109TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
109–714

STOCKHOLM AND ROTTERDAM TOXICS TREATY ACT OF 2006

NOVEMBER 15, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4591]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4591) 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stockholm and Rotterdam Toxics Treaty Act of 2006".

SEC. 2. 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) EXECUTIVE BODY.—The term 'Executive Body' means the Executive Body established by Article 10 of the LRTAP Convention.

"(4) EXECUTIVE BODY DECISION 1998/2.—The term 'Executive Body Decision 1998/2' means the decision of the Executive Body titled 'Executive Body Decision 1998/2 on Information to Be Submitted and the Procedure for Adding Substances to Annexes I, II, or III to the Protocol on Persistent Organic Pollutants' and any other Executive Body decision done pursuant to Article 14 of the LRTAP POPs Protocol.

"(5) LRTAP CONVENTION.—The term 'LRTAP Convention' means the Convention on Long-Range Transboundary Air Pollution, done at Geneva on November 13, 1979 (TIAS 10541), and any subsequent amendment to which the United States consents to be bound.

"(6) LRTAP POPS CHEMICAL SUBSTANCE OR MIXTURE.—The term 'LRTAP POPs chemical substance or mixture' means one of the following chemical substances or mixtures, as defined in section 3:

"(A) Aldrin.
"(B) Chlordane.
"(C) Chlordecone.
"(D) Dichlorodiphenyltrichloroethane (DDT).
"(E) Dieldrin.
"(F) Endrin.
"(G) Hexachlorocyclohexane (HCH).
"(H) Heptachlor.
"(I) Hexachlorobenzene.
"(J) Hexabromobiphenyl.
"(K) Mirex.
"(L) Polychlorinated biphenyls (PCBs).
"(M) Toxaphene.
"(N) Any chemical substance or mixture that is listed on Annex I or Annex II of the LRTAP POPs Protocol.

"(7) 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, and any subsequent amendment to which the United States consents to be bound.

"(8) 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, and any subsequent amendment to which the United States consents to be bound.

"(9) POPS CHEMICAL SUBSTANCE OR MIXTURE.—The term 'POPs chemical substance or mixture' means one of the following chemical substances or mixtures, as defined in section 3:

"(A) Aldrin.

"(B) Chlordane.

"(C) Dichlorodiphenyltrichloroethane (DDT).

"(D) Dieldrin.

"(E) Endrin.

"(F) Heptachlor.

"(G) Hexachlorobenzene.

"(H) Mirex.

"(I) Polychlorinated biphenyls (PCBs).

"(J) Toxaphene.

"(K) Any other chemical substance or mixture that is listed in Annex A or B to the POPs Convention.

"(10) POPS CONVENTION.—The term 'POPs Convention' means the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on May 22, 2001, and any subsequent amendment to which the United States consents to be bound.

"(11) 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.—Except as otherwise provided in this title, no person may manufacture, process, distribute in commerce for export, use, or dispose of a POPs chemical substance or mixture listed in section 501(9) (A), (B), (C), (D), (E), (F), (G), (H), or (J), or a LRTAP POPs chemical substance or mixture listed in section 501(6)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), or (M).

"(b) EXCEPTIONS.—The Administrator may by rule provide for exceptions to the prohibition under subsection (a) where such exceptions are not inconsistent with the obligations of the United States under the POPs Convention or the LRTAP POPs Protocol.

"(c) PCBS.—The Administrator may issue or amend rules for the purpose of United States compliance with the provisions of the POPs Convention or the LRTAP POPs Protocol related to polychlorinated biphenyls through rules duly promulgated through notice and comment rulemaking under section 6(e) or other applicable Federal law.

"SEC. 503. NOTICE, INFORMATION, RULEMAKING, AND EXEMPTIONS.

"(a) NOTICE THAT SCREENING CRITERIA ARE MET OR AFTER RISK PROFILE SUBMITTED.—

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

"(A) the POPs Review Committee decides 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;

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

"(C) 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 60 days after the date of an action described in paragraph (1), the Administrator shall—

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

"(B) provide opportunity for public comment on the proposal or risk profile described in paragraph (1).

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

"(A) the identity of the chemical substance or mixture that is the subject of the proposal or risk profile described in paragraph (1);

"(B) a summary of the process, under the POPs Convention or the LRTAP POPs Protocol, for the consideration of the action that was taken, including criteria applied in that process;

"(C) a summary of the POPs Review Committee or Conference decisions to date on the proposed listing and the basis for the decisions; and

"(D) a summary of how the chemical substance or mixture that is the subject of the action is currently regulated under the laws of the United States.

"(b) NOTICE THAT FURTHER CONSIDERATION OF CHEMICAL SUBSTANCE OR MIXTURE IS WARRANTED.—

"(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 a chemical substance or mixture that is the subject of a proposal to list under an Annex to the POPs Convention;

"(B) the Conference decides, under paragraph 8 of that Article, that such a proposal shall proceed; or

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

"(2) NOTICE.—Not later than 60 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 public comment on the decision or determination.

"(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—

"(i) the POPs Review Committee or Conference decision, and the basis for the decision, in the case of a decision described in paragraph (1)(A) or (B);

"(ii) the Executive Body determination, and basis for the determination, in the case of a determination described in paragraph (1)(C); and

"(iii) the comments received by the Administrator in response to the Federal Register notice published pursuant to subsection (a)(2)(A); and

"(C) request, for a chemical substance or mixture proposed for listing on Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol, information and public comment on any present or anticipated production or use of the chemical substance or mixture, including any explanation or documentation of items relating thereto that the United States may use 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.

"(c) NOTICE OF CONFERENCE RECOMMENDATION CONCERNING A LISTING OR COMPLETION OF A 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 a chemical substance or mixture in accordance with a proposal; or

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

"(2) NOTICE.—Not later than 60 days after the date on which a recommendation under paragraph (1)(A) is made or a technical review described in paragraph (1)(B) 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 public comment on the recommendation or the technical review.

"(3) REQUIRED ELEMENTS.—A notice under paragraph (2) shall include a summary of—

"(A) the POPs Review Committee recommendation, and the basis for the recommendation, or of the technical review;

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

"(C) any control measures for the chemical substance or mixture that exist under the laws of the United States; and

"(D) any public comments received by the Administrator in response to the Federal Register notice published pursuant to subsection (b)(2).

"(d) PROVISION OF INFORMATION.—

"(1) UNDER POPS CONVENTION.—The Administrator, where relevant, by general order issued in the Federal Register may require any person, or appropriate categories of persons, that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of a notice under subsection (a), (b), or (c) to provide information, to the extent such information is known or readily obtainable, on—

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

"(B) the uses of the chemical substance or mixture;

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

"(D) other information or monitoring data relating to the chemical substance or mixture that is consistent with the information specified in—

"(i) paragraph 1 of Annex D;

"(ii) subsections (b) through (e) of Annex E; and

"(iii) Annex F,

to the POPs Convention.

"(2) UNDER LRTAP POPS PROTOCOL.—The Administrator, where relevant, by general order issued in the Federal Register, may require any person, or appropriate categories of persons, that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of a notice under subsection (a), (b), or (c) to provide information, to the extent such information is known or readily obtainable, on—

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

"(B) the uses of the chemical substance or mixture;

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

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

"(E) information on alternatives to the uses of the chemical substance or mixture and the efficacy of each alternative;

"(F) information on any known adverse environmental or human health effects associated with each such alternative; and

"(G) other information or monitoring data relating to the chemical substance or mixture that is consistent with information specified in Executive Body Decision 1998/2 for inclusion in the risk profile or technical review.

"(3) UPDATING OF INFORMATION.—

"(A) VOLUNTARY UPDATES.—Any person who submits information under paragraph (1) or (2) may voluntarily update the information at any time.

"(B) REQUIRED UPDATES.—If the Administrator determines, with the concurrence of the Secretary of State, that an update of information submitted under paragraph (1) or (2) is necessary, the Administrator may, through a general order published in the Federal Register, require all persons that are required to submit the information to update the information.

"(C) NEW INFORMATION.—As part of a general order published under subparagraph (B), the Administrator may require any person who, after the date specified in the general order issued pursuant to paragraph (1) or (2) 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 paragraph (1) or (2), to submit the information required to be submitted in the general order issued pursuant to paragraph (1) or (2).

"(e) ACTION BY THE ADMINISTRATOR UPON NEW LISTING OR OTHER CHANGES.—

"(1) RULEMAKING.—

"(A) AUTHORITY.—If either—

"(i) the Conference decides to amend Annex A or B of the POPs Convention to list an additional chemical substance or mixture; or

"(ii) the parties to the LRTAP POPs Protocol decide to amend Annex I or II to the LRTAP POPs Protocol to list an additional chemical substance or mixture,

the Administrator may issue rules to prohibit or restrict the manufacture, processing, distribution in commerce for export, use, or disposal of the additional chemical substance or mixture to the extent necessary to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits. Such costs and benefits include both qualitative and quantitative costs and bene-

fits. The Administrator may modify rules issued under this paragraph, consistent with the requirements of this paragraph.

"(B) SCOPE OF RULEMAKING.—The Administrator may issue rules under subparagraph (A) only to meet, in whole or in part, the obligations of the United States under the POPs Convention or LRTAP POPs Protocol if the United States were to consent to be bound for that applicable amendment referred to in subparagraph (A).

"(C) EFFECTIVE DATE FOR RULES.—No rule issued under this paragraph shall take effect until the United States has consented to be bound by the amendment agreed to by a decision under subparagraph (A)(i) or (ii).

"(2) CONSIDERATIONS.—(A) In taking an action under paragraph (1), the Administrator shall consider—

"(i) the effects of such chemical substance or mixture on health and the magnitude and impact of the exposure of human beings to such chemical substance or mixture;

"(ii) the effects of such chemical substance or mixture on the environment and the magnitude and impact of the exposure of the environment to such chemical substance or mixture;

"(iii) the benefits of such chemical substance or mixture for various uses and the availability, risks, and economic consequences of substitutes for such uses, considering factors described in clause (iv);

"(iv) the reasonably ascertainable economic consequences of the proposed prohibition or other regulation, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health, including the degree to which the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture is necessary to prevent significant harm to an important sector of the economy; and

"(v) 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).

"(B) Nothing in this paragraph shall be interpreted to prevent the Administrator from using the information described in paragraph (3), along with any other information provided during the comment period with respect to the rulemaking under paragraph (1), to carry out this paragraph.

"(3) ADDITIONAL CONSIDERATIONS.—The Administrator may also consider—

"(A) with regard to chemical substances or mixtures listed in Annex A or B of the POPs Convention—

"(i) recommendations of the POPs Review Committee under paragraph 9 of Article 8 of the POPs Convention;

"(ii) the Conference listing decision; and

"(iii) 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

"(B) with regard to chemical substances or mixtures listed in Annex I or II of the LRTAP POPs Protocol—

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

"(ii) the LRTAP POPs Protocol listing decision; and

"(iii) any information that the United States submitted to the Executive Body, or a subsidiary of the Executive Body, in relation to such a technical review or listing decision.

"(4) ASSESSMENT OF RISKS OR EFFECTS.—In assessing risks and effects, the Administrator shall use sound and objective scientific practices, and shall determine the weight of the scientific evidence concerning such risks or effects based on the best available scientific information, including peer-reviewed studies, in the rulemaking record.

"(5) COMMENTS AND INFORMATION PART OF RECORD.—The comments and information received in response to notices or orders published pursuant to subsections (a), (b), (c), and (d) shall be part of the record for a rule promulgated pursuant to this subsection.

"(f) EXEMPTIONS UNDER POPS CONVENTION.—

"(1) USE-SPECIFIC OR ACCEPTABLE PURPOSE EXEMPTIONS.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State—

"(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 obligations or potential obligations of the United States with respect to that chemical substance or mixture under the POPs Convention.

"(2) UNINTENTIONAL TRACE CONTAMINANTS.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 for the United States 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 EXEMPTION.—

"(A) IN GENERAL.—Subject to subparagraph (B), prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to any quantity of a POPs chemical substance or mixture that is manufactured and used as a closed-system site-limited intermediate that is chemically transformed in the manufacture of other chemicals that do not exhibit the characteristics of persistent organic pollutants.

"(B) CONDITIONS.—Subparagraph (A) applies if, before the commencement of the manufacture or use under the POPs Convention, and before each 10-year period thereafter—

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

"(I) 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

"(II) 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—

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

"(II) transmits the information to the Secretariat of the POPs Convention.

"(C) TERMINATION OF EXEMPTION.—If, at the termination of any exemption under subparagraph (A), a particular closed-system site-limited intermediate exemption is no longer authorized for the United States under the POPs Convention, no further exemption shall be available under subparagraph (A).

"(6) DISTRIBUTION IN COMMERCE FOR EXPORT IF PRODUCTION OR USE-SPECIFIC EXEMPTION OR ACCEPTABLE PURPOSE IS IN EFFECT.—

"(A) IN GENERAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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—

"(i) if the export is for purposes of disposal, the export does not comply with an export condition described in subparagraph (B), as determined by the Administrator in consultation with the heads of other interested Federal agencies; or

"(ii) the export does not comply with an export condition described in subparagraph (C), or (D), as applicable, 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)(i) is that the POPs chemical substance or mixture is exported for the purpose of environmentally sound disposal.

"(C) EXPORT TO PARTY WITH PERMISSION TO USE.—An export condition referred to in subparagraph (A)(ii) 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)(ii) 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 described in clause (ii) 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.

"(E) INFORMATION RELEVANT TO EXPORTS.—The Administrator, with the concurrence of the Secretary of State, shall make available to the public, and keep current, a list of—

"(i) parties to the POPs Convention;

"(ii) production and use specific exemptions available to the United States;

"(iii) parties to the POPs Convention that are permitted to use each POPs chemical substance or mixture under Annex A or B of the POPs Convention; and

"(iv) chemical substances and mixtures for which no production or use specific exemptions are in effect for any party to the POPs Convention.

"(7) EXPORT FOR ENVIRONMENTALLY SOUND DISPOSAL IF NO PRODUCTION OR USE SPECIFIC EXEMPTION IN EFFECT.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to any distribution in commerce for export for the purpose of environmentally sound disposal 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.

"(8) IMPORTS FOR ENVIRONMENTALLY SOUND DISPOSAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to a POPs chemical substance or mixture that is imported for the purpose of environmentally sound disposal.

"(9) WASTE.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 that is otherwise regulated under Federal law.

"(10) 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 Act or any other title of this Act.

"(g) EXEMPTIONS UNDER LRTAP POPS PROTOCOL.—

"(1) IN GENERAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to—

"(A) any manufacture, processing, distribution in commerce for export, use, or disposal of a LRTAP POPs chemical substance or mixture that—

"(i) the Administrator determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State, 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) the Administrator determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State, would, as a result, not prevent the United States from complying with obligations or potential obligations of the United States with respect to that chemical substance or mixture 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 for the United States of any applicable obligation under 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 for the United States 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 of HCH, the use of technical HCH (i.e., HCH mixed isomers) as an intermediate in chemical manufacturing, and the use of products in which 99 percent of the HCH isomer is in the gamma form (i.e. lindane, CAS:58–89–9) so long as such use is restricted to—

"(i) seed treatment; and

"(ii) public health,

unless the Administrator, by rule, restricts the application of this subparagraph consistent with an amendment to the LRTAP POPs Protocol specifically addressing HCH;

"(G) any quantity of a LRTAP POPs chemical substance or mixture that has become waste that is otherwise regulated under Federal law;

"(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 may grant an exemption from prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), that the Administrator, in concurrence with the Secretary of State, determines is 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 prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a).

"(B) 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.—If the Administrator grants an exemption under paragraph (2) or (3), 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 paragraph (2) or (3), the exemption is no longer consistent with the requirements of paragraph (2) or (3), the Administrator shall withdraw the grant of such exemption.

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

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

"(h) 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 subsection (f) applicable to a POPs chemical substance or mixture and a provision of subsection (g) 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 a chemical substance or mixture described in paragraph (1), subsections (f) and (g) 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.

"(i) ACTION BY THE ADMINISTRATOR UPON ADDITION OF SOURCE CATEGORIES.—

"(1) APPLICABILITY.—If the Conference decides to amend Annex C of the POPs Convention to add to Part II new source categories not already listed under section 112(c) of the Clean Air Act (42 U.S.C. 7412(c)) as major source categories, such decision shall be published in the Federal Register.

"(2) CONFERENCE DECISION NOTICE.—A notice of a Conference decision published in the Federal Register pursuant to paragraph (1) of this subsection shall identify the source category or categories that are the subject of the decision. The notice shall include a summary of the Conference decision and request information and public comment.

"(j) ACTION PLANS.—

"(1) APPLICABILITY.—This subsection applies if the United States—

"(A) develops an action plan under Article 5(a) of the POPs Convention;

"(B) undertakes a review of a submitted action plan under Article 5(a)(v) of the POPs Convention;

"(C) requires, under Article 5(c) of the POPs Convention, substitute or modified materials, products, or processes; or

"(D) requires, under Article 5(d) of the POPs Convention, the use of best available techniques.

"(2) REQUIREMENT.—Not later than 90 days after the date of an action described in paragraph (1), the Administrator shall—

"(A) publish in the Federal Register a notice of such action; and

"(B) provide opportunity for public comment on any action plan, review of an action plan, or requirement to be established pursuant to Article 5(c) or (d) of the POPs Convention.

"(3) AUTHORITY TO IMPLEMENT ACTION PLAN.—An action to implement an action plan developed under Article 5(a) of the POPs Convention may be taken only to the extent that such action is authorized under the statutes of the United States.

"(k) DECISION CONCERNING A RULEMAKING.—If, within 1 year after a decision described in subsection (e)(1)(A)(i) or (ii), the United States has not, pursuant to Article 22 of the POPs Convention or Article 14 of the LRTAP POPs Protocol, deposited its instrument of ratification, acceptance, accession, or approval with the Convention or Protocol's relevant body, for that chemical substance or mixture, the Administrator shall publish in the Federal Register—

"(1)(A) a notice of a decision to initiate a rulemaking process regarding the chemical substance or mixture; or

"(B) a notice that a rulemaking process regarding the chemical substance or mixture will not be initiated and the reason for this decision, including, as appropriate, a discussion of the relevant information obtained by the Administrator under this section as well as other factors that the Administrator may have evaluated; or

"(2) a notice indicating the status of the Administrator's considerations on whether to publish a notice under paragraph (1), and an estimate of the timeframe expected for such a decision.

"SEC. 504. AMENDMENTS AND CONSULTATION.

"(a) CONSENT TO BE BOUND.—It is the sense of the Congress that the United States shall consent to be bound by an amendment to Annex A, B, or C of the POPs Convention only after, pursuant to paragraph (4) of Article 25 of the POPs Convention, the United States has declared that such amendment shall enter into force upon ratification, acceptance, approval, or accession of the United States to such amendment.

"(b) CONSULTATION.—

"(1) IN GENERAL.—The President shall, as appropriate, consult with Congress before consenting to bind the United States to an amendment to Annex A, B, or C of the POPs Convention.

"(2) REPORTING.—The President shall provide such other information relating to an amendment described in paragraph (1) as the Congress may request in the fulfillment of its constitutional responsibilities with respect to the protection of public health and the environment.

"(3) CONGRESSIONAL OVERSIGHT.—Information provided pursuant to paragraph (2) shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Environment and Public Works of the Senate for appropriate action.

"SEC. 505. INTERNATIONAL COOPERATION AND NOTICE OF MEETINGS.

"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 on chemical substances and mixtures;

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

"(A) the POPs Convention;

"(B) the LRTAP POPs Protocol; and

"(C) the PIC Convention; and

"(3) publish in the Federal Register timely advance notice of the known schedule and agenda of meetings on the POPs Convention, PIC Convention, and LRTAP POPs Protocol, and their subsidiary bodies, at which the United States will be represented.

"SEC. 506. EFFECT OF REQUIREMENTS.

"Any provision of this Act that establishes a requirement to comply with, or that is based on, a provision of the POPs Convention, the LRTAP POPs Protocol, or the PIC Convention shall be effective only to the extent that the United States has consented to be bound by that provision.

"SEC. 507. RULES OF CONSTRUCTION.

"Nothing in this title—

"(1) shall be construed to require the United States to register for a specific exemption available to the United States under Annex A or B to the POPs Convention or an acceptable purpose available to the United States under Annex B to the POPs Convention; or

"(2) affects the authority of the Administrator to regulate a chemical substance or mixture under any other law or any provision of this Act.".

SEC. 3. POLYCHLORINATED BIPHENYLS (PCBS).

Section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)) is amended—

(1) by adding at the end of paragraph (2) the following new subparagraph:

"(D) The Administrator may not, after the date of enactment of this subparagraph, issue a rule authorizing activities, that were not previously authorized, under subparagraph (B) unless the activities authorized are consistent with the exemptions described in section 503(f) or (g), subject to section 503(h).";

(2) by adding at the end of paragraph (3) the following new subparagraph:

"(D) The Administrator may not, after the date of enactment of this subparagraph, grant an exemption under subparagraph (B) unless the manufacturing, proc-

essing, or distribution in commerce with respect to which such exemption applies is consistent with the exemptions described in section 503(f) or (g), subject to section 503(h).”; and

(3) by adding at the end the following new paragraph:

“(6) Notwithstanding any other provision of this subsection, no person may distribute in commerce for export equipment (including transformers, capacitors, and other receptacles) containing greater than 0.05 liters of liquid stock that contains greater than 0.005 percent polychlorinated biphenyls, except for the purpose of environmentally sound waste management to the extent that such distribution in commerce for export is authorized by Federal law.”.

SEC. 4. JUDICIAL REVIEW.

Section 19 of the Toxic Substances Control Act (15 U.S.C. 2618) is amended—

(1) in subsection (a)(1)(A), by striking “or IV” and inserting “, IV, or V”;

(2) in subsection (a)(3)(B), by striking “title IV, the finding” and inserting “title IV or V, the findings”;

(3) by striking “and” at the end of subparagraph (D) of subsection (a)(3);

(4) by redesignating subparagraph (E) of subsection (a)(3) as subparagraph (F);

(5) by inserting after subparagraph (D) of subsection (a)(3) the following new subparagraph:

“(E) for rules promulgated under section 503(e), any written submission or other information the Administrator receives pursuant to subsection (a), (b), (c), or (d) of section 503; and”;

(6) in subsection (b), by inserting “(except a rule promulgated pursuant to section 503)” after “this section to review a rule”; and

(7) in subsection (c)(1)(B)(i), by striking “or 6(e)” and inserting “6(e), or 503(e)(1)”.

SEC. 5. EXPORTS.

Section 12 of the Toxic Substances Control Act (15 U.S.C. 2611) is amended—

(1) in subsection (a)(1), by striking “subsection (b), this Act (other than section 8)” and inserting “subsections (b) and (c), this Act (other than section 8 and title V)”; and

(2) by adding at the end the following new subsection:

“(c) EXPORTS UNDER THE PIC CONVENTION AND POPS CONVENTION.—

“(1) EXPORT CONDITIONS OR RESTRICTIONS.—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 paragraph (4)(C), any person that distributes in commerce for export the chemical substance or mixture shall comply with any export conditions or restrictions identified by the Administrator in the notice.

“(2) PRE-EXPORT NOTICES.—

“(A) IN GENERAL.—

“(i) REQUIREMENT.—In the case of—

“(I) a chemical substance or mixture that the Administrator determines to be banned or severely restricted under paragraph (4)(A);

“(II) a chemical substance or mixture identified by the Administrator in a notice issued under paragraph (4)(C); or

“(III) a POPs chemical substance or mixture (for which a listing under Annex A or Annex B of the POPs Convention has entered into force for the United States), the export of which is not prohibited by section 502(a) or rules promulgated pursuant to section 503(e),

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.

“(ii) TIMING OF NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES THAT ARE BANNED OR SEVERELY RESTRICTED.—

“(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the United States to each importing foreign state after the Administrator issues a notice under paragraph (4)(A), the exporter shall provide the notice required under clause (i) so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier

than 45 nor later than 15 calendar days before the date of the first export in such calendar year.

"(iii) TIMING OF NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES LISTED UNDER THE PIC CONVENTION.—

"(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the United States to each importing foreign state after the Administrator issues a notice under paragraph (4)(C), the exporter shall provide the notice required under clause (i) so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such export.

"(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 paragraph (4)(C), or if circumstances described by the exporter in an earlier pre-export notice have substantially changed, the exporter shall provide an additional notice under this subparagraph so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

"(iv) TIMING OF PRE-EXPORT NOTICE FOR THE EXPORT OF POPS CHEMICAL SUBSTANCES OR MIXTURES WHICH ARE NOT PROHIBITED UNDER THE POPS CONVENTION.—

"(I) FIRST EXPORT.—In the case of the first export that an exporter makes from the United States to each importing foreign state of a chemical substance or mixture not prohibited from being exported by the prohibition in section 502(a) or rules promulgated pursuant to section 503(e), the exporter shall provide the notice under this subparagraph so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such subsequent export in such calendar year.

"(III) CHANGED CIRCUMSTANCES MERITING NEW NOTICE.—If the circumstances described by the exporter in an earlier pre-export notice have substantially changed, the exporter shall provide an additional notice under this subparagraph so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

"(B) ALTERNATE TIME FRAME FOR NOTICES.—

"(i) DISCRETIONARY ALTERNATE TIME FRAMES.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), the Administrator may set an alternate time frame for providing notices under this subparagraph if the Administrator determines that such alternate time frame is appropriate and the Administrator is able, within such alternate time frame, to administer notice activities in accordance with the PIC Convention and comply with the POPs Convention.

"(ii) MANDATORY REVIEW OF STATUTORY TIME FRAMES AND PROCESSES.—Not later than 18 months after entry into force for the United States of the PIC Convention, and not later than 18 months after entry into force for the United States of the POPs Convention, the Administrator shall review the statutory time frames for receipt of pre-export notices under this subparagraph and the Administrator's processing of such notices. In such review, the Administrator, with the concurrence of the Secretary of State, shall consider whether amendments to the time frames and modifications to the processes would be appropriate to administer notice activities in accordance with the PIC Convention and to comply with the POPs Convention.

"(C) CONTENT OF PRE-EXPORT NOTICES.—

"(i) NOTICES FOR BANNED OR SEVERELY RESTRICTED CHEMICAL SUBSTANCE OR MIXTURE.—A notice under subparagraph (A)(ii) with respect to a chemical substance or mixture that is banned or severely restricted shall include for each export anticipated during that calendar year—

"(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) information relating to the foreseen uses of the chemical substance or mixture, if known, in the importing foreign state;

"(VIII) information on precautionary measures, consistent with the ban or severe restriction applicable to the United States under the PIC Convention, to reduce exposure to, and emission of, the chemical substance or mixture;

"(IX) information relating to the concentration of the chemical substance or mixture; and

"(X) any other information that the Administrator determines, in a general order published in the Federal Register, is required by Annex V of the PIC Convention to be included in such a notice.

"(ii) NOTICES FOR CHEMICAL SUBSTANCES OR MIXTURES LISTED ON ANNEX III OF THE PIC CONVENTION.—A notice under subparagraph (A)(ii) with respect to a chemical substance or mixture listed on Annex III of the PIC Convention shall include for each export anticipated during that calendar year—

"(I) all of the information required to be included under clause (i);

"(II) any information relating to export conditions or restrictions identified by the Administrator in the notice issued under paragraph (4)(C) 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 by general order published in the Federal Register to be necessary for effective enforcement of the export conditions or restrictions applicable to the chemical substance or mixture.

"(iii) NOTICES FOR CHEMICAL SUBSTANCE OR MIXTURE THE EXPORT OF WHICH IS NOT PROHIBITED UNDER THE POPS CONVENTION.—A notice submitted to the Administrator under subparagraph (A)(iii) shall include—

"(I) the name and address of the exporter;

"(II) the name and address of the importer;

"(III) a name of the POPs chemical substance or mixture;

"(IV) a general description of how the export is in accordance with the provisions related to export in section 503(f)(6) or (7); and

"(V) such other information as the Administrator determines by general order published in the Federal Register to be necessary for enforcement of the export-related obligations of the POPs Convention applicable to the United States for that chemical substance or mixture.

"(D) PRE-EXPORT NOTICES ACCOMPANYING EACH EXPORT.—An exporter shall ensure that a copy of the most recent applicable pre-export notice provided to the Administrator under this subsection accompanies each shipment for export and is available for inspection upon export for—

"(i) any chemical substance or mixture that the Administrator has identified under paragraph (4)(C) as being listed on Annex III of the PIC Convention; or

"(ii) any POPs chemical substance or mixture that is exported.

"(E) RETENTION OF PRE-EXPORT NOTICES.—An exporter required to provide a notice under subparagraph (A) shall maintain a copy of the notice and other documents used to generate the notice and have it readily available for a period of no less than 3 years beginning on the date on which the notice is provided.

"(3) LABELING AND DOCUMENT REQUIREMENTS.—

"(A) IN GENERAL.—In the case of any chemical substance or mixture that is the subject of a notice issued under subparagraph (A) or (C) of paragraph

(4) and that is manufactured, processed, or distributed in commerce, the chemical substance or mixture shall, as required by the PIC Convention—

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

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

"(B) CUSTOM CODES.—A chemical substance or mixture that is the subject of a notice issued under paragraph (4)(C) 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.

"(4) NOTICE REQUIREMENTS AND EXEMPTION.—

"(A) DETERMINATION WHETHER CHEMICAL SUBSTANCE OR MIXTURE IS BANNED OR SEVERELY RESTRICTED.—

"(i) 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).

"(ii) 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 clause (i) 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.

"(B) NOTICE TO FOREIGN COUNTRIES.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to a chemical substance or mixture that is banned or severely restricted under paragraph (2)(A)(ii), the Administrator shall provide to the designated authority of the importing foreign state a copy of the preexport notice it determines represents the first export to the importing foreign state after a determination under subparagraph (A) that the chemical substance or mixture is banned or severely restricted and, thereafter, the preexport notice it determines represents the first export in each calendar year to the importing foreign state.

"(ii) 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.

"(C) NOTICE TO PUBLIC.—

"(i) 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 the conditions and restrictions applicable thereto; 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.

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

"(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.

"(iii) TREATMENT OF CONDITIONS AND RESTRICTIONS.—A condition or restriction identified by a notice required under clause (i) shall be considered to be an export condition or restriction for the purpose of paragraph (1).

"(D) NOTICE OF EXEMPTION.—The Administrator may issue a notice exempting any chemical substance or mixture from the requirements of paragraphs (1) through (3), and subparagraph (B) of this paragraph, if the Administrator determines, with the concurrence of the Secretary of State, that

the exemption would be consistent with the PIC Convention or the POPs Convention.

"(5) CONSOLIDATION OF NOTICES.—With respect to any pre-export notice requirement under this subsection, the Administrator shall allow any such requirement, and any pre-export notice requirement in other provisions of this Act, to be satisfied by a single notice.

"(6) TRACE CONCENTRATIONS.—The Administrator shall allow the export of trace concentrations of otherwise restricted or banned chemicals without notification if the Administrator finds that the export of such concentrations without notification does not pose a significant threat to human health or the environment and is not inconsistent with the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.".

SEC. 6. CONFORMING AMENDMENTS.

(a) The table of contents in section 1 of the Toxic Substances Control Act is amended by adding at the end the following:

"TITLE V—IMPLEMENTATION OF INTERNATIONAL AGREEMENTS

"Sec. 501. Definitions
"Sec. 502. Implementation of POPs Convention and LRTAP POPs Protocol
"Sec. 503. Notice, information, rulemaking, and exemptions
"Sec. 504. Amendments and consultation
"Sec. 505. International cooperation and notice of meetings
"Sec. 506. Effect of requirements
"Sec. 507. Rules of construction".

(b) 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 title V".

(c) Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended—

(1) in paragraph (1), by inserting "or any requirement prescribed under title V or rule or order promulgated or issued under title V" after "under title II"; and

(2) in paragraph (2), by inserting ", or any requirement prescribed under title V or rule or order promulgated or issued under title V" after "under section 5 or 7".

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

(1) in subsection (a)(1)—

(A) 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);";

(B) in subparagraphs (A) and (C), by striking the comma at the end and inserting a semicolon; and

(C) 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

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

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

(1) by amending subsection (a)(2)(B) to read as follows:

"(B) if—

"(i) 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; or

"(ii) the United States has consented to be bound under the POPs Convention or LRTAP POPs Protocol with respect to a POPs chemical substance or mixture or LRTAP POPs chemical substance or mixture (as defined in section 501),

no State or political subdivision of a State may, after the effective date of such rule or order or consent, 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 a risk of injury to health or the environment associated with such substance or mixture that the rule, order, or consent is designed to protect against, unless such requirement is identical to the requirement prescribed by the Administrator, is adopted under the authority of the Clean Air Act or any other Federal law, or 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

(2) by adding at the end the following new subsection:

"(c) SAVINGS.—Nothing in this section shall be construed to authorize a State to act in a manner that causes the United States to be out of compliance with its obligations under the POPs Convention or LRTAP POPs Protocol. For purposes of this section, the terms 'POPs Convention' and 'LRTAP POPs Protocol' have the meaning given those terms in section 501.".

PURPOSE AND SUMMARY

The purpose of H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2005, is to implement the Stockholm Convention on Persistent Organic Pollutants (POPs), the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution (LRTAP), and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC).

BACKGROUND AND NEED FOR LEGISLATION

Persistent organic pollutants (POPs) are toxic chemicals that adversely affect human health and the environment around the world. Because they can be transported by wind and water, most POPs generated in one country can affect people and wildlife far from where they are used and released. They persist for long periods of time in the environment and can accumulate and pass from one species to the next through the food chain. To address this global concern, the U.S. negotiated and signed onto three international agreements to address POPs in the last decade: (1) the 2001 Stockholm Convention on Persistent Organic Pollutants; (2) the 1998 Aarhus Protocol on Persistent Organic Pollutants (POPs Protocol) to the 1979 Geneva Convention on Long-Range Transboundary Air Pollution (LRTAP); and (3) the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention).

Currently, the U.S. is a signatory on all three agreements. However, in order for the U.S. to become a binding and full partner to these treaties and play a meaningful role and secure its interests in future meetings, especially as control measures for additional chemicals are proposed, the Senate must give its advice and consent on the POPs and PIC Conventions, and Congress must enact enabling (also known as "implementing") legislation so that current law can be amended to be in full compliance with the agreements. Since the LRTAP POPs Protocol is considered to be an executive agreement and amends a broader treaty to which the U.S. is already a party, the POPs Protocol does not require Senate approval.

At present, U.S. environmental laws, primarily the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorize most Environmental Protection Agency (EPA) activities that are necessary to fulfill commitments under these three international agreements. Therefore, the U.S. is, in large part, already fulfilling many of the obligations of these three international agreements, either because it has taken the legal and administrative measures necessary to eliminate production and use of the listed chemicals, or because nearly all production and use of these chemicals have otherwise ceased. New leg-

islation is needed, however, to authorize EPA implementation of a few treaty provisions.

The Administration and most other stakeholders have suggested that it is important to have implementing legislation in place as soon as possible. Ratification and U.S. compliance with these international treaties will allow the U.S. to participate as a full party to these treaties. Absent ratification, the U.S. is relegated to participation as an observer, not as a party, in formal meetings that discuss additional substances or mixtures to be proposed for listing.

H.R. 4591 seeks to address certain limitations to existing statutes and regulations of chemicals for the U.S. to be in full compliance with the terms of these international agreements. While there is virtual agreement on treatment of the initial chemical substances under the treaties, there are questions concerning the addition of new chemicals in the future.

For the listing of new chemicals under the POPs Convention and LRTAP POPs Protocol, it is difficult to know what domestic implementing regulations or laws might be necessary based on a future addition of a chemical or other amendment to these treaties to which the United States might "opt-in." How a given party determines its positions on amendments is fully a matter of domestic law. While nothing in the POPs or LRTAP POPs agreements dictate that compliance be through regulations issued from an agency as opposed to action by Congress, H.R. 4591 nonetheless sets out additional rulemaking authority that the EPA Administrator may use with respect to chemicals added to the treaty lists in the future. The international body under POPs and LRTAP POPs would propose such chemicals or other new amendments and decisions through an international process intended to be consensus in nature of which the U.S. would be a participant. During this process, these proposals would not automatically impose any new restrictions in the U.S. on new chemicals. Once the international body has voted to add a new chemical, this proposal would also not automatically impose any new restrictions in the U.S. on that chemical without U.S. consent, also known as the "opt-in." Additionally, the agreements do not prevent the U.S. from acting to regulate these substances (or not) using its own authority.

Currently, TSCA Section 6 details the rule-making procedure for chemicals found to present an unreasonable risk. The procedure combines notice and opportunity for public comment consistent with the Administrative Procedure Act (5 U.S.C. § 553), and an opportunity for an informal hearing. In addition, the TSCA regulatory procedure requires that EPA consider and publish a statement with respect to the health and environmental effects of the chemical, the magnitude of human and environmental exposure to the chemical, the benefits of the chemical for various uses, the availability of substitutes, and "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health."

The final chemical rule must be based on "the matter in the rulemaking record (as defined in section 19(a))," which includes the rule, the EPA Administrator's finding that the chemical presents an unreasonable risk, the cost-benefit statement, the hearing tran-

script, any written submission of interested parties, and other relevant material.

Below is a brief discussion of each of the agreements that H.R. 4591 seeks to implement:

Stockholm Convention on Persistent Organic Pollutants (POPs treaty): Under the auspices of the United Nations (U.N.), the U.S. began negotiating this treaty in 1995 and officially signed onto this agreement with 90 other countries and the European Union in May 2001. Under the POPs treaty, countries agree to reduce or eliminate the production, use, and release of 12 key POPs, which include nine pesticides (aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, and toxaphene), and three industrial chemicals, (PCBs and unintentional by-products (dioxins and furans) of industrial and combustion processes). The Stockholm POPs Convention entered into force on May 17, 2004, and the first meeting of the Parties to the POPs Convention, at which the composition of the POPs Review Committee and the rules of procedure were established, took place in May 2005. One hundred thirty countries have now ratified the Convention.

Long-Range Transboundary Air Pollution (LRTAP) POPs Protocol: Not a treaty, this accord was completed in Aarhus, Denmark in February 1998, and is a regional agreement that seeks "to control, reduce or eliminate discharge, emissions and losses of persistent organic pollutants" in Europe, some former Soviet Union countries, and the U.S. This agreement is a legally binding protocol on POPs under the Geneva Convention on Long-Range Transboundary Air Pollution, the objective of which is to control, reduce, or eliminate discharges, emissions, and losses of persistent organic pollutants. The LRTAP POPs Protocol regulates 16 compounds, banning the production and use of 8 (aldrin, chlordane, dieldrin, endrin, hexabromobiphenyl, kepone (chlordecone), mirex, and toxaphene), banning or significantly restricting production and use of hexachlorobenzene, heptachlor, PCBs, DDT, and lindane, and applying limits to air emissions from major stationary sources of dioxins (polychlorinated dibenzo-p-dioxins), furans (polychlorinated dibenzofurans), hexachlorobenzene, and polycyclic aromatic hydrocarbons.

The LRTAP POPs Protocol went into force on October 23, 2003. The LRTAP Executive Body met in December 2003, and issued a number of framework decisions for the operation of the LRTAP POPs Protocol that are now in force. The LRTAP POPs Protocol will not require Senate advice and consent, only implementing legislation. Once that legislation is enacted, the U.S. will be able to join the Protocol.

Rotterdam Convention on Prior Informed Consent (PIC): In 1998, under the auspices of the United Nations, the U.S. negotiated with 100 other countries at a conference in Rotterdam on an agreement that turned a voluntary international program into a legally binding procedure known as the "Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade." Under PIC, importing countries should receive shipments of banned or severely restricted substances, such as pesticides, only after they have had an opportunity to make an informed decision about them.

The PIC Convention entered into force on February 24, 2004. Entry into force triggered a required meeting of the Conference of the Parties (COP). The PIC Conference of the Parties took on a number of important decisions at the first meeting on issues including the Convention's non-compliance regime, the rules of procedure (including which COP decisions need to be taken by consensus, which is significant for the U.S.), and the organization of the Chemical Review Committee that will consider chemicals for addition to the Convention's Annex III.

HEARINGS

The Subcommittee on Environment and Hazardous Materials held a hearing on "Legislation to Implement the POPs, PIC, and LRTAP POPs Agreements" on March 2, 2006. The Subcommittee received testimony from: The Honorable Claudia A. McMurray, Assistant Secretary for Oceans and International Environmental and Scientific Affairs, U.S. Department of State; Mrs. Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency; Mr. Michael P. Walls, Managing Director, Regulatory and Technical Affairs Department, American Chemistry Council; Mr. Steven Goldberg, Vice President and Associate General Counsel, Regulatory Law & Government Affairs, Crop Life America; Mr. Jim Roewer, Executive Director, the Utility Solid Waste Activities Group; Mr. E. Donald Elliott, Partner, Wilkie and Gallagher, LLP; Dr. Lynn R. Goldman, Professor, Environmental Health Sciences, Bloomberg School of Public Health, Johns Hopkins University; Ms. Claudia Polsky, Deputy Attorney General, Environmental Section, California Department of Justice; Mr. Brooks B. Yeager, Visiting Fellow, H. John Heinz III Center for Science, Economics, and the Environment; and Mr. Glenn M. Wiser, Senior Attorney, Center for International Environmental Law.

COMMITTEE CONSIDERATION

On Thursday, May 18, 2006, the Subcommittee on Environment and Hazardous Materials met in open markup session and approved H.R. 4591 for full Committee consideration, amended, by a record vote of 15 yeas to 10 nays, a quorum being present. On Wednesday, July 12, 2006, the Committee on Energy and Commerce met in open markup session and ordered H.R. 4591 favorably reported to the House, amended, by a recorded vote of 28 yeas and 15 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Barton to order H.R. 4591 reported favorably to the House, amended, was agreed to by a record vote of 28 yeas and 15 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 129

Bill: H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2005.

AMENDMENT: An amendment in the nature of a substitute by Ms. Solis, No. 2, to amend the Toxic Substances Control Act to: (1) implement the Stockholm Convention on Persistent Organic Pollutants (POPs), the Long Range Transboundary Air Pollution (LRATP) POPs Protocol, and the Rotterdam Convention on Prior Informed Consent (PIC) procedures, (2) provide the Administrator of the Environmental Protection Agency with new rulemaking authority to address new chemical substances or mixtures proposed under the POPs Treaty or LRTAP POPs Protocol, (3) provide notice and record of prohibitions, exemptions, disallowances, and other information, (4) require the collection of information on chemical substances or mixtures, (5) allow cooperation in international conventions and efforts, and (6) provide rules of construction and applicability of new title authority.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal				Mr. Brown			
Mr. Whitfield				Mr. Gordon	X		
Mr. Norwood		X		Mr. Rush	X		
Ms. Cubin				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

07/12/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 130

Bill: H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2005.

AMENDMENT: An amendment by Ms. Solis, No. 4, to prohibit application of (1) the "substantial evidence" judicial review standard in Section 19, (2) the "informal hearings" required under Section 6(c)(2) and (3), and the "least burdensome" requirement in Section 6(a) of the Toxic Substances Control Act to regulations involving POPs chemical substances or mixtures.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton		X		Mr. Dingell	X		
Mr. Hall		X		Mr. Waxman			
Mr. Bilirakis		X		Mr. Markey			
Mr. Upton		X		Mr. Boucher			
Mr. Stearns		X		Mr. Towns			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Deal		X		Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood		X		Mr. Rush			
Ms. Cubin		X		Ms. Eshoo			
Mr. Shimkus		X		Mr. Stupak	X		
Ms. Wilson		X		Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering		X		Mr. Green	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt		X		Ms. DeGette			
Mr. Buyer		X		Ms. Capps	X		
Mr. Radanovich		X		Mr. Doyle	X		
Mr. Bass		X		Mr. Allen	X		
Mr. Pitts		X		Mr. Davis			
Ms. Bono		X		Ms. Schakowsky	X		
Mr. Walden		X		Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson		X		Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter		X		Mr. Ross	X		
Ms. Myrick		X					
Mr. Sullivan		X					
Mr. Murphy		X					
Mr. Burgess		X					
Ms. Blackburn		X					

07/12/2006

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 131

Bill: H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2005

MOTION: A motion by Mr. Barton to order the bill reported, as amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 28 yeas to 15 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell		X	
Mr. Hall	X			Mr. Waxman			
Mr. Bilirakis	X			Mr. Markey			
Mr. Upton	X			Mr. Boucher			
Mr. Stearns	X			Mr. Towns			
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Deal	X			Mr. Brown			
Mr. Whitfield				Mr. Gordon			
Mr. Norwood				Mr. Rush			
Ms. Cubin	X			Ms. Eshoo			
Mr. Shimkus	X			Mr. Stupak		X	
Ms. Wilson	X			Mr. Engel			
Mr. Shadegg	X			Mr. Wynn		X	
Mr. Pickering	X			Mr. Green	X		
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt	X			Ms. DeGette			
Mr. Buyer	X			Ms. Capps		X	
Mr. Radanovich	X			Mr. Doyle		X	
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X			Mr. Inslee		X	
Mr. Rogers				Ms. Baldwin		X	
Mr. Otter		X		Mr. Ross		X	
Ms. Myrick	X						
Mr. Sullivan	X						
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

07/12/2006

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Subcommittee on Environment and Hazardous Materials held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4591 is 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.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2005, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 2006.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4591, the Stockholm and Rotterdam Toxics Treaty Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman and Leigh Angres.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 4591—Stockholm and Rotterdam Toxics Treaty Act of 2006

H.R. 4591 would amend the Toxic Substances Control Act to authorize the Environmental Protection Agency (EPA) to implement provisions of three international environmental agreements: the Stockholm Convention on Persistent Organic Pollutants (POPs Convention), the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution for POPs (POPs Protocol to LRTAP), and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention). 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 H.R. 4591 would cost $10 million over the next five years, assuming appropriation of the necessary amounts. Funds would support additional personnel that would be needed at EPA under this legislation. While EPA currently regulates many of the chemicals that would be affected by these agreements, implementing this legislation would result in additional responsibilities for EPA. Specifically, EPA would participate in the international process for determining whether additional chemicals should be prohibited or restricted from use under the agreements. The agency would then oversee the process necessary to meet any prohibitions or restrictions of the use of chemicals that the United States chooses to pursue. EPA's duties would include issuing public notices following decisions by the committees established under the agreements and developing and enforcing regulations when necessary. In establishing regulations, EPA would be required to conduct an analysis of the environmental and health benefits and risks, the economic consequences, and the national and international effects of regulating or banning certain chemicals.

Based on information from EPA, CBO estimates that these activities would cost about $2 million a year, subject to the availability of appropriated funds. Enacting H.R. 4591 would not affect direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. H.R. 4591 would implement the following treaties: POPs Convention, PIC Convention, and POPs Protocol to LRTAP. CBO has determined that because this bill would implement three environmental treaties, it falls within that exclusion. CBO has thus not reviewed the bill for intergovernmental or private-sector mandates.

The CBO staff contacts for this estimate are Susanne S. Mehlman and Leigh Angres. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the legislation as the "Stockholm and Rotterdam Toxics Treaty Act of 2006."

Section 2. Implementation of international agreements

Section 2 amends the Toxic Substances Control Act by adding a new Title V, Implementation of International Agreements in TSCA.

Section 501. Definitions

New Section 501 containing definitions for newly introduced terms for Title V under TSCA.

Section 502. Implementation of POPS Convention and LRTAP POPS Protocol

New Section 502 prohibits the manufacture, process, distribution in commerce for export, use, or disposal of defined POPs (aldrin, chlordane, dichlorodiphenyltrichloroethane (DDT), dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, and toxaphene) or LRTAP POPs (aldrin, chlordane, chlordecone, dichlorodiphenyltrichloroethane (DDT), dieldrin, endrin, hexachlorocyclohexane, heptachlor, hexachlorobenzene, hexabromobiphenyl, mirex, and toxaphene) chemical substance or mixtures.

New section 502(c) addresses PCBs, also a defined POPs and LRTAP POPs chemical substance. H.R. 4591 authorizes the Administrator of EPA to issue or amend rules under TSCA section 6(e), the current regulatory regime for PCBs, or other applicable law, for the purpose of complying with PCB provisions of the POPs Convention or LRTAP POPs Protocol.

Section 503. Notice, information, rulemaking, and exemptions

New Section 503 sets up a mandatory notice and comment procedure triggered by the formal actions of the international body (POPs Review Committee or Executive Body under LRTAP) regarding a new chemical substance or mixture that has been proposed

to be added, as outlined in the respective international agreement. Each notice and comment procedure corresponds with various, established stages in the international process, (first round is triggered after screening criteria is met or risk profile submitted, second after further consideration of chemical substance or mixture is warranted, and third after a conference recommendation concerning a listing or completion of a technical review).

New Section 503 requires that for each required round of notice and public comment, the Administrator has 60 days to publish a notice and sets out various information pieces to be included in the notice as well as the types of information to be requested.

New Section 503(d) also grants to the Administrator discretionary information gathering authority relating to any of the newly proposed POPs or LRTAP POPs chemical substances or mixtures subject to the notice and comment provisions, including for collection of information on annual quantities of the proposed chemical produced, the uses of such chemical, and the approximate releases into the environment. Section 503(d)(3), however, requires updates of information if the Administrator determines that an update of previously submitted information is necessary.

Upon a vote of the international body to add a new chemical substance or mixture to the list of chemical substances or mixtures that are to be banned or severely restricted under either the POPs Convention or LRTAP POPs Protocol, new Section 503(e) establishes a domestic rulemaking framework that is intended to allow the Administrator to issue regulations to bring the United States into compliance with its obligations under these agreements. The Administrator may issue rules to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits, only to the extent necessary to meet the obligations of the U.S. under the Conventions. The Committee intends to set the legal authority of "protecting human health and the environment," but choosing means of such protection that reasonably balance costs and benefits is reserved to the Administrator. The Administrator should make every effort under this standard to ensure that the protection of human health and the environment is satisfied when attempting to balance social, environmental, and economic costs and benefits for purposes of meeting its obligations under the Conventions. The language is clear that the Administrator can use both qualitative and quantitative considerations in making evaluations. The standard asks the Administrator to choose a manner of protecting human health and the environment that "achieves a reasonable balance of social, environmental, and economic costs and benefits." The Committee believes there is a distinction between the basic goal of the Stockholm Convention—protection of human health and the environment—and the assessment of appropriate means or measures to address this goal, specifically reflected in Annex F of the POPs Convention. This rulemaking standard reflects that distinction.

New Section 503(e) also establishes considerations for the Administrator to use when promulgating rules based on assessing the effects and the impact of exposure to the proposed chemical. The Committee is especially concerned about the application of scientific studies and practices in any rulemaking. The Committee believes that sound and objective scientific studies, regardless of

source or origin, must be the basis by which any regulatory determinations are made. The use of sound and objective scientific practices is not new to Federal environmental law, including its application to Section 1412 of the Safe Drinking Water Act and Executive Order 12866, as issued by President Clinton.

New Section 503(e)(4) directs the Administrator to use sound and objective scientific practices in assessing risks and effects, and further directs the Administrator to determine the weight of the scientific evidence concerning such risks based on the best available scientific information, including peer-reviewed studies in the rulemaking record. The term "weight of the evidence" is expressly used in the 1997 Final Report of the Presidential/Congressional Commission on Risk Assessment and Risk Management. The language is based, in part, on the Commissions recommendations. On page 4 of that report the Commission states: "A good risk management decision . . . is based on a careful analysis of the weight of scientific evidence that supports conclusions about a problem's potential risks to human health and the environment." On page 23 of that report the Commission states: "Making judgments about risk on the basis of scientific information is called 'evaluating the weight of the evidence.' . . . It is important that risk assessors respect the objective scientific basis of risk and procedures for making inferences in the absence of adequate data." On page 38 of that report the Commission states: "Risk assessors and economists are responsible for providing decision-makers with the best technical information available or reasonably attainable, including evaluations of the weight of the evidence that supports different assumptions and conclusions."

New Section 503(f) lists POPs Convention-based and new Section 503(g) enumerates LRTAP POPs Protocol-based "use specific" or "acceptable purpose" exemptions, as well as other exemptions, for the prohibitions and restrictions identified in new Section 502, including exemptions for unintentional trace contaminants, research, constituent of article in use, and export exemptions. As will be pointed out later in this report, new Section 507 provides that nothing in the legislation shall be construed to mandate that the United States register for an exemption under the POPs Convention.

Of note, regarding the disposal of LRTAP substances, enactment of new Sections 503(g)(1)(H) and 503(g)(1)(I) of H.R. 4591, are able to be met utilizing existing authorities, including, as appropriate, the Resource Conservation and Recovery Act. The Committee wants to make clear that it does not want to create the impression that a new regulatory standard is being created or set for them.

In addition, regarding the prohibitions and exemptions afforded in new Section 503, the Committee is concerned that future ban or restriction of some Persistent Organic Pollutants could become an issue in the United States' ability to combat potential threats to public health. As is stated before, the Committee intends for the EPA Administrator to have maximum flexibility, including the ability under the Administrative Procedure Act to amend any regulation put into place under this statute restricting the use of a POP in the event that the ability to protect U.S. public health is severely threatened by this restriction.

New Section 503(h) creates a harmonization standard for treatment of exemptions for chemical substances or mixtures under the POPs Convention and LRTAP POPs Protocol. Under new Section 503(h), if there is a conflict between a specified exemption under POPs or LRATP POPs, the more stringent provision, as determined by the Administrator, with the concurrence of the Secretary of State, shall apply.

New Section 503(i) requires the Administrator to publish in the Federal Register a decision regarding the POPs Convention's treatment of any new source categories that are not already listed under Section 112(c) of the Clean Air Act.

New Section 503(j) requires the Administrator to publish a notice in the Federal Register within 90 days of developing an action plan under Article 5(a) of the POPs Convention.

New Section 503(k) requires the Administrator, within one year of a final decision to add a new chemical substance or mixture by the parties to the POPs Convention or LRTAP POPs Protocol, to publish a notice in the Federal Register of either: (1) a decision to initiate a rulemaking process regarding a newly listed POPs or LRTAP POPs chemical substance or mixture, (2) a decision not to initiate a rulemaking and the reasons for this decision, or (3) the status of the Administrator's considerations on a rulemaking and its timeframe, if the Administrator has not made a decision to regulate the POPs or LRTAP POPs chemical substance or mixture.

Importantly, the Committee wishes to make clear its position concerning H.R. 4591 and pharmaceuticals. H.R. 4591 is not intended to amend or affect any provision or application of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). H.R. 4591 applies only to those chemical substances or mixtures that are: (1) covered by the treaties and (2) within the scope of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

Finally, the Committee notes that new Section 503, as well as other provisions of H.R. 4591, contains numerous requirements on the Administrator of the EPA to obtain the "concurrence of the Secretary of State" before taking necessary actions. The Committee views the use of the term "concurrence" merely to ensure that actions by the Administrator under Title V will allow the United States to be in compliance with the POPs Convention, LRTAP POPs Protocol, and the PIC Convention. In no way does the Committee intend the use of the word "concurrence" to confer any type of new legal or other regulatory authority over environmental law, or its enforcement, to the Secretary of State.

Section 504. Amendments and consultation

New Section 504(a) establishes a sense of the Congress that the U.S. shall consent to be bound to further amendments and additional chemical substances or mixtures only after depositing their instrument of ratification and utilizing the opt-in. The State Department and EPA have twice testified before the Subcommittee on Environment and Hazardous Materials that the White House, under the Clinton Administration, worked very hard to have the "opt-in" procedure added to Article 22(b) of the POPs Convention and the present White House wishes to utilize the "opt-in" feature for future chemical substances or mixtures. New Section 504 is meant to reinforce the importance of the "opt-in" process and to

alert future White House's of Congress's clear desire at the time of the passage of implementing legislation.

New Section 504(b) also establishes consultation and reporting requirements with both Houses of Congress before the U.S. consents to be bound by any future amendment or additional chemical. Especially because of the potential impact of these treaties on the laws of the United States, new Section 504 is intended to ensure greater transparency by the Executive Branch in future efforts under these international agreements.

Section 505. International cooperation and notice of meetings

New Section 505 establishes that the Administrator and other appropriate Federal agencies, such as State, shall participate and cooperate in any international efforts to develop improved capacity building and technical cooperation in support of these treaties.

Section 506. Effect of requirements

New Section 506 establishes that any provision of TSCA that establishes a requirement to comply with, or is based on a provision of the POPs or PIC Convention or LRTAP POPs Protocol, shall be effective only to the extent that the U.S. has consented to be bound by that provision.

Section 507. Rules of construction

New Section 507 provides that nothing in the legislation shall be construed to mandate that the United States register for an exemption under the POPs Convention.

In addition, new Section 507 states that nothing in this title affects the authority of the Administrator to use TSCA or any Federal environmental law to regulate a chemical substance or mixture.

Section 3. Polychlorinated Biphenyls (PCBs)

Section 3 amends Section 6(e) of TSCA to add a requirement that the Administrator may not issue a rule authorizing activities that were not previously authorized under TSCA Section 6(e) unless the activities are consistent with the activities (exemptions) authorized under new Sections 503(f) and (g). Further, Section 3 closes the gaps in current TSCA Section 6 in order for the U.S. to be in compliance with the POPs Convention for its obligations as they relate to PCBs.

Section 4. Judicial review

Section 4 applies a "substantial evidence" standard of review for regulations issued under new Section 503(e). The application of a "substantial evidence" test for rulemaking under new Section 503(e) is wholly consistent with TSCA's current judicial review provisions for regulations issued under Sections 6(a) of TSCA, the other explicit regulatory authority provided in TSCA. In addition, the Committee does not wish to alter the provisions of existing law beyond what is essential to allow for full implementation of what the POPs, LRTAP POPs, and PIC Conventions requires. Since the other statute that must be amended for full implementation of these international agreements—the Federal Insecticide, Fungicide, and Rodenticide Act—also contains a "substantial evidence" test for

judicial review, the Committee does not wish to have conflicting judicial review standards applied to the same domestic implementation legislation.

Section 5. Exports

Section 5 establishes conditions for the export regime of PIC chemical substances or mixtures. It sets up requirements for pre-export notices, timing requirements for first export and subsequent exports, labeling and document requirements, and it also contains a streamlining and consolidation of notices section. Section 5 also establishes an Administrator-determined alternate time frame for exporters to request.

Section 6. Conforming amendments

Section 6 makes five conforming amendments to harmonize its provisions with the existing provisions of TSCA. Section 6(a) amends TSCA Section 1, the Table of Contents to include the new Title V; Section 6(b) conforms TSCA Section 11, Inspections and Subpoenas, to include new Title V; Section 6(c) adds Title V to TSCA Section 15, Prohibited Acts; Section 6(d) applies new Title V to the provisions of TSCA Section 17, Specific Enforcement and Seizure; and Section 6(e) amends TSCA Section 18, Preemption, to have it conform to new Title V.

Regarding the changes to TSCA Section 18 called for in Section 6(e), States can still impose stricter standards for POPs or LRTAP POPs chemical substances or mixtures on top of the Federal standards issued under new Section 503(e) if the State or municipal law is adopted under the authority of the Clean Air Act or any other Federal law, if the State or municipality bans the POPs or LRTAP POPs chemical substance or mixture, or if the State or municipal law is the same as the Federal law. If a State or municipal law does not qualify under these direct exemptions, the State or municipality may petition the Administrator to continue its law. The Committee notes that in the last 30 years the only time EPA denied a petition under TSCA Section 18, EPA took the subject of the individual State's petition and made a national regulation out of it, thus public health protections have never been rejected by EPA under TSCA section 18. Of note, this petition is the only one that EPA has received under that Section.

The Committee notes that because TSCA's wide sweep regulates manufacturing and distribution of chemicals, a procedure has been in place for three decades that ensures State and local laws do not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce when a Federal rule or order is in place. In addition, States remain able to impose their own standards and have "blank check" authority over non-POPs, non-LRTAP POPs, or non-TSCA chemical substances or mixtures.

Further, because H.R. 4591 is implementing legislation for the POPs Convention and the LRTAP POPs Protocol, the Savings Clause of Section 6(e) clarifies that this section does not authorize State actions that would place the United States out of compliance with these international environmental accords. This treaty implementation language is intended to ensure that State laws restricting manufacturing and distribution in commerce are in line with the minimum obligations that are required to for the United States

to be in full compliance with these treaties. The Committee believes that altering the existing process in TSCA could possibly lead to a patch work set of laws that, according the Department of State, could lead to multiple interpretations of what is less stringent than federal regulations, resulting in states taking actions without notification to the Federal government.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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

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".

TABLE OF CONTENTS

TITLE I—CONTROL OF TOXIC SUBSTANCES

* * * * * * *

TITLE V—IMPLEMENTATION OF INTERNATIONAL AGREEMENTS

Sec. 501. Definitions
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Sec. 503. Notice, information, rulemaking, and exemptions
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Sec. 507. Rules of construction

* * * * * * *

SEC. 6. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

(a) * * *

* * * * * * *

(e) POLYCHLORINATED BIPHENYLS.—(1) * * *
(2)(A) * * *

* * * * * * *

(D) The Administrator may not, after the date of enactment of this subparagraph, issue a rule authorizing activities, that were not previously authorized, under subparagraph (B) unless the activities authorized are consistent with the exemptions described in section 503(f) or (g), subject to section 503(h).

(3)(A) * * *

* * * * * * *

(D) The Administrator may not, after the date of enactment of this subparagraph, grant an exemption under subparagraph (B) unless the manufacturing, processing, or distribution in commerce with respect to which such exemption applies is consistent with the exemptions described in section 503(f) or (g), subject to section 503(h).

* * * * * * *

(6) Notwithstanding any other provision of this subsection, no person may distribute in commerce for export equipment (including transformers, capacitors, and other receptacles) containing greater than 0.05 liters of liquid stock that contains greater than 0.005 percent polychlorinated biphenyls, except for the purpose of environmentally sound waste management to the extent that such distribution in commerce for export is authorized by Federal law.

* * * * * * *

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 title 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 title V* within such premises or conveyance have been complied with.

* * * * * * *

SEC. 12. EXPORTS.

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

(A) * * *

* * * * * * *

(c) EXPORTS UNDER THE PIC CONVENTION AND POPS CONVENTION.—

(1) EXPORT CONDITIONS OR RESTRICTIONS.—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 paragraph (4)(C), any person that distributes in commerce for export the chemical substance or mixture shall comply with any export conditions or restrictions identified by the Administrator in the notice.

(2) PRE-EXPORT NOTICES.—

(A) IN GENERAL.—

(i) REQUIREMENT.—In the case of—

(I) a chemical substance or mixture that the Administrator determines to be banned or severely restricted under paragraph (4)(A);

(II) a chemical substance or mixture identified by the Administrator in a notice issued under paragraph (4)(C); or

(III) a POPs chemical substance or mixture (for which a listing under Annex A or Annex B of the POPs Convention has entered into force for the United States), the export of which is not prohibited by section 502(a) or rules promulgated pursuant to section 503(e),

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.

(ii) TIMING OF NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES THAT ARE BANNED OR SEVERELY RESTRICTED.—

(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the United States to each importing foreign state after the Administrator issues a notice under paragraph (4)(A), the exporter shall provide the notice required under clause (i) so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first export in such calendar year.

(iii) TIMING OF NOTICE FOR CHEMICAL SUBSTANCES OR MIXTURES LISTED UNDER THE PIC CONVENTION.—

(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the United States to each importing foreign state after the Administrator issues a notice under paragraph (4)(C), the exporter shall provide the notice required under clause (i) so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such export.

(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 paragraph (4)(C), or if circumstances described by the exporter in an earlier pre-export notice have substantially changed, the exporter shall provide an additional notice under this subparagraph so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

(iv) TIMING OF PRE-EXPORT NOTICE FOR THE EXPORT OF POPS CHEMICAL SUBSTANCES OR MIXTURES WHICH ARE NOT PROHIBITED UNDER THE POPS CONVENTION.—

(I) FIRST EXPORT.—In the case of the first export that an exporter makes from the United States to each importing foreign state of a chemical substance or mixture not prohibited from being exported by the prohibition in section 502(a) or rules promulgated pursuant to section 503(e), the exporter shall provide the notice under this subparagraph so that the Administrator receives the notice not earlier than 45 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 calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such subsequent export in such calendar year.

(III) CHANGED CIRCUMSTANCES MERITING NEW NOTICE.—If the circumstances described by the exporter in an earlier pre-export notice have substantially changed, the exporter shall provide an additional notice under this subparagraph so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

(B) ALTERNATE TIME FRAME FOR NOTICES.—

(i) DISCRETIONARY ALTERNATE TIME FRAMES.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), the Administrator may set an alternate time frame for providing notices under this subparagraph if the Administrator determines that such alternate time frame is appropriate and the Administrator is able, within such alternate time frame, to administer notice activities in accordance with the PIC Convention and comply with the POPs Convention.

(ii) MANDATORY REVIEW OF STATUTORY TIME FRAMES AND PROCESSES.—Not later than 18 months after entry into force for the United States of the PIC Convention, and not later than 18 months after entry into force for the United States of the POPs Convention, the Administrator shall review the statutory time frames for receipt of pre-export notices under this subparagraph and

the Administrator's processing of such notices. In such review, the Administrator, with the concurrence of the Secretary of State, shall consider whether amendments to the time frames and modifications to the processes would be appropriate to administer notice activities in accordance with the PIC Convention and to comply with the POPs Convention.

(C) CONTENT OF PRE-EXPORT NOTICES.—

(i) NOTICES FOR BANNED OR SEVERELY RESTRICTED CHEMICAL SUBSTANCE OR MIXTURE.—A notice under subparagraph (A)(ii) with respect to a chemical substance or mixture that is banned or severely restricted shall include for each export anticipated during that calendar year—

(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) information relating to the foreseen uses of the chemical substance or mixture, if known, in the importing foreign state;

(VIII) information on precautionary measures, consistent with the ban or severe restriction applicable to the United States under the PIC Convention, to reduce exposure to, and emission of, the chemical substance or mixture;

(IX) information relating to the concentration of the chemical substance or mixture; and

(X) any other information that the Administrator determines, in a general order published in the Federal Register, is required by Annex V of the PIC Convention to be included in such a notice.

(ii) NOTICES FOR CHEMICAL SUBSTANCES OR MIXTURES LISTED ON ANNEX III OF THE PIC CONVENTION.—A notice under subparagraph (A)(ii) with respect to a chemical substance or mixture listed on Annex III of the PIC Convention shall include for each export anticipated during that calendar year—

(I) all of the information required to be included under clause (i);

(II) any information relating to export conditions or restrictions identified by the Administrator in the notice issued under paragraph (4)(C) 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 by general order published in the

Federal Register to be necessary for effective enforcement of the export conditions or restrictions applicable to the chemical substance or mixture.

(iii) NOTICES FOR CHEMICAL SUBSTANCE OR MIXTURE THE EXPORT OF WHICH IS NOT PROHIBITED UNDER THE POPS CONVENTION.—A notice submitted to the Administrator under subparagraph (A)(iii) shall include—

(I) the name and address of the exporter;

(II) the name and address of the importer;

(III) a name of the POPs chemical substance or mixture;

(IV) a general description of how the export is in accordance with the provisions related to export in section 503(f)(6) or (7); and

(V) such other information as the Administrator determines by general order published in the Federal Register to be necessary for enforcement of the export-related obligations of the POPs Convention applicable to the United States for that chemical substance or mixture.

(D) PRE-EXPORT NOTICES ACCOMPANYING EACH EXPORT.—An exporter shall ensure that a copy of the most recent applicable pre-export notice provided to the Administrator under this subsection accompanies each shipment for export and is available for inspection upon export for—

(i) any chemical substance or mixture that the Administrator has identified under paragraph (4)(C) as being listed on Annex III of the PIC Convention; or

(ii) any POPs chemical substance or mixture that is exported.

(E) RETENTION OF PRE-EXPORT NOTICES.—An exporter required to provide a notice under subparagraph (A) shall maintain a copy of the notice and other documents used to generate the notice and have it readily available for a period of no less than 3 years beginning on the date on which the notice is provided.

(3) LABELING AND DOCUMENT REQUIREMENTS.—

(A) IN GENERAL.—In the case of any chemical substance or mixture that is the subject of a notice issued under subparagraph (A) or (C) of paragraph (4) and that is manufactured, processed, or distributed in commerce, the chemical substance or mixture shall, as required by the PIC Convention—

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

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

(B) CUSTOM CODES.—A chemical substance or mixture that is the subject of a notice issued under paragraph (4)(C) 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.

(4) NOTICE REQUIREMENTS AND EXEMPTION.—

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

(i) 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).

(ii) 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 clause (i) 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.

(B) NOTICE TO FOREIGN COUNTRIES.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to a chemical substance or mixture that is banned or severely restricted under paragraph (2)(A)(ii), the Administrator shall provide to the designated authority of the importing foreign state a copy of the preexport notice it determines represents the first export to the importing foreign state after a determination under subparagraph (A) that the chemical substance or mixture is banned or severely restricted and, thereafter, the preexport notice it determines represents the first export in each calendar year to the importing foreign state.

(ii) 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.

(C) NOTICE TO PUBLIC.—

(i) 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 the conditions and restrictions applicable thereto; 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.

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

(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.

(iii) TREATMENT OF CONDITIONS AND RESTRICTIONS.—A condition or restriction identified by a notice required under clause (i) shall be considered to be an export condition or restriction for the purpose of paragraph (1).

(D) NOTICE OF EXEMPTION.—The Administrator may issue a notice exempting any chemical substance or mixture from the requirements of paragraphs (1) through (3), and subparagraph (B) of this paragraph, if the Administrator determines, with the concurrence of the Secretary of State, that the exemption would be consistent with the PIC Convention or the POPs Convention.

(5) CONSOLIDATION OF NOTICES.—With respect to any pre-export notice requirement under this subsection, the Administrator shall allow any such requirement, and any pre-export notice requirement in other provisions of this Act, to be satisfied by a single notice.

(6) TRACE CONCENTRATIONS.—The Administrator shall allow the export of trace concentrations of otherwise restricted or banned chemicals without notification if the Administrator finds that the export of such concentrations without notification does not pose a significant threat to human health or the environment and is not inconsistent with the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

* * * * * * *

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 *or any requirement prescribed under title V or rule or order promulgated or issued under title V*;

(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 violation 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*, or any requirement prescribed under title V or rule or order promulgated or issued under title V*;

* * * * * * *

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**[**,**]***;*

[(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.

* * * * * * *

(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.

SEC. 18. PREEMPTION.

(a) EFFECT ON STATE LAW.—(1) * * *

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

(A) * * *

[(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).]

(B) if—

(i) 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; or

(ii) the United States has consented to be bound under the POPs Convention or LRTAP POPs Protocol with respect to a POPs chemical substance or mixture or LRTAP POPs chemical substance or mixture (as defined in section 501),

no State or political subdivision of a State may, after the effective date of such rule or order or consent, 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 a risk of injury to health or the environment associated with such substance or mixture that the rule, order, or consent is designed to protect against, unless such requirement is identical to the requirement prescribed by the Administrator, is adopted under the authority of the Clean Air Act or any other Federal law, or 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).

* * * * * * *

(c) SAVINGS.—Nothing in this section shall be construed to authorize a State to act in a manner that causes the United States to be out of compliance with its obligations under the POPs Convention or LRTAP POPs Protocol. For purposes of this section, the terms "POPs Convention" and "LRTAP POPs Protocol" have the meaning given those terms in section 501.

SEC. 19. JUDICIAL REVIEW.

(a) IN GENERAL.—(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8, or under title II [or IV]*, IV, or V*, any person may file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

* * * * * * *

(3) For purposes of this section, the term "rulemaking record" means—

(A) * * *

(B) in the case of a rule under section 4(a), the finding required by such section, in the case of a rule under section 5(b)(4), the finding required by such section, in the case of a rule under section 6(a) the finding required by section 5(f) or 6(a), as the case may be, in the case of a rule under section 6(a), the statement required by section 6(c)(1), and in the case of a rule under section 6(e), the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be and in the

case of a rule under [title IV, the finding] *title IV or V, the findings* required for the issuance of such a rule;

* * * * * * *

(D) any written submission of interested parties respecting the promulgation of such rule; [and]

(E) for rules promulgated under section 503(e), any written submission or other information the Administrator receives pursuant to subsection (a), (b), (c), or (d) of section 503; and

[(E)] *(F)* any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

(b) ADDITIONAL SUBMISSIONS AND PRESENTATIONS; MODIFICATIONS.—If in an action under this section to review a rule *(except a rule promulgated pursuant to section 503)* the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule being reviewed or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(c) STANDARD OF REVIEW.—(1)(A) * * *

(B) Section 706 of title 5, United States Code, shall apply to review of a rule under this section, except that—

(i) in the case of review of a rule under section 4(a), 5(b)(4), 6(a), [or 6(e)] *6(e), or 503(e)(1)*, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;

* * * * * * *

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) EXECUTIVE BODY.—The term "Executive Body" means the Executive Body established by Article 10 of the LRTAP Convention.

(4) EXECUTIVE BODY DECISION 1998/2.—The term "Executive Body Decision 1998/2" means the decision of the Executive Body titled "Executive Body Decision 1998/2 on Information to Be Submitted and the Procedure for Adding Substances to Annexes I, II, or III to the Protocol on Persistent Organic Pollutants" and any other Executive Body decision done pursuant to Article 14 of the LRTAP POPs Protocol.

(5) LRTAP CONVENTION.—The term "LRTAP Convention" means the Convention on Long-Range Transboundary Air Pollution, done at Geneva on November 13, 1979 (TIAS 10541), and any subsequent amendment to which the United States consents to be bound.

(6) LRTAP POPS CHEMICAL SUBSTANCE OR MIXTURE.—The term "LRTAP POPs chemical substance or mixture" means one of the following chemical substances or mixtures, as defined in section 3:

(A) Aldrin.
(B) Chlordane.
(C) Chlordecone.
(D) Dichlorodiphenyltrichloroethane (DDT).
(E) Dieldrin.
(F) Endrin.
(G) Hexachlorocyclohexane (HCH).
(H) Heptachlor.
(I) Hexachlorobenzene.
(J) Hexabromobiphenyl.
(K) Mirex.
(L) Polychlorinated biphenyls (PCBs).
(M) Toxaphene.
(N) Any chemical substance or mixture that is listed on Annex I or Annex II of the LRTAP POPs Protocol.

(7) 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, and any subsequent amendment to which the United States consents to be bound.

(8) 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, and any subsequent amendment to which the United States consents to be bound.

(9) POPS CHEMICAL SUBSTANCE OR MIXTURE.—The term "POPs chemical substance or mixture" means one of the following chemical substances or mixtures, as defined in section 3:

(A) Aldrin.
(B) Chlordane.
(C) Dichlorodiphenyltrichloroethane (DDT).
(D) Dieldrin.
(E) Endrin.
(F) Heptachlor.
(G) Hexachlorobenzene.

(H) Mirex.

(I) Polychlorinated biphenyls (PCBs).

(J) Toxaphene.

(K) Any other chemical substance or mixture that is listed in Annex A or B to the POPs Convention.

(10) POPS CONVENTION.—The term "POPs Convention" means the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on May 22, 2001, and any subsequent amendment to which the United States consents to be bound.

(11) 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.—Except as otherwise provided in this title, no person may manufacture, process, distribute in commerce for export, use, or dispose of a POPs chemical substance or mixture listed in section 501(9) (A), (B), (C), (D), (E), (F), (G), (H), or (J), or a LRTAP POPs chemical substance or mixture listed in section 501(6)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), or (M).

(b) EXCEPTIONS.—The Administrator may by rule provide for exceptions to the prohibition under subsection (a) where such exceptions are not inconsistent with the obligations of the United States under the POPs Convention or the LRTAP POPs Protocol.

(c) PCBS.—The Administrator may issue or amend rules for the purpose of United States compliance with the provisions of the POPs Convention or the LRTAP POPs Protocol related to polychlorinated biphenyls through rules duly promulgated through notice and comment rulemaking under section 6(e) or other applicable Federal law.

SEC. 503. NOTICE, INFORMATION, RULEMAKING, AND EXEMPTIONS.

(a) NOTICE THAT SCREENING CRITERIA ARE MET OR AFTER RISK PROFILE SUBMITTED.—

(1) APPLICABILITY.—This subsection applies if—

(A) the POPs Review Committee decides 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;

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

(C) 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 60 days after the date of an action described in paragraph (1), the Administrator shall—

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

(B) provide opportunity for public comment on the proposal or risk profile described in paragraph (1).

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

(A) the identity of the chemical substance or mixture that is the subject of the proposal or risk profile described in paragraph (1);

(B) a summary of the process, under the POPs Convention or the LRTAP POPs Protocol, for the consideration of the action that was taken, including criteria applied in that process;

(C) a summary of the POPs Review Committee or Conference decisions to date on the proposed listing and the basis for the decisions; and

(D) a summary of how the chemical substance or mixture that is the subject of the action is currently regulated under the laws of the United States.

(b) NOTICE THAT FURTHER CONSIDERATION OF CHEMICAL SUBSTANCE OR MIXTURE IS WARRANTED.—

(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 a chemical substance or mixture that is the subject of a proposal to list under an Annex to the POPs Convention;

(B) the Conference decides, under paragraph 8 of that Article, that such a proposal shall proceed; or

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

(2) NOTICE.—Not later than 60 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 public comment on the decision or determination.

(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—

(i) the POPs Review Committee or Conference decision, and the basis for the decision, in the case of a decision described in paragraph (1)(A) or (B);

(ii) the Executive Body determination, and basis for the determination, in the case of a determination described in paragraph (1)(C); and

(iii) the comments received by the Administrator in response to the Federal Register notice published pursuant to subsection (a)(2)(A); and

(C) request, for a chemical substance or mixture proposed for listing on Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol, information and public comment on any present or anticipated produc-

tion or use of the chemical substance or mixture, including any explanation or documentation of items relating thereto that the United States may use 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.

(c) NOTICE OF CONFERENCE RECOMMENDATION CONCERNING A LISTING OR COMPLETION OF A 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 a chemical substance or mixture in accordance with a proposal; or

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

(2) NOTICE.—Not later than 60 days after the date on which a recommendation under paragraph (1)(A) is made or a technical review described in paragraph (1)(B) 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 public comment on the recommendation or the technical review.

(3) REQUIRED ELEMENTS.—A notice under paragraph (2) shall include a summary of—

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

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

(C) any control measures for the chemical substance or mixture that exist under the laws of the United States; and

(D) any public comments received by the Administrator in response to the Federal Register notice published pursuant to subsection (b)(2).

(d) PROVISION OF INFORMATION.—

(1) UNDER POPS CONVENTION.—The Administrator, where relevant, by general order issued in the Federal Register may require any person, or appropriate categories of persons, that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of a notice under subsection (a), (b), or (c) to provide information, to the extent such information is known or readily obtainable, on—

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

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

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

(D) other information or monitoring data relating to the chemical substance or mixture that is consistent with the information specified in—

(i) paragraph 1 of Annex D;

(ii) subsections (b) through (e) of Annex E; and

(iii) Annex F,

to the POPs Convention.

(2) UNDER LRTAP POPS PROTOCOL.—The Administrator, where relevant, by general order issued in the Federal Register, may require any person, or appropriate categories of persons, that manufactures, processes, distributes in commerce for export, or disposes of a chemical substance or mixture that is the subject of a notice under subsection (a), (b), or (c) to provide information, to the extent such information is known or readily obtainable, on—

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

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

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

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

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

(F) information on any known adverse environmental or human health effects associated with each such alternative; and

(G) other information or monitoring data relating to the chemical substance or mixture that is consistent with information specified in Executive Body Decision 1998/2 for inclusion in the risk profile or technical review.

(3) UPDATING OF INFORMATION.—

(A) VOLUNTARY UPDATES.—Any person who submits information under paragraph (1) or (2) may voluntarily update the information at any time.

(B) REQUIRED UPDATES.—If the Administrator determines, with the concurrence of the Secretary of State, that an update of information submitted under paragraph (1) or (2) is necessary, the Administrator may, through a general order published in the Federal Register, require all persons that are required to submit the information to update the information.

(C) NEW INFORMATION.—As part of a general order published under subparagraph (B), the Administrator may require any person who, after the date specified in the general order issued pursuant to paragraph (1) or (2) 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 paragraph (1) or (2), to submit the information required to be submitted in the general order issued pursuant to paragraph (1) or (2).

(e) ACTION BY THE ADMINISTRATOR UPON NEW LISTING OR OTHER CHANGES.—

(1) RULEMAKING.—

(A) AUTHORITY.—If either—

(i) the Conference decides to amend Annex A or B of the POPs Convention to list an additional chemical substance or mixture; or

(ii) the parties to the LRTAP POPs Protocol decide to amend Annex I or II to the LRTAP POPs Protocol to list an additional chemical substance or mixture,

the Administrator may issue rules to prohibit or restrict the manufacture, processing, distribution in commerce for export, use, or disposal of the additional chemical substance or mixture to the extent necessary to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits. Such costs and benefits include both qualitative and quantitative costs and benefits. The Administrator may modify rules issued under this paragraph, consistent with the requirements of this paragraph.

(B) SCOPE OF RULEMAKING.—The Administrator may issue rules under subparagraph (A) only to meet, in whole or in part, the obligations of the United States under the POPs Convention or LRTAP POPs Protocol if the United States were to consent to be bound for that applicable amendment referred to in subparagraph (A).

(C) EFFECTIVE DATE FOR RULES.—No rule issued under this paragraph shall take effect until the United States has consented to be bound by the amendment agreed to by a decision under subparagraph (A)(i) or (ii).

(2) CONSIDERATIONS.—(A) In taking an action under paragraph (1), the Administrator shall consider—

(i) the effects of such chemical substance or mixture on health and the magnitude and impact of the exposure of human beings to such chemical substance or mixture;

(ii) the effects of such chemical substance or mixture on the environment and the magnitude and impact of the exposure of the environment to such chemical substance or mixture;

(iii) the benefits of such chemical substance or mixture for various uses and the availability, risks, and economic consequences of substitutes for such uses, considering factors described in clause (iv);

(iv) the reasonably ascertainable economic consequences of the proposed prohibition or other regulation, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health, including the degree to which the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical substance or mixture is necessary to prevent significant harm to an important sector of the economy; and

(v) 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).

(B) Nothing in this paragraph shall be interpreted to prevent the Administrator from using the information described in paragraph (3), along with any other information provided during the comment period with respect to the rulemaking under paragraph (1), to carry out this paragraph.

(3) ADDITIONAL CONSIDERATIONS.—The Administrator may also consider—

(A) with regard to chemical substances or mixtures listed in Annex A or B of the POPs Convention—

(i) recommendations of the POPs Review Committee under paragraph 9 of Article 8 of the POPs Convention;

(ii) the Conference listing decision; and

(iii) 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

(B) with regard to chemical substances or mixtures listed in Annex I or II of the LRTAP POPs Protocol—

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

(ii) the LRTAP POPs Protocol listing decision; and

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

(4) ASSESSMENT OF RISKS OR EFFECTS.—In assessing risks and effects, the Administrator shall use sound and objective scientific practices, and shall determine the weight of the scientific evidence concerning such risks or effects based on the best available scientific information, including peer-reviewed studies, in the rulemaking record.

(5) COMMENTS AND INFORMATION PART OF RECORD.—The comments and information received in response to notices or orders published pursuant to subsections (a), (b), (c), and (d) shall be part of the record for a rule promulgated pursuant to this subsection.

(f) EXEMPTIONS UNDER POPS CONVENTION.—

(1) USE-SPECIFIC OR ACCEPTABLE PURPOSE EXEMPTIONS.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State—

(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 obligations or potential obligations of the United States with respect to that chemical substance or mixture under the POPs Convention.

(2) UNINTENTIONAL TRACE CONTAMINANTS.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 for the United States 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 EXEMPTION.—

(A) IN GENERAL.—Subject to subparagraph (B), prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to any quantity of a POPs chemical substance or mixture that is manufactured and used as a closed-system site-limited intermediate that is chemically transformed in the manufacture of other chemicals that do not exhibit the characteristics of persistent organic pollutants.

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

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

(I) 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

(II) 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—

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

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

(C) TERMINATION OF EXEMPTION.—If, at the termination of any exemption under subparagraph (A), a particular closed-system site-limited intermediate exemption is no longer authorized for the United States under the POPs Convention, no further exemption shall be available under subparagraph (A).

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

(A) IN GENERAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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—

(i) if the export is for purposes of disposal, the export does not comply with an export condition described in subparagraph (B), as determined by the Administrator in consultation with the heads of other interested Federal agencies; or

(ii) the export does not comply with an export condition described in subparagraph (C), or (D), as applicable, 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)(i) is that the POPs chemical substance or mixture is exported for the purpose of environmentally sound disposal.

(C) EXPORT TO PARTY WITH PERMISSION TO USE.—An export condition referred to in subparagraph (A)(ii) 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)(ii) 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 described in clause (ii) 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.

(E) INFORMATION RELEVANT TO EXPORTS.—The Administrator, with the concurrence of the Secretary of State, shall make available to the public, and keep current, a list of—

(i) parties to the POPs Convention;

(ii) production and use specific exemptions available to the United States;

(iii) parties to the POPs Convention that are permitted to use each POPs chemical substance or mixture under Annex A or B of the POPs Convention; and

(iv) chemical substances and mixtures for which no production or use specific exemptions are in effect for any party to the POPs Convention.

(7) EXPORT FOR ENVIRONMENTALLY SOUND DISPOSAL IF NO PRODUCTION OR USE SPECIFIC EXEMPTION IN EFFECT.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to any distribution in commerce for export for the purpose of environmentally sound disposal 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.

(8) IMPORTS FOR ENVIRONMENTALLY SOUND DISPOSAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to a POPs chemical substance or mixture that is imported for the purpose of environmentally sound disposal.

(9) WASTE.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), 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 that is otherwise regulated under Federal law.

(10) 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 Act or any other title of this Act.

(g) EXEMPTIONS UNDER LRTAP POPS PROTOCOL.—

(1) IN GENERAL.—Prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), shall not apply to—

(A) any manufacture, processing, distribution in commerce for export, use, or disposal of a LRTAP POPs chemical substance or mixture that—

(i) the Administrator determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State, 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) the Administrator determines, through final rules promulgated under subsection (e)(1), with the concurrence of the Secretary of State, would, as a result, not prevent the United States from complying with obligations or potential obligations of the United States with respect to that chemical substance or mixture 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 for the United States of any applicable obligation under 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 for the United States 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 of HCH, the use of technical HCH (i.e., HCH mixed isomers) as an intermediate in chemical manu-

facturing, and the use of products in which 99 percent of the HCH isomer is in the gamma form (i.e. lindane, CAS:58–89–9) so long as such use is restricted to—

(i) seed treatment; and

(ii) public health,

unless the Administrator, by rule, restricts the application of this subparagraph consistent with an amendment to the LRTAP POPs Protocol specifically addressing HCH;

(G) any quantity of a LRTAP POPs chemical substance or mixture that has become waste that is otherwise regulated under Federal law;

(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 may grant an exemption from prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a), that the Administrator, in concurrence with the Secretary of State, determines is 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 prohibitions or restrictions included in rules issued under subsection (e)(1), and the prohibitions described in section 502(a).

(B) 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.—If the Administrator grants an exemption under paragraph (2) or (3), 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 paragraph (2) or (3), the exemption is no longer consistent with the requirements of paragraph (2) or (3), the Administrator shall withdraw the grant of such exemption.

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

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

(h) 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 subsection (f) applicable to a POPs chemical substance or mixture and a provision of subsection (g) 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 a chemical substance or mixture described in paragraph (1), subsections (f) and (g) 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.

(i) ACTION BY THE ADMINISTRATOR UPON ADDITION OF SOURCE CATEGORIES.—

(1) APPLICABILITY.—If the Conference decides to amend Annex C of the POPs Convention to add to Part II new source categories not already listed under section 112(c) of the Clean Air Act (42 U.S.C. 7412(c)) as major source categories, such decision shall be published in the Federal Register.

(2) CONFERENCE DECISION NOTICE.—A notice of a Conference decision published in the Federal Register pursuant to paragraph (1) of this subsection shall identify the source category or categories that are the subject of the decision. The notice shall include a summary of the Conference decision and request information and public comment.

(j) ACTION PLANS.—

(1) APPLICABILITY.—This subsection applies if the United States—

(A) develops an action plan under Article 5(a) of the POPs Convention;

(B) undertakes a review of a submitted action plan under Article 5(a)(v) of the POPs Convention;

(C) requires, under Article 5(c) of the POPs Convention, substitute or modified materials, products, or processes; or

(D) requires, under Article 5(d) of the POPs Convention, the use of best available techniques.

(2) REQUIREMENT.—Not later than 90 days after the date of an action described in paragraph (1), the Administrator shall—

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

(B) provide opportunity for public comment on any action plan, review of an action plan, or requirement to be established pursuant to Article 5(c) or (d) of the POPs Convention.

(3) AUTHORITY TO IMPLEMENT ACTION PLAN.—An action to implement an action plan developed under Article 5(a) of the

POPs Convention may be taken only to the extent that such action is authorized under the statutes of the United States.

(k) DECISION CONCERNING A RULEMAKING.—If, within 1 year after a decision described in subsection (e)(1)(A)(i) or (ii), the United States has not, pursuant to Article 22 of the POPs Convention or Article 14 of the LRTAP POPs Protocol, deposited its instrument of ratification, acceptance, accession, or approval with the Convention or Protocol's relevant body, for that chemical substance or mixture, the Administrator shall publish in the Federal Register—

(1)(A) a notice of a decision to initiate a rulemaking process regarding the chemical substance or mixture; or

(B) a notice that a rulemaking process regarding the chemical substance or mixture will not be initiated and the reason for this decision, including, as appropriate, a discussion of the relevant information obtained by the Administrator under this section as well as other factors that the Administrator may have evaluated; or

(2) a notice indicating the status of the Administrator's considerations on whether to publish a notice under paragraph (1), and an estimate of the timeframe expected for such a decision.

SEC. 504. AMENDMENTS AND CONSULTATION.

(a) CONSENT TO BE BOUND.—It is the sense of the Congress that the United States shall consent to be bound by an amendment to Annex A, B, or C of the POPs Convention only after, pursuant to paragraph (4) of Article 25 of the POPs Convention, the United States has declared that such amendment shall enter into force upon ratification, acceptance, approval, or accession of the United States to such amendment.

(b) CONSULTATION.—

(1) IN GENERAL.—The President shall, as appropriate, consult with Congress before consenting to bind the United States to an amendment to Annex A, B, or C of the POPs Convention.

(2) REPORTING.—The President shall provide such other information relating to an amendment described in paragraph (1) as the Congress may request in the fulfillment of its constitutional responsibilities with respect to the protection of public health and the environment.

(3) CONGRESSIONAL OVERSIGHT.—Information provided pursuant to paragraph (2) shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Environment and Public Works of the Senate for appropriate action.

SEC. 505. INTERNATIONAL COOPERATION AND NOTICE OF MEETINGS.

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 on chemical substances and mixtures;

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

(A) the POPs Convention;

(B) the LRTAP POPs Protocol; and

(C) the PIC Convention; and

(3) publish in the Federal Register timely advance notice of the known schedule and agenda of meetings on the POPs Con-

vention, PIC Convention, and LRTAP POPs Protocol, and their subsidiary bodies, at which the United States will be represented.

SEC. 506. EFFECT OF REQUIREMENTS.

Any provision of this Act that establishes a requirement to comply with, or that is based on, a provision of the POPs Convention, the LRTAP POPs Protocol, or the PIC Convention shall be effective only to the extent that the United States has consented to be bound by that provision.

SEC. 507. RULES OF CONSTRUCTION.

Nothing in this title—

(1) shall be construed to require the United States to register for a specific exemption available to the United States under Annex A or B to the POPs Convention or an acceptable purpose available to the United States under Annex B to the POPs Convention; or

(2) affects the authority of the Administrator to regulate a chemical substance or mixture under any other law or any provision of this Act.

DISSENTING VIEWS OF THE HONORABLE JOHN D. DINGELL, HENRY A. WAXMAN, EDWARD J. MARKEY, EDOLPHUS TOWNS, FRANK PALLONE, JR., BART GORDON, BOBBY L. RUSH, ANNA G. ESHOO, BART STUPAK, ELIOT L. ENGEL, ALBERT R. WYNN, TED STRICKLAND, DIANA DEGETTE, LOIS CAPPS, MIKE DOYLE, TOM ALLEN, JIM DAVIS, JAN SCHAKOWSKY, HILDA L. SOLIS, CHARLES A. GONZALEZ, JAY INSLEE, TAMMY BALDWIN, AND MIKE ROSS

We oppose H.R. 4591, the "Stockholm and Rotterdam Toxics Treaty Act of 2005", as reported by the Committee. The proponents of H.R. 4591 purport to be interested in developing implementing legislation for the Stockholm Convention on Persistent Organic Pollutants so that the United States can ratify the Convention and be at the negotiating table as the international community engages in the lengthy, scientific process of determining whether additional persistent organic pollutants (POPs) should be added to the "dirty dozen" chemicals that are already listed in the Convention. But their approach included significant departures from important environmental principles in current law, and precluded a consensus bill that could actually become law.

Instead of developing legislation to protect the public from dangerous pollutants, they have put forth H.R. 4591, a bill containing a controversial, cost-benefit standard that is not found in the Convention or existing environmental laws. Moreover, they have chosen to regulate new POPs under a law that is unworkable.

The reported bill would preempt States seeking stronger regulation, and would set no time frames for the Environmental Protection Agency (EPA) to act. By choosing the Toxic Substances Control Act (TSCA) to regulate these POPs, they have adopted a judicial review standard that makes it easier for judges to substitute their views for the expert decisions of EPA. The bill would also deny citizen suits to enforce regulation of POPs, a right citizens have under TSCA.

Opposition to H.R. 4591 comes from many different sectors. The 2.9 million member American Nurses Association opposes H.R. 4591, as do the National Hispanic Environmental Council and the United Steelworkers, the predominant union representing chemical plant workers. Opposition to H.R. 4591 also comes from a bipartisan group of State Attorneys General, two dozen Native American communities, and approximately 60 public health and environmental organizations, including the Natural Resources Defense Council and the League of Conservation Voters.

We offered an alternative, H.R. 4800 (the "Solis Democratic Substitute"), which was defeated on a party-line vote. It provided EPA with rulemaking authority and a regulatory standard that would allow EPA to implement promptly the control measures rec-

ommended by the Conference of the Parties for a new chemical, sometimes called "the 13th POP." It would protect U.S. sovereignty, while allowing EPA to proceed in an efficient and expeditious manner. EPA testified that, "It does appear from our analysis of [H.R. 4800] that [it] would allow the United States to implement the obligations under these agreements."[1]

Protecting U.S. sovereignty

Although it was alleged during consideration of the bill that our Substitute would relinquish U.S. sovereignty, the Democratic substitute would fully protect U.S. sovereignty. The Department of State informed the Subcommittee in writing that it agrees that the Democratic substitute "would not require automatic adoption of decisions of the COP [Conference of the Parties]" and it agrees that the Democratic substitute would not delegate regulatory powers to the United Nations.[2] Under the Democratic substitute, the United States would not be bound by any future chemical listings under POPs unless the President affirmatively consented to be bound by the listing of a new chemical. In addition, EPA would not be allowed to regulate a newly listed chemical if EPA were to decide that the chemical substance is not likely to lead to significant human health or environmental effects.

The Worst of the worst chemicals should be regulated using a health-based standard, not a novel, controversial cost-benefit standard

The health-based standard in the Democratic substitute is one of the critical reasons we support it rather than H.R. 4591, which would establish an untested cost-benefit standard that would not adequately protect public health and would undoubtedly lead to lengthy litigation. It would add this standard and other new requirements and criteria to the existing criteria of the Toxic Substances Control Act (TSCA). These new requirements and criteria would create additional obstacles to regulating under a statute that has already proved unworkable for regulating asbestos and other hazardous chemicals.

The next POPs chemical identified for international regulation by the science-based procedure that takes a minimum of five years under the Treaty will be the worst of the worst chemicals, reflecting broad-based international agreement. Article 21 requires parties to "make every effort to reach agreement . . . by consensus" and a minimum "three-fourths majority" to adopt amendments.

For new POPs chemicals listed by the international community under the Stockholm Convention, the Solis Democratic Substitute would use a health-based standard that "protects against significant adverse human health and environmental effects." In a letter dated August 1, 2001, to President Bush by then-Secretary of State Colin L. Powell, submitting the Stockholm Convention on POPs, he

[1] Testimony of Ms. Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency, before the Subcommittee on Environment and Hazardous Materials Hearing, March 2, 2006 (Serial No. 109–63), p. 37.

[2] Response to questions for the record submitted to Assistant Secretary Claudia McMurray, before the Subcommittee on Environment and Hazardous Materials hearing, March 2, 2006 (Serial No. 109–63), p. 161.

described the "significant adverse human health and/or environmental effects" as a formulation that is "consistent with risk-based decision-making by chemical regulators under existing U.S. law."[3] This is the formulation used in the Solis Democratic Substitute.

H.R. 4591, in contrast, utilizes the already unworkable Toxic Substances Control Act and would make it even harder for EPA to limit the use of persistent organic pollutants. During the legislative hearing process on H.R. 4591, we were told that Section 6 of the existing Toxic Substances Control Act is not a useful tool for protecting Americans from exposures to harmful chemicals. Under Section 6, as interpreted by the Court of Appeals, EPA was not able to regulate a chemical as thoroughly studied and as dangerous as asbestos. We were informed that the Court of Appeals reversed EPA's attempt in 1989 to ban all uses of asbestos for which there were readily available substitutes, a rule that was supported by 10 years of hearings and over 100,000 pages of record, including several hundred scientific studies.

The asbestos experience led Mr. Donald Elliott, who was General Counsel of EPA during the Administration of the first President Bush, to conclude: "That case sets the evidentiary standard for regulation under Section 6 so high that EPA can no longer use. . . . Section 6 as a useful tool for regulating chemicals. If after thousands of deaths from asbestos exposure, EPA could not regulate asbestos under section 6, it is virtually impossible for EPA to regulate any chemical under section 6."[4] Mr. Elliott went on to state that "That case is a public policy and public health disaster and should be explicitly overruled by Congress."[5]

Rather than overruling that "public policy and public health disaster" and fixing Section 6 (at least for the worst of the worst chemicals), H.R. 4591 would add new requirements and criteria to the existing TSCA criteria that EPA would have to consider before it could regulate a new POPs chemical. These new criteria would expand the number of analyses required, delay regulatory action, and provide new opportunities to challenge in court any EPA regulation of a newly listed POPs chemical.

H.R. 4591 contains a controversial, economic cost-benefit standard that uses criterion that de-emphasizes the impact on public health. This standard appears nowhere in the Stockholm Convention or in existing U.S. law. At the Subcommittee hearing on July 14, 2004 (Serial No. 108–112, at pages 70–71), Lisa Heinzerling, Georgetown University Professor of Law and an expert on environmental regulation, testified about the inappropriateness of using a cost-benefit standard to regulate the worst of the worst chemicals:

> Cost-benefit balancing is notoriously, and systematically, biased against environmental regulation. It is particularly skewed against environmental regulation that targets pollutants like the POPs pollutants with large but insidious and sometimes subtle effects, spread over a vast popu-

[3] Sec. of State Colin L. Powell Letter of Submittal, Aug. 1, 2001; Treaty Doc. 107, Stockholm Convention on Organic Pollutants, Message from the President of the United States Transmitting Stockholm Convention on Persistent Organic Pollutants, with Annexes, Done at Stockholm, May 22–23, 2001; May 7, 2002; pg. XIV.

[4] Response to questions for the record submitted to Mr. Donald Elliott, Subcommittee on Environment and Hazardous Materials hearing, March 2, 2006 (Serial No. 109–93), p. 120.

[5] Id.

> lation (in this case, the whole world) and reaching into the distant future.
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> —Many of the benefits of reducing these pollutants cannot be quantified. In many cases, avoiding cancer is the only benefit that can be quantified. This leaves all other causes of death, plus all nonfatal illnesses avoided and all ecological effects, left out of the numerical tally of costs and benefits. When a benefit is not quantified, its worth is typically treated as if it were zero in a cost-benefit balancing.
>
> —The costs of regulating environmental risks are often overstated, and often by a large amount.
>
> —Even when benefits can be quantified, the process of fitting values like human lives and health into a cost-benefit balance is fraught with difficulty. . . .
>
> —The technique of discounting—required by the court in Corrosion Proof Fittings [the case overturning EPA's attempt to regulate asbestos under Section 6 of the Toxic Substances Control Act] . . .—belittles desires to protect this and future generations against long-term and persistent risks. Discounting would easily trivialize the benefits of regulating POPs. Yet protection of the future for our own generation, our children's generation, and generations yet to come—is one of the basic principles animating a document like the POPs treaty. . . .
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> * * * * * * *
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> . . . [the use of cost-benefit balancing] in the POPs implementing legislation would virtually ensure that no new POPs will be regulated in this country. . . .[6]

U.S. officials who led the U.S. delegation when the POPs Treaty was negotiated have testified that the authors of the regulatory standard and criteria in H.R. 4591 have essentially designed a system to fail. In their view, and ours, H.R. 4591 would likely prevent EPA from being able to regulate a new chemical, just as EPA was unable to regulate asbestos under TSCA.

Mr. Brooks Yeager, head of the delegation and lead U.S. negotiator for the POPs Convention as Deputy Assistant Secretary for Environment and Development, U.S. Department of State, testified that the regulatory standard provision of H.R. 4591:

> . . . adds considerable regulatory baggage . . . to a piece of domestic environmental legislation that is already anemic and largely ineffectual . . . virtually ensuring that no chemical will surmount the bureaucratic hurdles.[7]

Dr. Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides, and Toxic Substances, U.S. EPA (1993–1998), led the

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[6] Internal footnotes omitted.

[7] Testimony of Brooks B. Yeager before the Subcommittee on Environment and Hazardous Materials Hearing, July 13, 2004 (Serial No. 108–112, pg. 60).

U.S. delegation to the first POPs negotiating session. Dr. Goldman testified on March 2, 2006[8]:

> Decision standard: The standard that the U.S. negotiated for the POPs convention, that is, to "protect against significant adverse human health and environmental effects associated with the chemical substance or mixture", should be the standard for actions to implement POPs convention decisions. H.R. 4800 adheres to this standard. H.R. 4591, on the other hand, is loaded down with prescriptive language regarding "sound science" and various kinds of risk-analytical determinations in vogue today, which are certain to contribute nothing of value beyond the expert process of the convention. These new procedures, if enacted by Congress, would increase the burden to EPA and the taxpayers of unnecessary analyses, open new opportunities for litigation, and render it difficult if not impossible for the EPA to take action to implement POPs listings.

A health-based regulatory standard is fundamental to protecting the health of our citizens. In the words of the chief U.S. negotiator, these POPs "can wreak havoc in human and animal tissue, causing nervous system damage, diseases of the immune system, reproductive and developmental disorders, and cancers." The lead EPA negotiator for the Treaty testified that "control of POPs therefore is about protecting our food supply, protecting the fetus and protecting the safety of breast milk for infants."

We should allow States to protect their citizens and adopt more stringent regulations

We also oppose H.R. 4591 because it preempts more stringent State regulation of POPs chemicals, even though the Stockholm Convention does not preclude stricter State standards. H.R. 4591 is even more preemptive than TSCA section 18, which preempts States to a greater extent than most other environmental statutes. Under H.R. 4591 (and existing TSCA section 18) the only circumstances where a State law could be more stringent are (1) where the requirement is adopted under a Federal law, or (2) the State law is a total ban on the chemical's use in the State. In every other circumstance, where a State wanted to impose a more protective or more stringent set of controls, the State must petition and obtain permission from EPA after a rulemaking where it must be demonstrated that the State requirement "provides a significantly higher degree of protection" and "does not . . . unduly burden interstate commerce." EPA has never granted a State petition in the 30-year history of TSCA.

Remarkably, H.R. 4591 goes even further, providing that once the U.S. has consented to be bound under the POPs Convention, more stringent State laws regulating a chemical POPs would be preempted even if EPA has not adopted any regulations of the chemical. Under this preemption scheme, if a State were to have a regulation in place when the U.S. consents to be bound by the listing of a new POP, that State law would effectively be wiped off

[8] Testimony of Dr. Lynn R. Goldman before the Subcommittee on Environment and Hazardous Materials Hearing, March 2, 2006 (Serial No. 109–63, pg. 89).

the books even if the chemical were not subject to any regulations at the Federal level.

H.R. 4591 results in a regulatory system for POPs where more stringent State laws could apply to pesticide POPs but not to chemical POPs, except where the State acted under the authority of Federal law or the State law was a total ban. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the statute that would regulate pesticide POPs, allows the States to have more stringent laws while H.R. 4591 would restrict the States for chemical POPs.

In contrast to the preemption of State law found in H.R. 4951, the Solis Democratic Substitute would allow States to promulgate more stringent requirements than the minimum Federal controls, as may be necessary to protect the health of their citizens. States are allowed to set more stringent standards under other EPA statutes, without any petition process or similar limitations (see, e.g., the Solid Waste Disposal Act, the Safe Drinking Water Act and the Clean Water Act, and FIFRA which applies to pesticide POPs).

State Attorneys General from Illinois, Minnesota, Washington, Oregon, New Mexico, New Jersey, New York, Delaware, Connecticut, California, and Massachusetts have all written in opposition to H.R. 4591. In an April 19, 2006, letter, the Attorney General for the State of Washington wrote that "The preemption of state authority in this area is counterproductive to our shared interest in protecting the health and welfare of our citizens." In a May 1, 2006, letter to Chairman Gillmor, Attorneys General from 10 States expressed their support for H.R. 4800 and stated that H.R. 4591 ". . . falls far short of what is necessary to ensure that States are not dangerously vulnerable to the risks from chemicals that may later be added to the list of toxics covered by the POPs Treaty." We agree.

We should require EPA to act in a timely fashion

One of the lessons we have learned over the years, and one that is reflected in our environmental statutes, is that EPA needs to be given deadlines to ensure that it does what we tell it to do. H.R. 4591 ignores this basic lesson and does not set any time limit for final EPA action.

The Solis Democratic Substitute would set deadlines for EPA action. The deadline provision would carefully protect U.S. sovereignty by ensuring that no EPA regulation would go into effect unless and until the U.S. consented to be bound by the new listing. It requires that, within one year after a Stockholm Convention Conference decision to list a new POPs chemical, the Administrator of EPA shall publish in the Federal Register a proposed regulation, a proposed decision that the substance is already regulated appropriately, or a proposed decision not to regulate because the chemical substance or mixture is not likely to lead to significant adverse human health or environmental effects. Within two years after the decision to list a new chemical, a final rule or decision must be published in the Federal Register.

Judges should not be allowed to supplant the agency's expert views with their own

We also oppose H.R. 4591 because of the standard of judicial review it would use for review of EPA decisions. H.R. 4591 requires the Court of Appeals to set aside an agency rule if the Court were to find that the rule is not supported by "substantial evidence in the rulemaking record . . . taken as a whole." Under this standard, which is the standard in Section 19 of TSCA and was the standard of review in the failed EPA effort to regulate asbestos, the reviewing court could rely on its own judgment and analysis of highly scientific and technical findings, making it easier for judges to overturn agency action.

The Solis Democratic Substitute requires that the Court of Appeals set aside an agency rule if the Court were to find that the rule is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." This is the traditional standard of review under the Administrative Procedure Act for agency rules, and is used by the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Solid Waste Disposal Act. Under this standard, the reviewing court is to conduct a "thorough, probing, in-depth review" of the agency's action and rationale. The reviewing court must set aside agency action where it finds a "clear error of judgment," but the court is not to substitute its judgment for that of the agency.

We should not limit the rights of citizens to protect against violations of regulations controlling the worst of the worst chemicals

H.R. 4591 would not provide citizens the same rights they have under TSCA and other environmental statutes. It would not allow the existing citizen suit provision of TSCA (Section 20) to apply to the POPs provisions or to any regulation adopted under the regulatory standard of H.R. 4591. Under the current citizen suit provision of TSCA, any person may commence a civil action against any person who is in violation of the Act or regulations promulgated thereunder or against the EPA Administrator for failure to perform a non-discretionary duty.

The Solis Democratic Substitute follows TSCA and applies the citizen suit provisions to violations of the POPs implementing legislation or EPA regulations promulgated thereunder.

Conclusion

Our Republican colleagues are offering us an unbalanced piece of legislation that is designed to roll back important principles of our environmental laws. H.R. 4591 would set up a system designed to fail, designed to ensure that EPA cannot issue regulations governing the worst of the worst chemicals in a way that adequately protects public health. The authority and procedures Toxic Substances Control Act established to regulate chemicals have already proved unworkable—EPA could not even regulate asbestos using those provisions.

H.R. 4591 takes this bad situation under TSCA and makes it worse by adding new obstacles that experts believe will virtually ensure that no new POPs chemicals will surmount the bureaucratic hurdles it establishes. In particular, we believe that the cost-benefit standard in H.R. 4591 would not allow EPA to adopt regula-

tions that would adequately protect the public from the health risks associated with the worst of the worst chemicals.

The Democratic substitute requires EPA to use a health-based standard in deciding whether and how to regulate the very worst chemicals on the planet—chemicals that are persistent and can be transported long distances. In the words of the chief U.S. negotiator, these POPs ". . . can wreak havoc in human and animal tissue, causing nervous system damage, diseases of the immune system, reproductive and developmental disorders, and cancers." The lead EPA negotiator for the Treaty testified that ". . . control of POPs therefore is about protecting our food supply, protecting the fetus and protecting the safety of breast milk for infants." A health-based regulatory standard, therefore, is fundamental to protecting the health of our citizens.

The Solis Democratic substitute offered a responsible and workable way forward, consistent with important environmental principles. H.R. 4591 does not, and should be rejected.

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