemicals that meet defined criteria to the lists of POPs subject to the Convention.

The Convention does not differentiate in its basic obligations between developing and developed countries. The Convention does establish a flexible framework to provide technical and financial assistance to help developing countries implement their commitments. The Convention will enter into force on May 17, 2004.

The LRTAP POPs Protocol is one of eight protocols to the 1979 Convention on Long-range Transboundary Air Pollution (LRTAP). Thirty-six members of the United Nations Economic Commission for Europe—Northern, developed countries, including the United States—have signed the Protocol, and 15 have ratified it. The Protocol is a regional agreement seeking to reduce the use and proliferation of 16 POPs—eleven pesticides, two industrial chemicals and three by-products/contaminants. As a precursor to the global POPs Convention, the LRTAP POPs Protocol set the tone for developed countries to lead the way in reducing POPs. It bans the production and use of some POPs outright, while scheduling others for elimination at a later date. In the United States, the LRTAP POPs Protocol has the legal status of an executive agreement. The United States signed the Protocol on June 24, 1998, but has not ratified it. The Protocol entered into force on October 23, 2003.

The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade acts as a clearinghouse mechanism to help participating countries: (1) learn more about the characteristics of potentially hazardous chemicals that may be imported; (2) initiate a decision-making process on the future import of these chemicals; (3) exclude chemicals that cannot be managed safely; and (4) facilitate the dissemination of these decisions to other countries. If a country agrees to import chemicals, the Convention promotes their safe use through labeling standards and technical assistance. The PIC Convention also mandates that exporters obtain informed consent before exporting listed chemicals and comply with specific labeling requirements. The PIC Convention currently covers 31 chemicals—21 pesticides, five severely hazardous pesticide formulations and five industrial chemicals—but it is expected that many more chemicals will be added as the provisions of the Convention are implemented. The United States signed the treaty on September 11, 1998, but has not ratified it. The Rotterdam Convention entered into force on February 24, 2004.

#### OBJECTIVES OF THE LEGISLATION

S. 1486 was crafted to allow for the implementation of three related international agreements regarding chemicals. Enactment of this legislation is necessary for the United States to become a party to the Stockholm Convention on Persistent Organic Pollutants, the LRTAP POPs Protocol, and the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

The legislation:

- provides a framework for the Administrator of the Environmental Protection Agency to take regulatory action regarding listed chemical substances or mixtures under the Stockholm Convention or the LRTAP POPs Protocol;
- provides for a citizens' petition process to allow for public input and judicial review if the Administrator does not initiate a rulemaking with respect to a chemical substance or mixture listed under the Stockholm Convention or the LRTAP POPs Protocol;
- provides unambiguous authority to prevent production of all POPs chemicals for export;
- streamlines the certification requirements for export of chemicals under the PIC Convention.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

Sets forth the short title of the bill as the "POPs, LRTAP POPs, and PIC Implementation Act of 2003."

##### *Sec. 101. Implementation of International Agreements*

#### SUMMARY

Section 101 adds a new Title V, entitled Implementation of International Agreements, to the Toxic Substances Control Act which

would govern the process used in the United States with respect to chemicals that are being considered for listing, or have been listed, on an annex to the Stockholm Convention or the LRTAP POPs Protocol.

#### DISCUSSION

New section 501 defines key terms used in the POPs Convention, LRTAP POPs Protocol, and PIC Convention. In particular, a POPs chemical substance or mixture means aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, PCBs, toxaphene, and any other chemical substance or mixture listed in Annex A or B to the POPs Convention, and with respect to which an amendment adding it has entered into force for the United States. A LRTAP POPs chemical substance or mixture means any chemical substance or mixture listed in Annex I or II to the LRTAP POPs Protocol.

New section 502 is entitled "Implementation of POPs Convention and LRTAP POPs Protocol." Subject to certain exemptions, this section prohibits the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substances or mixtures currently covered by or subsequently added to the POPs Convention and the LRTAP POPs Protocol. The exemptions to the prohibitions are intended to mirror the provisions of the two treaties. In addition, for POPs substances or mixtures, there are exemptions allowing for export and import consistent with the Convention (the LRTAP POPs Protocol does not restrict import or export of listed chemical substances or mixtures).

Notice and information collection provisions established in this section require the submission of information to the Administrator regarding a chemical substance or mixture proposed for listing under the POPs Convention and the LRTAP POPs Protocol. The notice and comment periods correspond with specific steps in the international process that evaluates proposals for the listing of additional chemical substances or mixtures.

For POPs, if the Persistent Organic Pollutants Review Committee (POPRC) determines that a proposal for listing meets Annex D screening criteria, the Administrator shall publish a notice in the Federal Register within 45 days of the decision. Within 60 days of publication, any person that manufactures, processes, distributes in commerce for export, or disposes of the covered chemical substance or mixture must submit the following information: annual quantity manufactured and locations; uses; annual quantity entering each environmental medium; and other information consistent with the Convention. Information updates are voluntary, unless the Administrator determines that an update is necessary.

Upon a decision by the POPRC that, on the basis of a risk profile, a proposal for listing a chemical substance or mixture shall proceed, the Administrator shall publish a second notice in the Federal Register within 45 days of the decision. Within 60 days of publication, covered persons must submit information consistent with the provisions in Annex F of the Convention, among other things. If the POPRC recommends that the Conference of the Parties (COP) consider listing the chemical substance or mixture, the

Administrator shall publish a third notice within 45 days of the recommendation.

Similar LRTAP POPs provisions require the Administrator to publish notice and a request for information within 45 days of a submission of a risk profile to the Executive Body of the LRTAP POPs Protocol in support of a proposal to list a chemical substance or mixture on one of the LRTAP POPs Annexes. Within 60 days, the following information must be submitted: potential for long-range transboundary atmospheric transport; toxicity; persistence; bioaccumulation; annual quantity manufactured and locations; uses; annual quantity entering each environmental medium; environmental monitoring data; alternatives and their efficacy; known adverse environmental or human health effects associated with alternatives; process changes, control technologies, operating practices and other pollution prevention techniques that can be used to reduce emissions of the chemical substance or mixture, and their applicability and effectiveness; and non-monetary costs and benefits and the quantifiable costs and benefits associated with the use of identified alternatives and/or techniques. Information updates are voluntary, unless the Administrator determines that an update is necessary. Upon a decision by the Executive Body that further consideration of a chemical substance or mixture is warranted, the Administrator shall publish a second notice in the Federal Register within 45 days of the decision. Within 60 days of publication, covered persons must submit information consistent with the requirements for the technical review under the Protocol.

For POPs and LRTAP POPs, the Administrator, based on the information received from the notice and comment periods, shall submit to the Secretary of State a report on the production and uses in the United States of the chemical substance or mixture and an assessment of benefits and risks, and a second report on the feasibility of possible prohibitions or restrictions that could be placed on the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture.

If the COP to the POPs Convention or parties to the LRTAP POPs Protocol adopts an amendment to list a chemical substance or mixture in Annex A or B to the POPs Convention or Annex I or II to the LRTAP POPs Protocol, the Administrator may, at the Administrator's discretion, commence a rulemaking to prohibit or restrict any manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture. If the Administrator decides to commence a rulemaking, the Administrator shall promulgate prohibitions or restrictions to protect against hazards, including exposure, to human health and the environment associated with the chemical substance or mixture. In determining the appropriate manner of regulation, the Administrator shall take into account public health, environmental, and socio-economic factors and shall consider the record compiled under the notice and comment periods, the national and international consequences of regulatory action alternatives to the adopted prohibitions or restrictions, and all scientific information that is compiled through the notice and comment periods, or submitted to the POPRC or LRTAP Executive Body, taking due account of the scientific information that is consistent with generally accepted sci-

entific principles. Furthermore, in the case of a chemical substance or mixture listed on Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol, the Administrator shall give substantial weight to the POPRC recommendation or technical review, a listing decision by the COP or under the LRTAP POPs Protocol, the reports that the Administrator is required to issue, and any information that the United States submits to the POPRC, COP, or LRTAP Executive Body.

Beginning 1 year after a listing decision by the COP or under LRTAP POPs Protocol, any person may petition the Administrator to commence a rulemaking if one has not commenced. Within 90 days of the date of filing the Administrator shall grant or deny the petition. If the Administrator grants the petition, the Administrator shall commence a rulemaking; if the Administrator denies the petition, the Administrator shall publish the reasons for denial in the Federal Register. If the Administrator denies a petition or fails to render a decision within the 90-day period, the petitioner may bring a civil action within 60 days in the U.S. District Court to compel the Administrator to commence a rulemaking. The court shall consider the petition de novo, using the same criteria used by the Administrator. The court shall order the Administrator to commence a rulemaking if the court determines that regulatory action is necessary to protect against hazards, including exposure, to human health and the environment associated with the chemical substance or mixture, and the Administrator has not taken action.

Within 18 months of commencing a rulemaking the Administrator shall promulgate final regulations or decide not to promulgate a final rule and publish his reasoning in the Federal Register within 30 days. If the Administrator has not commenced a rulemaking within 1 year of a listing decision by the COP or under the LRTAP POPs Protocol, the Administrator shall publish annually in the Federal Register a summary of the actions taken with respect to the listing decision or likely to be taken with respect to commencing a rulemaking. Nothing in this section affects the Administrator's authority under other laws.

New section 503 creates a section entitled, "Notice and Record of Prohibitions, Exemptions, Disallowances, and Other Information." The Administrator shall publish in the Federal Register notice regarding the POPs/LRTAP POPs chemical substances or mixtures subject to prohibitions, or any exemptions from the prohibitions, including any disallowances for any exemptions.

New section 504 is based on FIFRA section 17(d). The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved research and regulations on chemical substances and mixtures, and participate in technical cooperation and capacity building activities designed to support implementation of the LRTAP POPs Protocol, the PIC Convention, and the POPs Convention.

New section 505 implements the PIC Convention and Article 3, paragraph 2(b) of the POPs Convention. Current TSCA section 12(a) exempts certain chemical substances or mixtures manufactured, processed, or distributed in commerce for export from most provisions of TSCA. The amendment would exempt from that gen-

eral exemption any chemical substance or mixture for which manufacture, processing, distribution in commerce for export, use, or disposal is prohibited or restricted under the POPs and LRTAP POPs provisions.

The exporter of any chemical substance or mixture that is listed under the PIC Convention shall comply with any export conditions or restrictions identified by the Administrator. The exporter shall provide the Administrator with a notice of intent to export. The timing of the notices and other information requirements vary depending on the classification of the chemical substance or mixture. Covered chemicals substances or mixtures shall, in accordance with the PIC Convention, bear labeling information relating to the risks or hazards to human health or the environment and be accompanied by shipping documents that include relevant safety data. Where applicable, shipping documents must also bear appropriate harmonized system customs codes assigned by the World Customs Organization.

The Administrator, with the concurrence of the Secretary of State, shall determine whether a chemical substance or mixture is banned or severely restricted within the U.S and shall issue to the Secretariat of the PIC Convention and the public a notice of each determination. On receipt of a notice of intent to export, the Administrator shall provide a copy to the designated national authority of the importing foreign state. The Administrator, with the concurrence of the Secretary of State, shall issue a notice informing the public of any listing on Annex III of the PIC Convention and any condition or restriction of an importing foreign state that is applicable to the import. The Administrator may issue a notice exempting any chemical substance or mixture from the export notice and labeling requirements if the Administrator determines, with the concurrence of the Secretary of State, that the exemption would be consistent with the PIC Convention.

New section 506 defines the rulemaking record, which includes, among other things, any determination by the Administrator in response to a decision by the COP or the Parties to the LRTAP POPs Protocol to list a chemical substance or mixture, written submissions/comments by interested parties relating to a proposed regulation, and the international listing process and decision. This section also outlines procedural requirements relating to judicial review.

This legislation anticipates the addition of chemicals to the POPs Convention or the LRTAP POPs Protocol in the future. The POPs Protocol anticipates continued use of some listed chemical substances and mixtures through the mechanism of Annex B. Where there is no equally effective substitute for a chemical substance in a critical use (i.e., preventing disease, promoting safety), the parties may adopt an Annex B listing and identify the only permissible uses (restricted use) for a chemical substance. The Protocol contains provisions requiring parties that register for restricted uses to take actions that will minimize human exposure to chemicals listed under Annex B during the production, use and disposal of these substances.

Although the United States does not currently produce or use any Annex B chemical for a restricted purpose, some chemical substances under consideration in other international forums that may

be recommended for future listings under the POPs Protocol have essential uses that have been recognized by the Environmental Protection Agency in U.S. regulatory actions. For instance, in a proposed significant new use rule (SNUR) for perfluoroalkyl sulfonates (PFOS) published in the Federal Register on March 11, 2002 (67 FR 11014), the Environmental Protection Agency excluded from the SNUR the use of these substances in aviation hydraulic fluids in recognition of their critical importance to public safety, the absence of any known substitutes at this date and the long lead times required to develop and test substitutes for this sensitive application. The volume of PFOS chemicals used in aviation hydraulic fluids worldwide is small and results in little human exposure. It is expected that the mission-critical use of PFOS chemicals in aviation hydraulic fluids would be recognized as a permissible use under Annex B, if PFOS chemicals are considered for listing under the POPS Protocol in the future.

In addition, this legislation acknowledges that the mechanism envisioned by the treaty to evaluate candidate chemicals for inclusion on the list of banned chemicals is a screening protocol that evaluates each substance for persistence, bioaccumulation and toxicity. The screening mechanism is a valid way to identify those substances in a hierarchy of potential risk. As such, the screening mechanism should be tempered with informed technical judgment so as to focus resources on those chemicals that present the highest realistic threat to human health. For example, though pigments, by their nature, would score high on the persistence scale, they do not score high when evaluated for bioaccumulation and toxicity. Pigments are well known to be nearly insoluble in both water and oil and thereby present little or no risk to human health. It is expected that this process will have as its primary focus chemical substances and mixtures that pose the greatest risks to human health and the environment.

#### *Sec. 102. Exports*

##### SUMMARY

This section amends section 12(a)(1) of TSCA to prevent chemical substances, mixtures, or articles from being exported if their use is prohibited domestically.

##### DISCUSSION

Section 12(a)(1) of TSCA currently allows for the manufacture, processing, or distribution in commerce of a substance, mixture, or article if it was intended for export. Section 102 amends section 12 to eliminate the ability to manufacture for export certain substances after use of that substance was precluded in the United States.

#### *Sec. 103. Prohibited Acts*

##### SUMMARY

TSCA's enforcement provisions are applicable to the sections implementing the POPs Convention, LRTAP POPs Protocol, and PIC Convention.

## DISCUSSION

Under this section, it is unlawful for any person to fail or refuse to comply with: any rule issued under section 4 (testing of chemical substances and mixtures); any requirement prescribed by or any rule promulgated, or order issued under section 5 (manufacturing or processing notices) or section 6 (regulation of hazardous chemical substances and mixtures); any requirement of or any rule promulgated, or order issued under title II (asbestos hazard emergency response); or any requirement of or any rule promulgated under title V (implementation of international agreements). It would also be unlawful for any person to use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, processed, or distributed in commerce for export in violation of section 5 or 6; a rule promulgated or order issued under section 5 or 6; an order issued in a civil action brought under section 5 or 7 (imminent hazards); title V or a rule promulgated under title V. The section would also make it unlawful for any person to fail or refuse to establish or maintain records, submit reports, notices or other information, or permit access to or copying of records as required by the Act (including regulations promulgated under this Act); or fail or refuse to permit entry or inspection as required under section 11 (inspections and subpoenas).

*Sec. 104. Conforming Amendments*

This section makes conforming and technical amendments to the Toxic Substances Control Act.

## LEGISLATIVE HISTORY

On July 29, 2003, Senators Chafee and Jeffords introduced S. 1486, a bill to amend the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act to implement the Stockholm Convention on Persistent Organic Pollutants, the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

S. 1486, as amended, was reported by the Committee on Environment and Public Works on July 30, 2003.

## HEARINGS

There were no hearings on S. 1486 in the 108th Congress. In the 107th Congress, the Committee on Environment and Public Works conducted a hearing on May 14, 2002, on the Persistent Organic Pollutants (POPs) Implementation Act of 2002 (S. 2118) and the proposed legislation by the Bush Administration (S. 2507). The committee received testimony from Mr. Jeffrey Burnham, Deputy Assistant Secretary for Environment, U.S. Department of State, Washington, DC; Mr. Stephen Johnson, Assistant Administrator for Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC; Mr. Warren Muir, Executive Director, Commission on Life Sciences, and Executive Director, Board on Agriculture and Natural Resources, National Re-

search Council, Washington, DC (delivering statement of Mr. Bruce Alberts, President, National Academy of Sciences); Mr. John Buccini, Chair, Intergovernmental Negotiating Committee on POPs, Ottawa, Ontario, Canada; Mr. Brooks Yeager, President, Global Threats Program, World Wildlife Fund, Washington, DC; Mr. Michael Walls, Senior Counsel, American Chemistry Council, Arlington, VA; and Ms. Karen Perry, Deputy Director, Environment and Health Program, Physicians for Social Responsibility, Washington, DC.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1486 on July 30, 2003. The committee favorably reported the bill by voice vote.

#### REGULATORY IMPACT STATEMENT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication of the report of the committee's estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of S. 1486. The bill will not affect the personal privacy of others.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the committee finds that the bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. The bill includes reporting requirements for entities that manufacture, process, distribute in commerce for export, use, or dispose of POPs or LRTAP POPs. This bill also includes labeling and informed consent requirements for industry under the PIC Convention.

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 10, 2003.*

Hon. JAMES M. INHOFE, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1486, the POPs, LRTAP POPs, and PIC Implementation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

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*S. 1486, the POPs, LRTAP POPs, and PIC Implementation Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003*

S. 1486 would authorize the Environmental Protection Agency (EPA) to implement three international environmental agreements: the Stockholm Convention on Persistent Organic Pollutants (POPs), the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP) for POPs, and the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Those agreements are intended to help protect environmental and human health by eliminating or restricting the use of certain chemicals and to provide a means for participating countries to obtain and disseminate information about chemicals that may be imported and exported.

CBO estimates that implementing S. 1486 would cost \$5 million over the next 5 years, assuming appropriation of the necessary amounts. Such funding would be required to support additional personnel costs and contractor costs that would be incurred by EPA under this legislation. Enacting S. 1486 could affect direct spending and receipts because the bill would provide for civil and criminal penalties against persons who fail to comply with the bill's requirements. CBO estimates that any such increase in civil and criminal penalties would not be significant.

While EPA currently regulates many of the chemicals that would be affected by these agreements, implementing this legislation would result in some new responsibilities for EPA. Specifically, EPA would be required to participate in the international process for determining whether additional chemicals should be prohibited or restricted from use under the agreements. According to EPA, such a review process would take five or more years per chemical, and initially a few chemicals would be under consideration. EPA's duties would include issuing public notices following decisions by the committees established under the agreements, issuing reports on the benefits and risks associated with the use of certain chemicals, and promulgating rules. Based on information from EPA, CBO estimates that such activities would cost about \$1 million annually, subject to the availability of appropriated funds.

Section 4 of the Unfunded Mandates Reform Act UMRA excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that because S. 1486 would implement three environmental treaties, it falls within that exclusion. CBO has thus not reviewed the bill for the presence of mandates.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in **[black brackets]**, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

### TOXIC SUBSTANCES CONTROL ACT<sup>1</sup>

#### TITLE I—CONTROL OF TOXIC SUBSTANCES

##### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the “Toxic Substances Control Act”.

\* \* \* \* \*

##### SEC. 11. INSPECTIONS AND SUBPOENAS.

(a) **IN GENERAL.**—For purposes of administering this Act, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to **[title IV]** *title IV or V* are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) **SCOPE.**—(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this Act applicable to the chemical substances, mixtures, or products subject to **[title IV]** *title IV or V* within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) shall extend to—

- (A) financial data,
- (B) sales data (other than shipment data),
- (C) pricing data,
- (D) personnel data, or
- (E) research data (other than data required by this Act or under a rule promulgated thereunder),

<sup>1</sup>The Toxic Substances Control Act (15 U.S.C. 2601–2692) consists of Public Law 94–469 (Oct. 11, 1976; 90 Stat. 2003) and the amendments made by subsequent enactments.

unless, the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) for such inspection.

(c) SUBPOENAS.—In carrying out this Act, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

\* \* \* \* \*

**SEC. 12. EXPORTS.**

(a) IN GENERAL.—(1) Except as provided in paragraph (2) and subsection (b), this Act [(other than section 8)] (*other than section 8 or title V*) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

\* \* \* \* \*

**SEC. 13. ENTRY INTO CUSTOMS TERRITORY OF THE UNITED STATES.**

(a) IN GENERAL.—(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this Act,  
or

[(B) it is offered for entry in violation of section 5, 6, or title IV a rule or order under section 5, 6, or title IV or an order issued in a civil action brought under section 5, 7 or title IV.]

(B) *it is offered for entry in violation of—*

(i) *section 5 or 6;*

(ii) *title IV or V;*

(iii) *a rule or order issued under section 5 or 6 or title IV or V; or*

(iv) *an order issued in a civil action brought under section 5 or 6 or title IV.*

\* \* \* \* \*

**[SEC. 15. PROHIBITED ACTS.**

[It shall be unlawful for any person to—

[(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 4, (B) any requirement prescribed by section 5 or 6, (C) any rule promulgated or order issued under section 5 or 6, or (D) any requirement of title II or any rule promulgated or order issued under title II;

[(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in viola-

tion of section 5 or 6, a rule or order under section 5 or 6, or an order issued in action brought under section 5 or 7;

[(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this Act or a rule thereunder; or

[(4) fail or refuse to permit entry or inspection as required by section 11.]

**SEC. 15. PROHIBITED ACTS.**

*It shall be unlawful for any person to—*

- (1) *fail or refuse to comply with—*
- (A) *any rule promulgated or order issued under section 4;*
  - (B) *any requirement prescribed by section 5 or 6;*
  - (C) *any rule promulgated or order issued under section 5 or 6;*
  - (D) *any requirement of title II;*
  - (E) *any rule promulgated or order issued under title II;*
  - (F) *any requirement of title V; or*
  - (G) *any rule promulgated under title V;*
- (2) *use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, processed, or distributed in commerce for export in violation of—*
- (A) *section 5 or 6;*
  - (B) *a rule promulgated or order issued under section 5 or 6;*
  - (C) *an order issued in a civil action brought under section 5 or 7;*
  - (D) *title V; or*
  - (E) *a rule promulgated under title V;*
- (3) *fail or refuse to establish or maintain records, submit reports, notices, or other information, or permit access to or copying of records as required by this Act (including regulations promulgated under this Act); or*
- (4) *fail or refuse to permit entry or inspection as required under section 11.*

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**SEC. 16. PENALTIES.**

(a) CIVIL.—(1) Any person who violates a provision of [section 15 or 409] *section 15, section 409, or title V* shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of [section 15 or 409] *section 15, section 409, or title V*.

(2)(A) A civil penalty for a violation of [section 15 or 409] *section 15, section 409, or title V* shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an op-

portunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator, the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly or willfully violates any provision of **[section 15 or 409]** *section 15, section 409, or title V* shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than one year, or both.

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**SEC. 17. SPECIFIC ENFORCEMENT AND SEIZURE.**

(a) SPECIFIC ENFORCEMENT.—(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of **[section 15 or 409,]** *section 15, section 409, or title V;*

**[(B) restrain any person from taking any action prohibited by section 5, 6, or title IV, or by a rule or order under section 5, 6, or title IV,]**

(B) restrain any person from taking any action prohibited by section 5 or 6, or title IV or V (or a rule or order issued under any of those sections or titles);

(C) compel the taking of any action required by or under this Act[,]; or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to [title IV manufactured] title IV or V manufactured or processed in violation of [section 5, 6, or title IV] section 5 or 6, or title IV or V, or a rule or order under [section 5, 6, or title IV] section 5 or 6, or title IV or V, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 15 or title V occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) SEIZURE.—Any chemical substance, mixture, or product subject to title IV or V which was manufactured, processed, or distributed in commerce in violation of this Act or any rule promulgated or order issued under this Act or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceeding shall conform as nearly as possible to proceedings in rem in admiralty.

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#### SEC. 18. PREEMPTION.

(a) EFFECT ON STATE LAW.—(1) Except as provided in paragraph (2), nothing in this Act shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b)—

(A) if the Administrator requires by a rule promulgated under section 4 the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of

such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; [and]

(B) if the Administrator prescribes a rule or order under section 5 or 6 (other than a rule imposing a requirement described in subsection (a)(6) of section 6) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures)[.]; and

(C) no State or political subdivision may establish or continue in effect any requirement that is applicable to—

(i) a POPs Chemical substance or mixture or LRTAP POPs chemical substance or mixture (as defined in title V); or

(ii) a chemical substance or mixture that the Administrator regulates under section 502(h).

(b) EXEMPTION.—Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2), under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this Act described in subsection (a)(2), and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this Act described in subsection (a)(2) and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

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#### SEC. 20. CITIZENS' CIVIL ACTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this Act or any rule promulgated under section 4, 5, or 6, or [title II or IV]

title II, IV, or V, or order issued under section 5 or title II or IV to restrain such violation, or

\* \* \* \* \*

## **TITLE V—IMPLEMENTATION OF INTERNATIONAL AGREEMENTS**

### **SEC. 501. DEFINITIONS.**

*In this title:*

(1) *CONFERENCE.*—The term ‘Conference’ means the Conference of the Parties established by paragraph 1 of Article 19 of the POPs Convention.

(2) *CONFERENCE LISTING DECISION.*—The term ‘Conference listing decision’ means a decision by the Conference to approve an amendment to list a chemical substance or mixture in Annex A or B to the POPs Convention.

(3) *DESIGNATED NATIONAL AUTHORITY.*—The term ‘designated national authority’ means the 1 or more authorities that a government has designated in a notification to the Secretariat of the PIC Convention in accordance with Article 4 of the PIC Convention.

(4) *EXECUTIVE BODY.*—The term ‘Executive Body’ means the Executive Body established by Article 10 of the LRTAP Convention.

(5) *HCH.*—The term ‘HCH’ means hexachlorocyclohexane.

(6) *LRTAP CONVENTION.*—The term ‘LRTAP Convention’ means the Convention on Long-Range Transboundary Air Pollution, done at Geneva on November 13, 1979 (TIAS 10541), if the United States is a party.

(7) *LRTAP POPS CHEMICAL SUBSTANCE OR MIXTURE.*—The term ‘LRTAP POPS chemical substance or mixture’ means—

(A) chlordecone;

(B) hexabromobiphenyl;

(C) HCH; and

(D) any other chemical substance or mixture that is listed in Annex I or II to the LRTAP POPS Protocol.

(8) *LRTAP POPS LISTING DECISION.*—The term ‘LRTAP POPS listing decision’ means a decision by the parties to the LRTAP POPS Protocol to approve an amendment to list a chemical substance or mixture in Annex I or II to the LRTAP POPS Protocol.

(9) *LRTAP POPS PROTOCOL.*—The term ‘LRTAP POPS Protocol’ means the Protocol on Persistent Organic Pollutants to the LRTAP Convention, done at Aarhus on June 24, 1998, if the United States is a party.

(10) *PCB.*—The term ‘PCB’ means a polychlorinated biphenyl.

(11) *PIC CONVENTION.*—The term ‘PIC Convention’ means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on September 10, 1998, if the United States is a party.

(12) *POPS CHEMICAL SUBSTANCE OR MIXTURE.*—The term ‘POPs chemical substance or mixture’ means—

- (A) aldrin;
- (B) chlordane;
- (C) dichlorodiphenyltrichloroethane (DDT);
- (D) dieldrin;
- (E) endrin;
- (F) heptachlor;
- (G) hexachlorobenzene;
- (H) mirex;
- (I) PCBs;
- (J) toxaphene; and
- (K) any other chemical substance or mixture that is listed in Annex A or B to the POPs Convention.

(13) *POPS CONVENTION.*—The term ‘POPs Convention’ means the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on May 22, 2001, if the United States is a party.

(14) *POPS REVIEW COMMITTEE.*—The term ‘POPs Review Committee’ means the Persistent Organic Pollutants Review Committee established under paragraph 6 of Article 19 of the POPs Convention.

**SEC. 502. IMPLEMENTATION OF POPS CONVENTION AND LRTAP POPS PROTOCOL.**

(a) *PROHIBITION ON SPECIFIED POPS CHEMICAL SUBSTANCES AND MIXTURES AND LRTAP POPS CHEMICAL SUBSTANCES AND MIXTURES.*—Subject to subsections (c), (d), and (i) and the relevant provisions of the POPs Convention and the LRTAP POPS Protocol, notwithstanding any other provision of law, a person shall not manufacture, process, distribute in commerce for export, use, or dispose of any of the following:

(1) A POPs chemical substance or mixture specified in any of subparagraphs (A) through (J) of section 501(12).

(2) A LRTAP POPs chemical substance or mixture specified in any of subparagraphs (A) through (C) of section 501(7).

(b) *PROHIBITION ON OTHER POPS CHEMICAL SUBSTANCES AND MIXTURES AND LRTAP POPS CHEMICAL SUBSTANCES AND MIXTURES.*—Subject to subsections (c), (d), and (i), notwithstanding any other provision of law, a person shall not manufacture, process, distribute in commerce for export, use, or dispose of a POPs chemical substance or mixture described in section 501(12)(K), or a LRTAP POPs chemical substance or mixture described in 501(7)(D), in a manner that is inconsistent with regulations promulgated under subsection (h).

(c) *EXEMPTIONS UNDER POPS CONVENTION.*—

(1) *IN GENERAL.*—The prohibitions specified in subsection (b) shall not apply to any manufacture, processing, distribution in commerce for export, use, or disposal of a POPs chemical substance or mixture that the Administrator (with the concurrence of the Secretary of State) determines, through final regulations promulgated under subsection (h)—

- (A) is consistent with—

(i) a production or use specific exemption available to the United States under Annex A or B to the POPs Convention; or

(ii) an acceptable purpose applicable to the United States under Annex B to the POPs Convention; and

(B) would, as a result, not prevent the United States from complying with the obligations of the United States under the POPs Convention.

(2) UNINTENTIONAL TRACE CONTAMINANTS.—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any quantity of a POPs chemical substance or mixture that occurs as an unintentional trace contaminant in a product or article.

(3) RESEARCH.—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any quantity of a POPs chemical substance or mixture that is used for laboratory scale research or as a reference standard.

(4) CONSTITUENT OF ARTICLE IN USE BEFORE PROHIBITION APPLIED.—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any quantity of a POPs chemical substance or mixture that occurs as a constituent of an article, if—

(A) the article is manufactured or in use on or before the date of entry into force of the obligation applicable to the POPs chemical substance or mixture; and

(B) the United States has met any applicable requirement of the POPs Convention to notify the Secretariat of the POPs Convention concerning the article.

(5) CLOSED-SYSTEM SITE-LIMITED INTERMEDIATE.—

(A) EXEMPTION.—

(i) IN GENERAL.—Subject to clause (ii), to the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any quantity of a POPs chemical substance or mixture that is—

(I) manufactured and used as a closed-system site-limited intermediate; and

(II) chemically transformed in the manufacture of other chemicals that do not exhibit the characteristics of persistent organic pollutants (taking into consideration the criteria in paragraph 1 of Annex D of the POPs Convention).

(ii) CONDITIONS.—Clause (i) applies if, before the commencement of the manufacture or use under the POPs Convention, and each 10-year period thereafter—

(I) any person that desires to invoke the exemption provides to the Administrator information concerning—

(aa) the annual total quantity of the POPs chemical substance or mixture anticipated to be manufactured or used or a reasonable estimate of the quantity; and

(bb) the nature of the closed system site-limited process, including the quantity of any nontransformed and unintentional trace contamination by the POPs chemical substance or mixture that remains in the final product; and  
 (II) notwithstanding any other provision of law, the Administrator—

(aa) determines, with the concurrence of the Secretary of State, that the information provided under subclause (I) is complete and sufficient; and

(bb) transmits the information to the Secretariat of the POPs Convention.

(B) **TERMINATION OF EXEMPTION.**—If, at the termination of any 10-year exemption period under subparagraph (A), a particular closed-system site-limited intermediate exemption is no longer authorized for the United States under the POPs Convention, it shall be unlawful for any person to continue to manufacture or use any such POPs chemical substance or mixture as a closed-system site-limited intermediate.

(6) **PCB MATERIALS.**—Any person that manages PCBs in compliance with the rules promulgated under section 6(e) shall be—

(A) considered to be in compliance with this title; and

(B) presumed to be consistent with the POPs Convention, unless the Administrator determines that the applicable rule promulgated under section 6(e) is inconsistent with the POPs Convention.

(7) **DISTRIBUTION IN COMMERCE FOR EXPORT IF PRODUCTION OR USE SPECIFIC EXEMPTION OR ACCEPTABLE PURPOSE IS IN EFFECT.**—

(A) **IN GENERAL.**—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any distribution in commerce for export of any POPs chemical substance or mixture for which a production or use specific exemption under Annex A to the POPs Convention available to the United States is in effect, or for which a production or use specific exemption or acceptable purpose under Annex B to the POPs Convention available to the United States is in effect, unless the POPs chemical substance or mixture does not comply with an export condition described in—

(i) subparagraph (B), as determined by the Administrator in consultation with the heads of other interested Federal agencies; or

(ii) subparagraph (C) or (D), as determined by the Administrator in consultation with the heads of other interested Federal agencies and with the concurrence of the Secretary of State and the United States Trade Representative.

(B) **EXPORT FOR ENVIRONMENTALLY SOUND DISPOSAL.**—An export condition referred to in subparagraph (A) is that the POPs chemical substance or mixture is exported for the

*purpose of environmentally sound disposal in accordance with paragraph 1(d) of Article 6 of the POPs Convention.*

(C) *EXPORT TO PARTY WITH PERMISSION TO USE.*—An export condition referred to in subparagraph (A) is that the POPs chemical substance or mixture is exported to a party to the POPs Convention that is permitted to use the POPs chemical substance or mixture under Annex A or B to the POPs Convention.

(D) *EXPORT TO NONPARTY THAT HAS PROVIDED NONPARTY CERTIFICATION.*—

(i) *IN GENERAL.*—An export condition referred to in subparagraph (A) is that the POPs chemical substance or mixture is exported to an importing foreign state that—

(I) is not a party to the POPs Convention with respect to the POPs chemical substance or mixture; and

(II) has provided an annual certification to the Administrator.

(ii) *COMMITMENTS BY IMPORTING NONPARTY.*—Consistent with the POPs Convention, an annual nonparty certification under clause (i) shall specify the intended use of the POPs chemical substance or mixture and state that, with respect to the POPs chemical substance or mixture, the importing nonparty is committed to—

(I) protecting human health and the environment by taking necessary measures to minimize or prevent releases;

(II) complying with paragraph 1(d) of Article 6 of the POPs Convention; and

(III) complying, to the extent appropriate, with paragraph 2 of Part II of Annex B to the POPs Convention.

(iii) *SUPPORTING DOCUMENTATION.*—Each nonparty certification shall include any appropriate supporting documentation, such as legislation, regulatory instruments, and administrative or policy guidelines.

(iv) *SUBMISSION TO SECRETARIAT OF POPS CONVENTION.*—Not later than 60 days after the date of receipt of a complete nonparty certification, the Administrator shall submit a copy of the nonparty certification to the Secretariat of the POPs Convention.

(8) *EXPORT FOR ENVIRONMENTALLY SOUND DISPOSAL IF NO PRODUCTION OR USE SPECIFIC EXEMPTION IN EFFECT.*—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any distribution in commerce for export for the purpose of environmentally sound disposal, in accordance with paragraph 1(d) of Article 6 of the POPs Convention, of a POPs chemical substance or mixture listed in Annex A to the POPs Convention for which no production or use specific exemption is in effect for any party to the POPs Convention.

(9) *IMPORTS FOR SPECIFIED PURPOSES.*—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to a POPs chemical substance or mixture that is imported for the purpose of environmentally sound disposal in accordance with paragraph 1(d) of Article 6 of the POPs Convention.

(10) *WASTE.*—To the extent consistent with the POPs Convention, the prohibitions specified in subsections (a) and (b) shall not apply to any quantity of a POPs chemical substance or mixture, including any article that consists of, contains, or is contaminated with a POPs chemical substance or mixture, that has become waste and that is managed in a manner consistent with Article 6 of the POPs Convention.

(11) *NO EFFECT ON OTHER PROHIBITIONS.*—Nothing in this subsection authorizes any manufacture, processing, distribution in commerce for export, use, or disposal of a POPs chemical substance or mixture that is prohibited under any other provision of law.

(d) *EXEMPTIONS UNDER LRTAP POPs PROTOCOL.*—

(1) *IN GENERAL.*—To the extent consistent with the LRTAP POPs Protocol, the prohibitions on manufacture, processing, distribution in commerce for export, or use specified in subsections (a) and (b) shall not apply to—

(A) any manufacture, processing, distribution in commerce for export, or use of a LRTAP POPs chemical substance or mixture that the Administrator determines (with the concurrence of the Secretary of State), through final regulations promulgated in accordance with subsection (h)—

(i) is consistent with an allowed restricted use or condition available to the United States under Annex I or II to the LRTAP POPs Protocol; and

(ii) would, as a result, not prevent the United States from complying with the obligations of the United States under the LRTAP POPs Protocol;

(B) any quantity of a LRTAP POPs chemical substance or mixture that is used for laboratory scale research or as a reference standard;

(C) any quantity of a LRTAP POPs chemical substance or mixture that occurs as a contaminant in a product;

(D) any quantity of a LRTAP POPs chemical substance or mixture that is in an article manufactured or in use on or before—

(i) the implementation date of any applicable obligation of the LRTAP POPs Protocol; or

(ii) in the case of any LRTAP POPs chemical substance or mixture added to any applicable Annex after the implementation date of the applicable obligation of the LRTAP POPs Protocol, the implementation date in the amendment to the LRTAP POPs Protocol that makes the addition;

(E) any quantity of a LRTAP POPs chemical substance or mixture that occurs as a site-limited chemical inter-

mediate in the manufacture of 1 or more different substances and that is subsequently chemically transformed;

(F) the production or use of any quantity of HCH that complies with the restrictions and conditions specified for HCH in Annex II to the LRTAP POPs Protocol;

(G) any quantity of a LRTAP POPs chemical substance or mixture that has become waste and that is disposed of in an environmentally sound manner in accordance with paragraph 1(b) of Article 3 of the LRTAP POPs Protocol;

(H) any distribution in commerce for export of a LRTAP POPs chemical substance or mixture if the distribution in commerce for export is conducted in an environmentally sound manner; or

(I) any import of a LRTAP POPs chemical substance or mixture if the import is conducted in an environmentally sound manner.

(2) *EXEMPTIONS BY ADMINISTRATOR.*—The Administrator, with the concurrence of the Secretary of State, may grant an exemption from the prohibitions applicable to LRTAP POPs chemical substances or mixtures specified in subsection (a) or (b) that the Administrator determines are consistent with the exemptions authorized under paragraph 2 of Article 4 of the LRTAP POPs Protocol.

(3) *EXEMPTIONS BY PETITION.*—

(A) *PETITIONS.*—A person may petition the Administrator for an exemption from a prohibition applicable to LRTAP POPs chemical substances or mixtures specified in subsection (a) or (b) that is consistent with the exemptions authorized under paragraph 2 of Article 4 of the LRTAP POPs Protocol.

(B) *REQUIRED ELEMENTS OF PETITIONS.*—Any petition under subparagraph (A) shall, at a minimum, contain—

(i) information relating to each finding, if any, that the Administrator is required to make under the LRTAP POPs Protocol before granting the exemption; and

(ii) any additional information, if any, that the Administrator is required to provide to the Secretariat of the LRTAP POPs Protocol concerning a granted exemption.

(C) *GRANT OR DENIAL OF PETITION.*—The Administrator, with the concurrence of the Secretary of State, shall—

(i) if the petition is authorized for the United States under, and is otherwise consistent with, the LRTAP POPs Protocol, grant the petition with such conditions or limitations as are necessary to meet any requirement of the LRTAP POPs Protocol or any other provision of law; or

(ii) deny the petition.

(4) *PROVISION OF INFORMATION TO SECRETARIAT.*—Notwithstanding any other provision of law, if the Administrator grants an exemption under this subsection, the Administrator, not later than 90 days after the date on which the exemption is

granted, shall provide the Secretariat of the LRTAP POPs Protocol with the information specified in paragraph 3 of Article 4 of the LRTAP POPs Protocol.

(5) *DISALLOWANCE OF EXEMPTION BY LRTAP POPs PROTOCOL.*—

(A) *IN GENERAL.*—If, after an exemption has been granted under this subsection, the exemption is no longer authorized by the United States under the LRTAP POPs Protocol, it shall be unlawful for any person to manufacture, process, distribute in commerce for export, or use a LRTAP POPs chemical substance or mixture in the manner authorized by the exemption.

(B) *PUBLICATION OF NOTICE IN FEDERAL REGISTER.*—The Administrator shall publish in the Federal Register a notice announcing the disallowance of any exemption under subparagraph (A).

(6) *NO EFFECT ON OTHER PROHIBITIONS.*—Nothing in this subsection authorizes any manufacture, processing, distribution in commerce for export, or use of a LRTAP POPs chemical substance or mixture that is prohibited under any other provision of law.

(e) *NOTICE AND REPORT AFTER DECISION THAT SCREENING CRITERIA ARE MET UNDER POPs CONVENTION OR AFTER RISK PROFILE SUBMITTED UNDER LRTAP POPs PROTOCOL.*—

(1) *APPLICABILITY.*—This subsection applies if—

(A) the POPs Review Committee or Conference decides—

(i) under paragraph 4(a) of Article 8 of the POPs Convention, that a proposal for listing a chemical substance or mixture in Annex A, B, or C to the POPs Convention fulfills the screening criteria specified in Annex D to the POPs Convention; or

(ii) under paragraph 5 of Article 8 of the POPs Convention, that such a proposal shall proceed; or

(B) if a party to the LRTAP POPs Protocol submits to the Executive Body a risk profile in support of a proposal to list a chemical substance or mixture in Annex I, II, or III to the LRTAP POPs Protocol.

(2) *REQUIREMENT.*—Not later than 45 days after the date of the POPs Review Committee or Conference decision on a proposal or the submission of a risk profile in support of a proposal under the LRTAP POPs Protocol described in subparagraph (A) or (B) of paragraph (1), respectively, the Administrator shall—

(A) publish in the Federal Register a notice of the proposal; and

(B) provide opportunity for comment on the proposal.

(3) *REQUIRED ELEMENTS OF NOTICE.*—A notice under paragraph (2) shall—

(A) identify the chemical substance or mixture that is the subject of the proposal;

(B) include a summary of the process under the POPs Convention or the LRTAP POPs Protocol for submission of a proposal and listing of a chemical substance or mixture

that is the subject of a proposal (including criteria applied in that process);

(C) include a summary of the POPs Review Committee or Conference decision and the basis for the decision;

(D) request information relevant to and comment on—

(i) in the case of a chemical substance or mixture proposed for listing in an Annex to the POPs Convention, the information requirements and screening criteria elements covered under Annex D to the POPs Convention; and

(ii) in the case of a chemical substance or mixture proposed for listing in an Annex to the LRTAP POPs Protocol, the information referenced in paragraph 6(a) of Article 14 of the LRTAP POPs Protocol;

(E) request the information required under paragraph (4);

(F) include any other information that the Administrator considers to be relevant to the proposal;

(G) include a statement that any information submitted will be part of the record used as the basis for rule-making that the Administrator may undertake under this title; and

(H) request information and comment on—

(i) information relevant to the risk profile of the POPs Review Committee covered under Annex E to the POPs Convention; and

(ii) information relevant to any technical review conducted under paragraph 2 of Executive Body decision 1998/2.

(4) PROVISION OF INFORMATION.—

(A) PROVISION OF INFORMATION UNDER POPS CONVENTION.—Not later than 60 days after the date of publication of the notice under paragraph (2) regarding a proposal to list a chemical substance or mixture on an Annex of the POPs Convention, any person that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of the notice shall provide (and any other interested person may provide) to the Administrator information (to the extent the information is known or readily obtainable to the person) on—

(i) the annual quantity of the chemical substance or mixture that the person manufactures and the locations of the manufacture;

(ii) the uses of the chemical substance or mixture;

(iii) the approximate annual quantity of the chemical substance or mixture that the person releases into the environment; and

(iv) other information or monitoring data relating to the chemical substance or mixture that is consistent with the information specified in paragraph 1 of Annex D, and subsections (b) through (e) of Annex E, to the POPs Convention.

(B) PROVISION OF INFORMATION UNDER LRTAP POPS PROTOCOL.—Not later than 60 days after the date of publi-

*cation of the notice under paragraph (2) regarding a proposal to list a chemical substance or mixture on an Annex of the LRTAP POPs Protocol, any person that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of the notice shall provide (and any other interested person may provide) to the Administrator information (to the extent the information is known or readily obtainable to the person) on—*

*(i) the potential for long-range transboundary atmospheric transport of the chemical substance or mixture;*

*(ii) the toxicity of the chemical substance or mixture;*

*(iii) the persistence of the chemical substance or mixture, including biotic degradation processes and rates and degradation products;*

*(iv) the bioaccumulation of the chemical substance or mixture, including bioavailability;*

*(v) the annual quantity of the chemical substance or mixture that the person manufactures and the locations of the manufacture;*

*(vi) the uses of the chemical substance or mixture;*

*(vii) the approximate annual quantity of the chemical substance or mixture that the person releases into the environment;*

*(viii) environmental monitoring data relating to the chemical substance or mixture (in areas distant from sources);*

*(ix)(I) information on alternatives to the uses of the chemical substance or mixture and the efficacy of each alternative; and*

*(II) information on any known adverse environmental or human health effects associated with each alternative;*

*(x) information on—*

*(I) process changes, control technologies, operating practices, and other pollution prevention techniques that can be used to reduce the emissions of the chemical substance or mixture; and*

*(II) the applicability and effectiveness of each technique described in subclause (I); and*

*(xi) information on the nonmonetary costs and benefits and the quantifiable costs and benefits associated with the use of each alternative described in clause (ix) or technique described in clause (x)(I).*

**(C) UPDATING OF INFORMATION.—**

*(i) VOLUNTARY UPDATES.—Any person that submits information under subparagraph (A) or (B) may voluntarily update the information at any time.*

*(ii) REQUIRED UPDATES.—If the Administrator determines, with the concurrence of the Secretary of State, that an update of information submitted under subparagraph (A) or (B) is necessary, the Adminis-*

trator may, through a notice published in the Federal Register, require 1 or more persons that are required to submit the information to update the information.

(iii) *NEW INFORMATION.*—The Administrator may require any person that (after the date under subparagraphs (A) and (B) by which persons are required to submit information) commences manufacturing, processing, distributing in commerce for export, or disposing of a chemical substance or mixture subject to the requirements in subparagraph (A) or (B), to submit the information required to be submitted under subparagraph (A) or (B).

(D) *REPORT.*—Based on information received under this section and any other relevant information available to the Administrator, the Administrator, not later than 240 days after the date of publication of the notice under this paragraph, shall issue for public comment a report that contains, at a minimum—

(i) information on the production and uses in the United States of the chemical substance or mixture; and

(ii) a review of the benefits and risks in the United States and internationally associated with the production and uses in the United States and internationally of the chemical substance or mixture.

(f) *NOTICE AFTER DECISION THAT GLOBAL ACTION WARRANTED UNDER POPs CONVENTION OR THAT FURTHER CONSIDERATION OF CHEMICAL SUBSTANCE OR MIXTURE WARRANTED UNDER LRTAP POPs PROTOCOL.*—

(1) *APPLICABILITY.*—This subsection applies if—

(A) the POPs Review Committee decides, under paragraph 7(a) of Article 8 of the POPs Convention, that global action is warranted with respect to the chemical substance or mixture that is the subject of the proposal, or the Conference decides, under paragraph 8 of that Article, that the proposal shall proceed; or

(B) the Executive Body determines pursuant to paragraph 2 of Executive Body Decision 1998/2 that further consideration of the chemical substance or mixture is warranted, and therefore requires 1 or more technical reviews of the proposal.

(2) *NOTICE.*—Not later than 45 days after the date on which a decision or determination is made under paragraph (1), the Administrator shall—

(A) publish in the Federal Register a notice of the decision or determination; and

(B) provide opportunity for comment on the decision or determination.

(3) *REQUIRED ELEMENTS OF NOTICE.*—A notice under paragraph (1) shall—

(A) identify the chemical substance or mixture that is the subject of the proposal;

(B) include a summary of—

(i) the POPs Review Committee or Conference decision and the basis for the decision; or

(ii) the Executive Body determination and basis for the determination;

(C) request information and comment on—

(i) in the case of a chemical substance or mixture proposed for addition to an Annex of the POPs Convention—

(I) information on socioeconomic considerations covered under Annex F to the POPs Convention; and

(II) information on socioeconomic considerations covered under Annex F to the POPs Convention applicable to the range of possible prohibitions described in subparagraph (F); and

(ii) in the case of a chemical substance or mixture proposed for listing on an Annex to the LRTAP POPs Protocol, information on—

(I) any additional measures not described in the notice published under subparagraph (F) that may exist to reduce the risks of adverse effects on human health or the environment that result from the long-range transboundary atmospheric transport of the chemical substance or mixture; and

(II) the feasibility of any of the additional measures or the measures outlined in the notice published pursuant to subparagraph (F);

(D) request information on any current or anticipated production or use of the chemical substance or mixture that is the subject of the proposal for which the United States may wish to—

(i) seek an exemption or acceptable purpose under the POPs Convention; or

(ii) allow a restricted use or condition under the LRTAP POPs Protocol;

(E) request the information required under paragraph (4);

(F) describe a broad range of possible prohibitions or restrictions that the United States could impose on the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture to address any risks that the chemical substance or mixture may pose;

(G) specify what changes, if any, to the regulatory requirements and risk management measures applicable to the chemical substance or mixture in the United States have been made since the date of publication of the notice under subsection (e); and

(H) include a statement that any information submitted will be part of the record used as the basis for a rulemaking that the Administrator may undertake under this title.

(4) PROVISION OF INFORMATION.—Not later than 60 days after the date of publication of the notice under paragraph (1),

any person that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of the notice shall provide (and any other interested party may provide) to the Administrator—

(A) consistent with the information needs described in Annex F to the POPs Convention, any information that the person believes is relevant to—

(i) a risk management evaluation carried out under paragraph 7 of Article 8 of the POPs Convention; or

(ii) a decision by the Conference under paragraph 9 of Article 8 of the POPs Convention;

(B) consistent with the information needs for the technical review described in paragraph 2 of Executive Body Decision 1998/2, any information the person believes is relevant to the technical review or to an Executive Body decision made under paragraph 3 of Article 14 of the LRTAP POPs Protocol;

(C) any information that the person believes is relevant to an action under this section; and

(D) information on any article in use that consists of, contains, or is contaminated with the chemical substance or mixture.

(5) **REPORT BY ADMINISTRATOR.**—Not later than 240 days after the date of publication of the notice under this paragraph, based on information received under this subsection and any other information available to the Administrator, the Administrator shall issue a report for public comment that contains, at a minimum, information relating to the feasibility of possible prohibitions or restrictions that could be placed on the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture (including the possible consequences of using alternative products or processes).

(g) **NOTICE AFTER RECOMMENDATION THAT CONFERENCE CONSIDER LISTING OR AFTER COMPLETION OF TECHNICAL REVIEW.**—

(1) **APPLICABILITY.**—This subsection applies—

(A) if the POPs Review Committee recommends, under paragraph 9 of Article 8 of the POPs Convention, that the Conference consider making a Conference listing decision with respect to the chemical substance or mixture in accordance with the proposal; or

(B) after completion of a technical review of a proposal to list a chemical substance or mixture on an Annex of the LRTAP POPs Protocol.

(2) **NOTICE.**—Not later than 45 days after the date on which a recommendation under paragraph (1) is made or a technical review described in paragraph (1) is completed, the Administrator shall—

(A) publish in the Federal Register a notice of the recommendation or completion of the technical review; and

(B) provide opportunity for comment on the recommendation or the technical review.

(3) *REQUIRED ELEMENTS.*—A notice under paragraph (1) shall—

(A) include a summary of the POPs Review Committee recommendation and the basis for the recommendation or a summary of the technical review;

(B) summarize any control measures for the chemical substance or mixture that are identified by the POPs Review Committee or in the technical review; and

(C) include a statement that any information submitted will be part of the record used as the basis for a rulemaking that the Administrator may undertake under this title.

(h) *REGULATIONS BY THE ADMINISTRATOR.*—

(1) *CHEMICAL SUBSTANCE OR MIXTURE LISTED UNDER POPS CONVENTION OR LRTAP POPS PROTOCOL.*—If the Conference decides to list a chemical substance or mixture in Annex A or B of the POPs Convention, or if the parties to the LRTAP POPS Protocol decide to list a chemical substance or mixture in Annex I or II to the LRTAP POPS Protocol, the Administrator may commence a rulemaking to prohibit or restrict the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture.

(2) *CRITERIA FOR REGULATIONS.*—

(A) *IN GENERAL.*—If the Administrator decides to commence a rulemaking to prohibit or restrict the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture, the Administrator shall promulgate prohibitions or restrictions to protect against hazards, including exposure, to human health and the environment associated with the chemical substance or mixture.

(B) *CRITERIA.*—In determining the appropriate manner of regulation, the Administrator shall take into account public health, environmental, and socioeconomic factors and shall—

(i) consider—

(I) the record compiled under subsections (e), (f), and (g);

(II) national and international consequences that are likely to arise as a result of domestic regulatory action (including the possible consequences of using alternative products or processes);

(III) alternatives to the prohibitions or restrictions adopted by the Conference or the Executive Body for the newly-listed chemical substance or mixture that are feasible and protective of human health and the environment; and

(IV) all scientific information—

(aa) compiled in the record under subsections (e), (f), and (g);

(bb) submitted to the POPs Review Committee or Conference by the United States or any other entity; and

(cc) submitted to the Executive Body, or a subsidiary of the Executive Body, under the LRTAP POPs Protocol;

taking due account of the scientific information that is consistent with generally accepted scientific principles;

(ii) in the case of a chemical substance or mixture listed on Annex A or B of the POPs Convention, give substantial weight to—

(I) the POPs Review Committee recommendation under paragraph 9 of Article 8 of the POPs Convention;

(II) the Conference listing decision;

(III) the reports that the Administrator is required to issue pursuant to subsections (e)(4) and (f)(5), including any version of the reports revised to reflect information received through public comment; and

(IV) any information that the United States submits to the POPs Review Committee or to the Conference pursuant to Article 8 of the POPs Convention; and

(iii) in the case of a chemical substance or mixture listed on Annex I or II of the LRTAP POPs Protocol, give substantial weight to—

(I) any technical review conducted pursuant to paragraph 2 of Executive Body Decision 1998/2;

(II) the LRTAP POPs Protocol listing decision;

(III) the reports that the Administrator is required to issue pursuant to subsections (e)(4) and (f)(5), including any version of the reports revised to reflect information received through public comment; and

(IV) any information that the United States submits to the Executive Body, or a subsidiary of the Executive Body, in relation to a technical review or listing decision.

(3) CITIZEN'S PETITION.—

(A) IN GENERAL.—Beginning 1 year after the date on which the Conference listing decision or the LRTAP POPs Protocol listing decision is made, any person may petition the Administrator to commence a rulemaking, if a rulemaking has not commenced as of that date, to prohibit or restrict the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture that the Conference decides to list in Annex A or B of the POPs Convention, or that the parties to the LRTAP POPs Protocol decide to list in Annex I or II of the LRTAP POPs Protocol.

(B) PROCEDURE.—

(i) IN GENERAL.—A petition under subparagraph (A) shall describe the facts that the petitioner believes make it necessary for the Administrator to commence a rulemaking under paragraph (2).

(ii) *PROCEEDINGS.*—

(I) *AVAILABILITY.*—The Administrator shall publish in the Federal Register, and make available electronically, a summary of each petition received, including the name of the petitioner.

(II) *HEARINGS OR PROCEEDINGS.*—The Administrator may hold a public hearing, or conduct any investigation or proceeding that the Administrator considers appropriate, to determine whether or not a rulemaking should be commenced.

(iii) *DECISION BY THE ADMINISTRATOR.*—

(I) *IN GENERAL.*—Not later than 90 days after the date of filing of a petition under subparagraph (A), the Administrator shall grant or deny the petition.

(II) *GRANT.*—If the Administrator grants the petition, the Administrator shall promptly commence a rulemaking and proceed in accordance with paragraph (2).

(III) *DENIAL.*—If the Administrator denies the petition, the Administrator shall publish in the Federal Register a statement of the reasons for the denial.

(C) *CIVIL ACTION TO COMPEL RULEMAKING.*—

(i) *IN GENERAL.*—If the Administrator denies a petition under subparagraph (A) (or if the Administrator fails to grant or deny the petition within the 90-day period specified in subparagraph (B)(iii)), the petitioner may bring a civil action in United States district court to compel the Administrator to commence a rulemaking as requested in the petition.

(ii) *TIMING.*—A civil action under clause (i) shall be brought—

(I) not later than 60 days after the date of denial of the petition; or

(II) if the Administrator fails to grant or deny the petition within the 90-day period specified in subparagraph (B)(iii), not later than 60 days after the expiration of the 90-day period.

(iii) *SCOPE OF REVIEW.*—In a civil action under clause (i), the court shall consider the petition *de novo*.

(iv) *MATTERS FOR CONSIDERATION.*—If the Administrator denies a petition, the court shall take into account public health, environmental, and socioeconomic factors and shall—

(I) consider—

(aa) the record compiled under subsections (e), (f), and (g);

(bb) national and international consequences that are likely to arise as a result of domestic regulatory action (including the possible consequences of using alternative products or processes);

(cc) alternatives to the prohibitions or restrictions adopted by the Conference or the Executive Body for the newly-listed chemical substance or mixture that are feasible and protective of human health and the environment; and

(dd) all scientific information—

(AA) compiled in the record under subsections (e), (f), and (g);

(BB) submitted to the POPs Review Committee or Conference by the United States or any other entity; and

(CC) submitted to the Executive Body, or a subsidiary of the Executive Body, under the LRTAP POPs Protocol;

taking due account of the scientific information that is consistent with generally accepted scientific principles;

(II) in the case of a chemical substance or mixture listed on Annex A or B of the POPs Convention, give substantial weight to—

(aa) the POPs Review Committee recommendation under paragraph 9 of Article 8 of the POPs Convention;

(bb) the Conference listing decision;

(cc) the reports that the Administrator is required to issue pursuant to subsections (e)(4) and (f)(5), including any version of the reports revised to reflect information received through public comment; and

(dd) any information that the United States submits to the POPs Review Committee or to the Conference pursuant to Article 8 of the POPs Convention; and

(III) in the case of a chemical substance or mixture listed on Annex I or II of the LRTAP POPs Protocol, give substantial weight to—

(aa) any technical review conducted pursuant to paragraph 2 of Executive Body Decision 1998/2;

(bb) the LRTAP POPs Protocol listing decision;

(cc) the reports that the Administrator is required to issue pursuant to subsections (e)(4) and (f)(5), including any version of the reports revised to reflect information received through public comment; and

(dd) any information that the United States submits to the Executive Body, or a subsidiary of the Executive Body, in relation to a technical review or listing decision.

(v) ORDER TO COMMENCE RULEMAKING.—The court shall order the Administrator to commence a rule-

making in accordance with paragraph (2) if the court determines that—

(I) regulatory action to control the manufacture, processing, distribution in commerce for export, use, or disposal of a chemical substance or mixture listed in Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol is necessary to protect against hazards, including exposure, to human health and the environment associated with the chemical substance or mixture; and

(II) the Administrator has not taken action in accordance with paragraph (2).

(vi) COSTS.—In issuing any final order in a civil action under clause (i), the court may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(vii) SAVINGS CLAUSE.—The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(4) DEADLINE FOR REGULATIONS.—

(A) IN GENERAL.—Not later than 18 months after commencing a rulemaking under this subsection, the Administrator shall—

(i) promulgate final regulations prohibiting or restricting the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture to be listed in Annex A or B to the POPs Convention or Annex I or II of the LRTAP POPs Protocol; or

(ii) decide not to promulgate a final rule.

(B) DECISION NOT TO PROMULGATE.—If the Administrator decides not to commence or promulgate a final rule, the Administrator shall publish within 30 days a statement in the Federal Register explaining the reasons for not promulgating or commencing the final rule.

(5) SOLE PROCEDURE.—

(A) IN GENERAL.—No other rulemaking procedure under this Act shall apply to regulations promulgated under this section.

(B) RULEMAKING.—Regulations promulgated by the Administrator under this title shall comply with section 553 of title 5, United States Code (without regard to any reference in that section to sections 556 and 557 of that title).

(6) NO EFFECT ON OTHER AUTHORITY.—Nothing in this subsection affects the authority of the Administrator to regulate a chemical substance or mixture under any other law or any other provision of this Act.

(7) INTERIM STATEMENT.—

(A) APPLICABILITY.—This paragraph applies if the Administrator has not commenced a rulemaking under paragraph (2) by the date that is 1 year after the date on which—

(i) a decision is made by the Conference to list a chemical substance or mixture in Annex A or B of the POPs Convention; or

(ii) a decision is made by the parties to the LRTAP POPs Protocol to list a chemical substance or mixture in Annex I or II to the LRTAP POPs Protocol.

(B) STATEMENT.—If the Administrator has not commenced a rulemaking as described in subparagraph (A), the Administrator shall publish annually in the Federal Register a statement that—

(i) describes the actions taken by the Administrator with respect to the listing decision; and

(ii) characterizes actions likely to be taken by the Administrator with respect to the commencement of a rulemaking under paragraph (2).

(i) HARMONIZATION OF POPs CONVENTION AND LRTAP POPs PROTOCOL.—

(1) IN GENERAL.—If a chemical substance or mixture is both a POPs chemical substance or mixture and a LRTAP POPs chemical substance or mixture, in the case of a conflict between a provision of this section applicable to a POPs chemical substance or mixture and a provision of this section applicable to a LRTAP POPs chemical substance or mixture, the more stringent provision shall apply, as determined by the Administrator with the concurrence of the Secretary of State.

(2) APPLICATION.—In the case of chemical substance or mixture described in paragraph (1), this section shall be applied in such a manner as to ensure that the United States is in compliance with the POPs Convention and the LRTAP POPs Protocol with respect to the chemical substance or mixture.

**SEC. 503. NOTICE AND RECORD OF PROHIBITIONS, EXEMPTIONS, DISALLOWANCES, AND OTHER INFORMATION.**

(a) IN GENERAL.—The Administrator—

(1) shall publish in the Federal Register timely notice concerning—

(A) the POPs chemical substances and mixtures or the LRTAP POPs chemical substances and mixtures, subject to the prohibitions specified in section 502;

(B) any exemptions from the prohibitions authorized under section 502, including the effective date on which the exemptions are no longer authorized;

(C) in the case of a LRTAP POPs chemical substance or mixture, any disallowances of exemptions under section 502(d)(5); and

(D) in the case of a POPs chemical substance or mixture, a list of any importing foreign states from which the Administrator has received a nonparty certification under section 502(c)(7)(D); and

(2) may include in the notice any other information that the Administrator determines to be necessary to ensure adequate notice of the requirements of—

(A) this section;

(B) the POPs Convention; or

(C) the LRTAP POPs Protocol.

(b) **INTEGRATION WITH FIFRA INFORMATION.**—*The Administrator shall—*

(1) *maintain a record that integrates the information in the notice published under subsection (a) with any information published under section 17(g) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136o(e));*

(2) *update the record as necessary; and*

(3) *make the record publicly available.*

(c) **DISCLOSURE OF DATA.**—*Any information provided to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be subject to section 14 of this Act.*

**SEC. 504. INTERNATIONAL CONVENTIONS AND COOPERATION IN INTERNATIONAL EFFORTS.**

*In cooperation with the Secretary of State and the head of any other appropriate Federal agency, the Administrator shall—*

(1) *participate and cooperate in any international efforts to develop improved research and regulations on chemical substances and mixtures; and*

(2) *participate in technical cooperation and capacity building activities designed to support implementation of—*

(A) *the LRTAP POPs Protocol;*

(B) *the PIC Convention; and*

(C) *the POPs Convention.*

**SEC. 505. EXPORTS.**

(a) **REQUIREMENTS FOR EXPORTS.**—*In the case of a chemical substance or mixture identified by the Administrator as listed on Annex III of the PIC Convention in a notice issued under subsection (d)(3), any person that distributes in commerce the chemical substance or mixture for export shall comply with any export conditions or restrictions identified by the Administrator in the notice.*

(b) **PRE-EXPORT NOTICES.**—

(1) **IN GENERAL.**—

(A) **REQUIREMENT.**—*In the case of—*

(i) *a chemical substance or mixture that the Administrator determines to be banned or severely restricted under subsection (d)(1);*

(ii) *a chemical substance or mixture identified by the Administrator in a notice issued under subsection (d)(3); or*

(iii) *a POPs chemical substance or mixture allowed to be exported under paragraph (7) or (8) of section 502(c);*

*the exporter of the chemical substance or mixture shall provide to the Administrator notice of the intent of the exporter to export the chemical substance or mixture.*

(B) **TIMING OF NOTICE FOR BANNED OR SEVERELY RESTRICTED CHEMICAL SUBSTANCES OR MIXTURES.**—

(i) **FIRST EXPORT.**—*In the case of a first export that an exporter makes from the territory of the United States to each importing foreign state after the Administrator issues a notice under subsection (d)(1), the exporter shall provide the notice so that the Adminis-*

trator receives the notice not earlier than 30 nor later than 15 calendar days before the date of export.

(ii) *SUBSEQUENT EXPORTS.*—In the case of subsequent exports to the importing foreign state in the calendar year subsequent to the notification provided under clause (i), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of the first export in each calendar year.

(C) *TIMING OF PRE-EXPORT NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES LISTED ON ANNEX III OF THE PIC CONVENTION.*—

(i) *FIRST EXPORT.*—In the case of a first export that an exporter makes from the territory of the United States to each importing foreign state after the Administrator notifies the public under subsection (d)(3), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of export.

(ii) *SUBSEQUENT EXPORTS.*—In the case of subsequent exports by the exporter to the importing foreign state in a calendar year subsequent to the notification provided under clause (i), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of the first such subsequent export in each calendar year.

(iii) *CHANGED CIRCUMSTANCES MERITING NEW NOTICE.*—If conditions or restrictions imposed by the importing foreign state change and the Administrator notifies the public of the change under subsection (d)(3), or if an earlier pre-export notice no longer applies, the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of export.

(D) *TIMING OF PRE-EXPORT NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES ALLOWED TO BE EXPORTED UNDER PARAGRAPH (7) OR (8) OF SECTION 502(c).*—

(i) *FIRST EXPORT OF THE CALENDAR YEAR.*—In the case of the first export that an exporter makes from the territory of the United States to each importing foreign state of a chemical substance or mixture exported under paragraph (7) or (8) of section 502(c), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of the first export.

(ii) *SUBSEQUENT EXPORTS.*—In the case of subsequent exports by the exporter to the importing foreign state in a calendar year subsequent to the notification provided under clause (i) to the importing foreign state, the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later

than 15 calendar days before the date of the first such subsequent export in each calendar year.

(iii) *CHANGED CIRCUMSTANCES MERITING NEW NOTICE.*—If the information provided in an earlier pre-export notice is no longer accurate, the exporter shall provide the notice so that the Administrator receives the notice not earlier than 30 nor later than 15 calendar days before the date of export.

(2) *LATER NOTICES.*—Notwithstanding subparagraphs (B), (C), and (D) of paragraph (1), the Administrator may permit an exporter to provide a notice under paragraph (1) so that the Administrator receives the notice less than 15 days before the date of an export if the Administrator determines, based on the experience of the Administrator with the notification program, that the Administrator is able to administer notice activities in accordance with the PIC Convention despite the shortened notice period.

(3) *CONTENT OF PRE-EXPORT NOTICES.*—

(A) *NOTICES UNDER PARAGRAPH (1)(B).*—A notice under paragraph (1)(B) shall include—

- (i) the name and address of the exporter;
- (ii) the name and address of the appropriate designated national authority of the United States;
- (iii) the name and address of the appropriate designated national authority of the importing foreign state, if available;
- (iv) the name and address of the importer;
- (v) the name of the chemical substance or mixture for which the notice is required;
- (vi) the expected date of export;
- (vii) any information relating to the foreseen uses of the chemical substance or mixture, if known, in the importing foreign state;
- (viii) any information on precautionary measures to reduce exposure to, and emission of, the chemical substance or mixture;
- (ix) any information relating to the concentration of the chemical substance or mixture; and
- (x) any other information specified in Annex V to the PIC Convention.

(B) *NOTICES UNDER PARAGRAPH (1)(C).*—A notice under paragraph (1)(C) shall include—

- (i) all of the information required to be included under subparagraph (A);
- (ii) any information relating to export conditions or restrictions identified by the Administrator in the notice issued under subsection (d)(3) with respect to the chemical substance or mixture;
- (iii) a general description of the manner in which the export complies with those conditions; and
- (iv) any other information that the Administrator determines to be necessary for effective enforcement of the export conditions or restrictions applicable to the chemical substance or mixture.

(C) *NOTICES UNDER PARAGRAPH (1)(D).*—A notice submitted to the Administrator under paragraph (1)(D) shall include—

- (i) the name and address of the exporter;
- (ii) the name and address of the importer;
- (iii) a specification of the identity of the POPs chemical substance or mixture;
- (iv) a general description of how the export complies with the conditions under paragraph (7) or (8) of section 502(c); and
- (v) such other information as the Administrator determines to be necessary for enforcement of the export-related obligations of the POPs Agreement applicable to the chemical substance or mixture.

(4) *PRE-EXPORT NOTICES ACCOMPANYING EACH EXPORT.*—An exporter shall ensure that a copy of the most recent applicable pre-export notice accompanies each shipment for export and is available for inspection at the border of—

(A) any chemical substance or mixture that the Administrator has identified under subsection (d)(3) as being listed on Annex III of the PIC Convention; or

(B) any POPs chemical substance or mixture that is exported under paragraph (7) or (8) of section 502(c).

(5) *RETENTION OF PRE-EXPORT NOTICES.*—An exporter required to provide a notice under subparagraph (C) or (D) of paragraph (1) shall maintain a copy of the notice and other documents used to generate the notice on site and readily available for a period of not less than 3 years beginning on the date on which the notice is provided.

(c) *LABELING REQUIREMENTS.*—

(1) *IN GENERAL.*—In the case of any chemical substance or mixture that is the subject of a notice issued under paragraph (1) or (3) of subsection (d) and that is manufactured, processed, or distributed in commerce for export, the chemical substance or mixture shall, in accordance with the PIC Convention—

(A) bear labeling information relating to risks or hazards to human health or the environment; and

(B) be accompanied by shipping documents that include any relevant safety data sheets on the chemical substance or mixture.

(2) *CUSTOM CODES.*—A chemical substance or mixture that is the subject of a notice issued under subsection (d)(3) and that is distributed or sold for export shall be accompanied by shipping documents that bear, at a minimum, any appropriate harmonized system customs codes assigned by the World Customs Organization.

(d) *NOTICE REQUIREMENTS AND EXEMPTION.*—

(1) *DETERMINATION WHETHER CHEMICAL SUBSTANCE OR MIXTURE IS BANNED OR SEVERELY RESTRICTED.*—

(A) *IN GENERAL.*—The Administrator, with the concurrence of the Secretary of State, shall determine whether a chemical substance or mixture is banned or severely restricted within the United States (as those terms are defined by the PIC Convention).

(B) *NOTICE OF DETERMINATIONS.*—Notwithstanding any other provision of law, the Administrator shall issue to the Secretariat of the PIC Convention and the public a notice of each determination under subparagraph (A) that includes—

(i) in the case of a notice to the Secretariat of the PIC Convention, the information specified in Annex I to the PIC Convention; and

(ii) in the case of a notice to the public, at a minimum, a summary of that information.

(2) *NOTICE TO FOREIGN COUNTRIES.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of law, on receipt of a notice of intent to export under subsection (b)(1)(B), the Administrator shall provide a copy of the notice to the designated national authority of the importing foreign state.

(B) *NONIDENTIFIED DESIGNATED NATIONAL AUTHORITY.*—In a case in which a designated national authority has not been identified, the Administrator shall provide the notice of intent to export to any other appropriate official of the importing foreign state, as identified by the Administrator.

(3) *NOTICE TO PUBLIC.*—

(A) *IN GENERAL.*—The Administrator, with the concurrence of the Secretary of State, shall issue a notice to inform the public of—

(i) any chemical substance or mixture that is listed on Annex III to the PIC Convention; and

(ii) any condition or restriction of an importing foreign state that is applicable to the import, in accordance with the PIC Convention, of the chemical substance or mixture.

(B) *TIMING.*—A notice required under subparagraph (A) shall be issued not later than 90 days after, and any conditions or restrictions described in subparagraph (A)(ii) shall take effect not later than 180 days after, the date of receipt of a notice from the Secretariat of the PIC Convention who—

(i) transmits import decisions of the parties to the PIC Convention; or

(ii) provides notice of the failure of the parties to provide import decisions.

(C) *TREATMENT OF CONDITIONS AND RESTRICTIONS.*—A condition or restriction identified by a notice required under subparagraph (A) shall be considered to be an export condition or restriction for the purpose of subsection (a).

(4) *NOTICE OF EXEMPTION.*—The Administrator may issue a notice exempting any chemical substance or mixture from the requirements of subsections (a) through (c) and this subsection if the Administrator determines, with the concurrence of the Secretary of State, that the exemption would be consistent with the PIC Convention.

(5) *INTEGRATION WITH OTHER NOTICES.*—To the maximum extent practicable, the Administrator shall integrate the infor-

mation contained in any notice issued under this subsection into any notice published under—

(A) section 12(b);

(B) section 502; or

(C) section 17(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136o(g)).

(e) **REGULATIONS.**—The Administrator may promulgate such regulations as the Administrator determines to be necessary—

(1) to facilitate implementation of this section;

(2) to ensure compliance with the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol; and

(3) to allow the pre-export notice requirement under this section and any pre-export notice requirement in other provisions of this Act or in any other Federal law to be satisfied by a single notice.

(f) **HARMONIZATION OF POPS CONVENTION AND PIC CONVENTION.**—

(1) **IN GENERAL.**—If the export of a chemical substance or mixture is addressed or restricted under both section 502 and this section, that section and this section shall apply to the chemical substance or mixture.

(2) **CONFLICT.**—In the case of a conflict between section 502 and this section with respect to a chemical substance or mixture, the more stringent provision shall govern.

(3) **APPLICATION.**—With respect to a chemical substance or mixture, section 502 and this section shall be applied in such a manner as to ensure that the United States is in compliance with both the POPs Convention and the PIC Convention with respect to the chemical substance or mixture.

**SEC. 506. JUDICIAL REVIEW.**

(a) **DEFINITION OF RULEMAKING RECORD.**—In this section, the term ‘rulemaking record’ means—

(1) a regulation reviewed under this section;

(2) any determination required under section 502(h);

(3) any written submission of interested parties relating to the promulgation of a regulation under section 502(h);

(4)(A) in the case of a POPs chemical substance or mixture, the international listing process and Conference listing decision; or

(B) in the case of a LRTAP POPs chemical substance or mixture, the LRTAP POPs listing decision;

(5) comments on the proposed regulation; and

(6) any other information that the Administrator—

(A) determines to be relevant to the regulation; and

(B) identifies on or before the date of promulgation of the regulation.

(b) **JUDICIAL REVIEW.**—

(1) **IN GENERAL.**—Not later than 60 days after the date of promulgation of a regulation under this title, any person may file a petition for judicial review of the regulation with—

(A) the United States Court of Appeals for the District of Columbia; or

(B) the United States court of appeals for the circuit in which the person resides or maintains a principal place of business.

(2) JURISDICTION.—The United States courts of appeals shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a regulation promulgated under this title if any United States district court would have had jurisdiction of the action but for this paragraph.

(3) COPIES.—The clerk of the court with which a petition is filed under this subsection shall submit to the Administrator and the Attorney General copies of the petition.

(4) RULEMAKING PROCEEDINGS.—With respect to an action to obtain judicial review under this subsection, section 2112 of title 28, United States Code, shall apply to—

(A) the filing of the record of proceedings for a rule-making on which the Administrator based the regulation; and

(B) any transfer of proceedings between United States courts of appeals.

(c) STANDARD OF REVIEW.—Section 706 of title 5, United States Code, shall apply to the review of a regulation under this section.

(d) FEES AND COSTS.—The decision of the court in an action commenced under subsection (b), or of the Supreme Court of the United States on review of such a decision, may include an award of costs relating to the action (including reasonable fees for attorneys and expert witnesses) if the court determines that such an award is appropriate.

(e) OTHER REMEDIES.—The remedies provided under this section shall be in addition to and not in lieu of remedies provided under any other provision of law.

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