

# **S.1486**

## **POPs, LRTAP POPs, and PIC Implementation Act of 2003 (Introduced in Senate)**

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S 1486 IS

108th CONGRESS  
1st Session  
**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.

### **IN THE SENATE OF THE UNITED STATES**

**July 29 (legislative day, JULY 21), 2003**

Mr. CHAFEE (for himself and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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### **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.

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

### **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the 'POPs, LRTAP POPs, and PIC Implementation Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

## **TITLE I--IMPLEMENTATION OF INTERNATIONAL AGREEMENTS**

Sec. 101. Implementation of international agreements.

## **^TITLE V--IMPLEMENTATION OF INTERNATIONAL AGREEMENTS**

### **^Sec. 501. Definitions.**

**^Sec. 502. Implementation of POPs Convention and LRTAP POPs Protocol.**

**^Sec. 503. Notice and record of prohibitions, exemptions, disallowances, and other information.**

**^Sec. 504. International conventions and cooperation in international efforts.**

**^Sec. 505. Exports.**

**^Sec. 506. Judicial review.'**

Sec. 102. Exports.

Sec. 103. Prohibited acts.

Sec. 104. Conforming amendments.

## **TITLE II--USE OR PRODUCTION OF POPS PESTICIDES**

Sec. 201. Definitions.

Sec. 202. Registration of pesticides.

Sec. 203. Unlawful acts.

Sec. 204. Imports, exports, and international conventions.

Sec. 205. Conforming amendments.

## **TITLE I--IMPLEMENTATION OF INTERNATIONAL AGREEMENTS**

### **SEC. 101. IMPLEMENTATION OF INTERNATIONAL AGREEMENTS.**

The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by adding at the end the following:

## **^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 intermediate 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 rulemaking 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 publication 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 Administrator 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-

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` (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 rulemaking 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 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 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.

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**THIS SEARCH**

Next Hit

Prev Hit

Hit List

**THIS DOCUMENT**

[Forward](#)

[Back](#)

[Best Sections](#)

[Contents Display](#)

**GO TO**

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[HomePage](#)

[Help](#)

# S.1486

## POPs, LRTAP POPs, and PIC Implementation Act of 2003 (Introduced in Senate)

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### `(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 information 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 rulemaking 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.’.

## **SEC. 102. EXPORTS.**

Section 12(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2611(a)(1)) is amended by striking ‘(other than section 8)’ and inserting ‘(other than section 8 or title V)’.

## **SEC. 103. PROHIBITED ACTS.**

Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended to read as follows:

## **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.!

## **SEC. 104. CONFORMING AMENDMENTS.**

(a) Section 11 of the Toxic Substances Control Act (15 U.S.C. 2610) is amended in subsections (a) and (b) by striking 'title IV' each place it appears and inserting 'title IV or V'.

(b) Section 13(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2612(a)(1)) is amended by striking subparagraph (B) and inserting the following:

(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.!

(c) Section 16 of the Toxic Substances Control Act (15 U.S.C. 2615) is amended by striking 'section 15 or 409' each place it appears and inserting 'section 15, section 409, or title V'.

(d) Section 17 of the Toxic Substances Control Act (15 U.S.C. 2616) is amended--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) in subparagraph (A), by striking `section 15 or 409,' and inserting `section 15, section 409, or title V';

(ii) by striking subparagraph (B) and inserting the following:

`(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);

(iii) in subparagraph (C), by striking the comma at the end and inserting a semicolon; and

(iv) in subparagraph (D)--

(I) by striking `title IV manufactured' and inserting `title IV or V manufactured'; and

(II) by striking `section 5, 6, or title IV' each place it appears and inserting `section 5 or 6, or title IV or V'; and

(B) in paragraph (2), by inserting `or title V' after `section 15'; and

(2) in the first sentence of subsection (b), by inserting `or V' after `title IV'.

(e) Section 18(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2617(a)(2)) is amended--

(1) in subparagraph (A), by striking `and' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting `and'; and

(3) by adding at the end the following:

`(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).'

(f) Section 20(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2619(a)(1)) is amended by striking `title II or IV' each place it appears and inserting `title II, IV, or V'.