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Implementing International Agreements on Persistent Organic Pollutants (POPs): Proposed Amendments to the Toxic Substances Control Act

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Linda-Jo Schierow
Specialist in Environmental Policy
Resources, Science, and Industry Division

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Summary

Between 1998 and 2001, the United States signed two international treaties and one executive agreement to reduce production and use, and regulate trade and disposal, of certain “persistent organic pollutants” (POPs) and other chemicals that (for the most part) are strictly regulated in U.S. commerce. POPs are chemicals like polychlorinated biphenyls (PCBs) and the pesticide DDT that do not break down easily in the environment, tend to accumulate as they move up the food chain, and may be harmful to people and wildlife. The President signed and has submitted the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent to the Senate for advice and consent. If the Senate consents by a two-thirds majority, and the Congress passes legislation that is needed to implement the two treaties (as well as the executive agreement, the POPs Protocol to the Aarhus Convention on Long-Range Transboundary Air Pollution), then the treaties can be ratified and the agreements would take effect domestically.

Current U.S. laws do not provide for the U.S. Environmental Protection Agency (EPA) to fully comply with the provisions of these international agreements. For example, EPA has no authority to ban or restrict production of a chemical intended for export, even if its sale and use in the United States are prohibited. If the United States is going to abide by the agreements, Congress would have to enact amendments to two federal laws: the Toxic Substances Control Act (TSCA), governing industrial uses of chemicals, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates pesticide sale and use. Legislation has been introduced in the 109th Congress that would allow implementation of the agreements. H.R. 4591 and H.R. 4800 would amend TSCA, while H.R. 3849 and S. 2042 would amend FIFRA. This report focuses on the bills that offer proposed amendments to TSCA. TSCA requires EPA to begin rulemaking for a chemical if “there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal ... will present an unreasonable risk of injury to health or the environment.” The act directs EPA to regulate “to the extent necessary to protect adequately against such risk using the least burdensome requirements.”

H.R. 4591 and H.R. 4800 propose similar amendments to TSCA. Other bill provisions differ significantly, particularly with respect to regulating chemicals that might be banned or restricted in the future, if one or more of the international agreements were to be amended. Generally, it appears that H.R. 4591 would provide EPA circumscribed authority to regulate “to the extent necessary to protect human health and the environment,” require extensive analysis of options, and prescribe regulatory outcomes that achieve “a reasonable balance of social, environmental, and economic costs and benefits.” H.R. 4800 would provide clear authority to regulate in accord with amendments to the international agreements and prescribe chemical regulations that protect against “significant adverse human health and environmental effects.” Key bill provisions are summarized in **Table 1**.

This report will be updated as warranted by legislative action and interest.

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Implementing International Agreements on Persistent Organic Pollutants (POPs): Proposed Amendments to the Toxic Substances Control Act

Introduction

Persistent organic pollutants (POPs) are chemicals that can harm human health and wildlife, do not break down easily in the environment, and tend to accumulate as they move up the food chain. Many POPs are transported in the air and water across international boundaries. Most POPs are synthetic, industrial chemicals or pesticides, but a few are unintentional byproducts of processes such as combustion.

Between 1998 and 2001, the United States participated in the negotiation of three UN-sponsored international agreements to address global problems associated with POPs. Two agreements, the 2001 Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention) and the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention), have been submitted as treaties to the Senate for its advice and consent to ratification. The third agreement, the 1998 Aarhus Protocol on Persistent Organic Pollutants (LRTAP POPs Protocol), amends the 1979 Geneva Convention on Long-Range Transboundary Air Pollution (LRTAP). Both the LRTAP and LRTAP POPs Protocol were entered into by the United States as executive agreements.¹

Current U.S. laws governing chemicals do not provide for the U.S. Environmental Protection Agency (EPA) to fully implement and enforce the provisions of the international agreements. For example, EPA has no authority to ban or restrict production of a chemical intended for export, even if its sale and use in the United States are prohibited. Therefore, if the United States is to comply with the provisions of the three international agreements, Congress would have to enact amendments to two federal laws: the Toxic Substances Control Act (TSCA), governing industrial uses of chemicals, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates pesticide sale and use.

If the Senate provides its advice and consent to ratification of the two treaties, and Congress passes legislation to allow EPA implementation of the three agreements, the agreements may take effect domestically, and the United States

¹ For background on the differences between treaties and executive agreements, see CRS Report RL32528, *International Law and Agreements: Their Effect upon U.S. Law*, by Michael Garcia and Arthur Traldi.

would have the right to fully participate in international decisions about how the agreements should be implemented, enforced, and amended.

Implementing legislation has been introduced into the 109th Congress. H.R. 4591 and H.R. 4800 would amend TSCA, whereas H.R. 3849 and S. 2042 would amend FIFRA.

The focus of this report is on proposed amendments to TSCA. This report does not constitute a legal analysis of the bills or of existing law. Instead, it begins by describing the three international agreements and relevant provisions of TSCA. The report then summarizes selected provisions of H.R. 4591 and H.R. 4800, as introduced, and compares them in a brief narrative and more detailed table. This report will be updated as warranted by legislative activity.

The International Agreements

Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)

The Stockholm POPs Convention aims to eliminate or severely restrict production, use, trade, release, and disposal of 12 pollutants, known as the “dirty dozen,” all of which are strictly regulated in the United States. The 12 POPs include eight chlorinated pesticides² (aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex, and toxaphene), polychlorinated biphenyls (PCBs), hexachlorobenzene (HCB), polychlorinated dibenzo-p-dioxins (dioxins), and polychlorinated dibenzo-p-furans (furans). Specific exemptions from restrictions are allowed, for example, for use of DDT to fight malaria-carrying mosquitos.³

Annex A to the Stockholm Convention lists the intentionally produced chemicals for which production, use, import, and export must be eliminated, and specifies exemptions from controls. Annex B lists chemicals (currently only DDT) for which production and use must be restricted in specified ways. Annex C identifies unintentionally produced (by-product) chemicals that are subject to the treaty.

The Stockholm Convention commits each participating country to create a national implementation plan, establish a monitoring network, ensure public awareness of the problems posed by POPs, and compile inventories of POP use and storage. Developing countries that are parties to the treaty are assisted in these tasks by up to \$500 million in funding from the Global Environment Facility (GEF), which is administered by the World Bank and the United Nations.

² “Pesticides” is used here to refer to chemical substances best known for their pesticidal properties, that is, their ability to kill weeds, insects, and other pests.

³ Exemptions are listed in Annex A of the Stockholm Convention. Text of the treaty is available at [<http://www.pops.int>], visited Mar. 17, 2006.

Amendments to Add Chemicals. The convention allows new chemicals to be added to the list by amendment to treaty Annexes A, B, and C. Any party to the Convention may propose an amendment to list additional chemicals.⁴ Amendments may be adopted at a meeting of the Conference of the Parties (COP), after being circulated to all parties at least six months in advance of the meeting. Parties at the meeting must try to reach agreement by consensus, but when consensus cannot be reached, a vote by three-fourths of the parties present and voting is sufficient to adopt the amendment. Article 8 requires the following before chemicals may be added to the annexes:

- chemicals must meet criteria listed in Annex D, with respect to chemical characteristics and environmental and human health effects;
- a risk profile is prepared according to Annex E, based on information submitted by the parties or observers;
- a review committee decides, on the basis of the risk profile, that “the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted”;
- a risk management review is conducted according to Annex F, including evaluation of possible alternative control measures in terms of their feasibility, efficacy, risk, availability, accessibility, costs, and positive and negative impacts on health, agriculture, living things, economy, progress toward sustainable development and social costs; and
- the COP decides, taking into account any scientific uncertainty, “in a precautionary manner,” to list the chemical and to adopt associated control measures.

The amendment enters into force for all parties one year after adoption, except for any party which either

- “opts out” by notifying the depositary within the year that it does not accept the amendment, or
- makes a declaration at the time it deposits its instrument of treaty ratification that any amendment to Annexes A, B, or C will enter into force for it only if it affirmatively accepts that amendment (i.e., “opts in”).

The United States particularly favored inclusion of the latter treaty provision.⁵ The Bush Administration has testified that the United States, at the time of its ratification of the Stockholm Convention, intends to declare that any amendment shall enter into

⁴ A nation is said to be a “party” to the treaty if it has signed and ratified it.

⁵ Treaty Doc. No. 107-5. p. 15.

force for the United States only upon deposit of an instrument of U.S. ratification indicating acceptance or approval of that amendment.”⁶

The Stockholm POPs Convention has been signed by 151 nations; it has been ratified by 120 nations, but not by the United States. It entered into force on May 17, 2004.⁷ The President transmitted the treaty document for the Stockholm Convention (Treaty Doc. No. 107-5) to the U.S. Senate on May 7, 2002, where it was referred to the Committee on Foreign Relations. The Committee held a hearing on the POPs treaty on June 17, 2003, but has not reported its views to the Senate.

Rotterdam Convention on Prior Informed Consent (PIC Convention)

The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention), another global treaty negotiated under the auspices of the UN, was concluded in Rotterdam, The Netherlands, in 1998. The PIC Convention has as its objective:

... to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties. (Article 1)

The PIC Convention provides for prior notification to potential importing nations by countries exporting substances that have been banned or severely restricted in the exporting country, or that are severely hazardous pesticide formulations. Many POPs fall into these categories. Parties exporting certain chemicals listed in Annex III to the treaty must generally ensure that the importing party has consented to import the chemical.

The PIC Convention was opened for signature in 1998 and signed by 73 countries, including the United States. It has been ratified by 106 nations, but not by the United States. This treaty entered into force February 24, 2004.⁸ The President transmitted the treaty (Treaty Doc. No. 106-21) to the Senate on February 9, 2000. The Committee on Foreign Relations held a hearing on the PIC treaty on June 17, 2003, but has not reported its views to the Senate.

⁶ Claudia McMurray, Deputy Assistant Secretary for Environment, Bureau of Oceans, and International Environmental and Scientific Affairs, U.S. Department of State. Testimony before the House Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, July 13, 2004. U.S. Govt. Print. Off., Washington, DC. p. 13.

⁷ The latest information on the Stockholm Convention is available at [<http://www.pops.int/>].

⁸ The latest information on the PIC Convention is available at [<http://www.pic.int/>].

Persistent Organic Pollutants Protocol to the Aarhus Convention on Long Range Transboundary Pollution

The 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP) is a regional agreement among countries that are members of the UN Economic Commission for Europe (UNECE), including the United States. The UNECE has 55 members, mainly European and former Soviet Union countries, as well as the United States and Canada. LRTAP was negotiated to deal with air pollution problems through air quality monitoring cooperative research and exchanges of information, and development of national policies and strategies aimed at reducing emissions of pollutants. The United States signed the LRTAP Convention on November 13, 1979, and deposited its instrument of acceptance on November 30, 1981. The agreement was consistent with existing U.S. law, so there was no need to enact enabling legislation. Because the convention was signed as an executive agreement, it was not submitted to the Senate for advice and consent. The LRTAP Convention entered into force in 1983. It has been ratified, accepted, approved, or acceded to by 49 parties, including the United States.

In 1998, a POPs Protocol to LRTAP was concluded in Aarhus, Denmark. The objective of the amending protocol is “to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants.” It requires parties to take “effective measures ... to eliminate the production and use of substances listed in Annex I” (aldrin, chlordane, chordecone, DDT, dieldrin, endrin, heptachlor, hexabromobiphenyl, hexachlorobenzene [HCB], mirex, PCB, and toxaphene) and to ensure that when such substances are destroyed, disposed of, or moved across international boundaries, it is done in an “environmentally sound manner.” Most of these POPs are heavily restricted in the United States. The LRTAP POPs Protocol also requires countries to restrict uses of substances listed in Annex II (DDT, hexachlorocyclohexane [HCH]⁹, and PCB); if possible, to reduce total annual emissions of each substance in Annex III (polyaromatic hydrocarbons [PAHs], dioxins/furans, and HCB); and to ensure environmentally sound disposal of substances listed in Annex I, II, or III.

The POPs Protocol to LRTAP contains specific exemptions to the prohibitions on production, use, and disposal. For instance, quantities of chemicals used in laboratory research are exempted from the prohibitions. Another exemption allowed under the POPs Protocol is the use of DDT for controlling vectors of disease, particularly mosquitos that may carry malaria.

The protocol was concluded in 1998, was signed by 36 states, and has been ratified by 25 of the 55 States in the United Nations Economic Commission for Europe (UNECE). It entered into force in October 2003.¹⁰ Neither the LRTAP Convention nor the LRTAP POPs Protocol requires Senate approval.

⁹ Lindane is HCH in which at least 99% of the isomer is in the gamma form. Technical HCH consists of mixed isomers.

¹⁰ The UNECE countries are mainly European, former Soviet Union countries, the United States, and Canada. The latest information on the POPs Protocol may be found at [http://www.unece.org/env/lrtap/pops_h1.htm].

Amendments to Add Chemicals. The POPs Protocol allows new chemicals to be added by amendment to the lists in treaty Annexes I or II. Any party may propose an amendment adding a chemical, which may be adopted by consensus of the parties represented at a session of the executive body in the same manner as amendments to the LRTAP Convention. However, before chemicals may be added to the annexes, the POPs Protocol requires the following:

- a risk profile on the substance and information demonstrating that the substance meets selection criteria specified in Executive Body Decision 1998/2, with respect to chemical characteristics and the potential for environmental and human health effects;
- a summary report and information on production; uses; emissions; levels in the environment; degradation processes, rates, and products; bioavailability; and socio-economic factors related to alternatives for reducing emissions, including costs and benefits of each;
- an Executive Body decision that the risk profile is acceptable and further action is warranted;
- one or more technical reviews of the risk profile; and
- evaluation of the proposal, on the basis of the risk profile and technical review(s), in light of the objective of the POPs Protocol in Article 2: “to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants.”

Current Law

The Toxic Substances Control Act (15 U.S.C. §§ 2601-2692; TSCA) authorizes EPA to identify potentially dangerous products or uses of chemicals in manufacturing and interstate commerce that should be subject to federal control. TSCA mandates the screening of new and existing chemicals in commerce to determine whether their production, importation, processing, distribution, use, or disposal might pose an unreasonable risk of injury to health or the environment. To that end, EPA is authorized to require companies manufacturing chemicals to provide data on each chemical’s characteristics and use.

Under TSCA, EPA is required to initiate rulemaking for a chemical if the Administrator finds that “there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal ... presents, or will present an unreasonable risk of injury to health or the environment.” The act directs EPA to regulate a chemical “to the extent necessary to protect adequately against such risk using the least burdensome requirements.” TSCA authorizes a wide range of regulatory options to reduce chemical risks, from a requirement for labeling to a total ban on production and distribution in commerce.

Section 12 exempts from TSCA requirements (except for testing requirements) chemicals that are manufactured exclusively for export, if the chemicals (or containers) bear a stamp or label indicating that they are intended for export. However, EPA may require testing to determine whether or not such chemicals

present unreasonable risks, and the Section 12 exemption does not apply to a chemical found to “present an unreasonable risk of injury to health within the United States or to the environment of the United States.” Section 12(b) requires any exporter of a chemical for which EPA requires testing to notify EPA that it intends to export the chemical, and EPA must notify the government of the importing nation that such test data are available.¹¹

TSCA Section 6 specifies in detail the rule-making procedure for chemicals found to present an unreasonable risk. The procedure combines requirements for providing public notice and an opportunity for comment (as is required for most environmental rules under 5 U.S.C. §553), with an opportunity for a hearing. The hearing format, which is unique among environmental statutes in the context of rulemaking, is prescribed in TSCA §6(c)(3) and provides for cross-examination of such persons and issues as the Administrator deems appropriate and “required for a full and true disclosure with respect to [disputed issues of material fact].” In addition, TSCA §6(c)(1) 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, and 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.” Because rulemaking under TSCA §6 requires a considerable amount of data collection and analysis, promulgation of a regulation often takes many years.

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 Administrator’s finding that the chemical presents an unreasonable risk, the cost-benefit statement, the hearing transcript, any written submissions of interested parties, and other relevant material. TSCA Section 19 authorizes any person to file a petition for judicial review of a final rule within 60 days of its promulgation. TSCA directs a court to set aside rules promulgated under TSCA Section 6 “if the court finds that the rule is not supported by substantial evidence in the rulemaking record ... taken as a whole.”

TSCA Section 18(a) preempts state and local law if EPA promulgates a rule or order under Section 6 that is intended to protect against a risk of injury to health or the environment associated with a chemical. State or local law is permitted if it is identical to the federal requirement, adopted under another federal law, or prohibits the use of such substance or mixture within the relevant jurisdiction (except use in manufacture or processing of other substances). TSCA Section 18(b) allows states or localities to petition EPA to issue a rule exempting a state or local law if compliance would not cause a violation of federal law, it provides a significantly

¹¹ TSCA Section 4 requires testing if the manufacture, distribution in commerce, processing, use, or disposal of a chemical may present an unreasonable risk of injury to health or the environment; there are insufficient data and experience upon which to predict effects on health or the environment; and testing is necessary to develop such data. EPA also must require testing of a chemical that will be produced in substantial quantities if significant human exposure might occur.

higher degree of protection from such risk than the federal requirements, and does not unduly burden interstate commerce.

Legislative Proposals to Amend TSCA

Although existing U.S. laws authorize most EPA activities that are necessary to fulfill commitments under the three international agreements, new legislation would be needed to authorize implementation of a few treaty provisions, as well as to resolve several inconsistencies between current U.S. laws and international law. The legislation that is the subject of this report would accomplish these tasks by amending the Toxic Substances Control Act (TSCA), which governs most chemicals in U.S. commerce.¹²

H.R. 4591

Representative Gillmor introduced H.R. 4591 on December 16, 2005. The bill is very similar to a draft proposal that was the subject of a hearing July 13, 2004, before the House Subcommittee on Environment and Hazardous Materials, Energy and Commerce Committee. Mr. Gillmor is the chairman of that subcommittee.¹³ H.R. 4591 would add a new Title V, Implementation of International Agreements, to TSCA, pertaining exclusively to POPs. It would prohibit manufacture, processing, distribution in commerce for export, use, and disposal of chemicals currently listed in Annex A or B of the Stockholm POPs Convention or Annex I or II of the LRTAP POPs Protocol, with the exception of polychlorinated biphenyls (PCBs), which would continue to be regulated under TSCA §6(e).¹⁴ The chemicals covered by the prohibitions include aldrin, chlordane, chlordecone (a.k.a. Kepone), DDT, dieldrin, endrin, hexachlorocyclohexane (HCH, which includes Lindane), heptachlor, hexachlorobenzene (HCB), hexabromobiphenyl (HBB), mirex, and toxaphene.

Exemptions. Exemptions from prohibitions would be provided directly by the bill, consistent with exemptions identified in the annexes to the agreements. In addition, POPs that became wastes regulated under other federal laws would be exempted from all prohibitions. EPA would be given authority to promulgate regulations providing specific exceptions to the prohibitions, where they would not be inconsistent with U.S. obligations under the international agreements.

¹² The Toxic Substances Control Act (15 U.S.C. 2601-2692) does not apply to chemicals regulated under other acts, including pesticides, tobacco, radioactive materials, firearms, food, drugs, cosmetics, and medical devices (15 U.S.C. §2602(2)).

¹³ U.S. House. Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials. *POPs, PIC, and LRTAP: The Role of the U.S. and Draft Legislation to Implement These International Conventions*. Hearing. 108th Congress, 2nd Sess. U.S. Govt. Print. Off., Washington DC. 135 p. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:95454.pdf]

¹⁴ The bill authorizes EPA to promulgate regulations for PCBs under existing U.S. law for the purpose of U.S. compliance with provisions of the Stockholm POPs Convention or the LRTAP POPs Protocol.

Notice and Comment. H.R. 4591 would require EPA to publish a notice in the *Federal Register* and request public comments whenever the international bodies reach one of three decision points in the process of considering whether to add a chemical by amending an annex to the Stockholm POPs Convention or the LRTAP POPs Protocol. Under the Stockholm POPs Convention the three decision points occur when 1) the POPs Review Committee (known as POPRC, usually pronounced as “pop rock”)¹⁵ decides, under Article 8, paragraph 4(a), that a proposal for listing a chemical fulfills the screening criteria, or the Conference of Parties (COP)¹⁶ decides under Article 8, paragraph 5, that the proposal shall proceed; 2) the POPRC decides on the basis of a risk profile, under Article 8, paragraph 7(a), that global action is warranted, or the COP decides, under Article 8, paragraph 8, that the proposal shall proceed; and 3) the POPRC recommends on the basis of a risk profile and a risk management plan, under Article 8, paragraph 9, that the COP consider making a listing decision. Under the LRTAP POPs Protocol, the three decision points occur when 1) a party submits a risk profile in support of a proposal to list a new chemical; 2) the Executive Body established under Article 10 decides that additional consideration is warranted and requires technical reviews (under Executive Body Decision 1998/2); and 3) the technical review of a proposed chemical is completed.

Information Gathering. H.R. 4591 would authorize EPA to issue a general order requiring submission of specified information by any manufacturer, processor, distributor in commerce for export, or disposer of a chemical being considered for listing by amendment of an annex.

Rulemaking for New Chemicals. If a chemical were added to Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol, and the United States consented to be bound by that amendment (that is, opted in), H.R. 4591 would authorize EPA to make or modify rules to the extent that rules were necessary to meet U.S. obligations. H.R. 4591 provides such rulemaking authority “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.”

In promulgating rules under TSCA, Title V, EPA would be required to conduct scientific assessments of risks to health and the environment, as well as assessments of direct and indirect socio-economic effects of regulation for the various uses of the chemical and other chemicals that might serve as substitutes for the chemical proposed for listing. H.R. 4591 would require an assessment of “the degree to which the manufacture, processing, distribution in commerce for export, use, or disposal of the chemical ... is necessary to prevent significant harm to an important sector of the economy. The bill would require assessments to use “sound and objective scientific practices” and “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.” These rulemaking criteria would be substituted for the rulemaking criteria in TSCA §6.

¹⁵ The POPRC is established by the Conference of the Parties at its first meeting under Article 19, paragraph 6.

¹⁶ The COP is established in Article 19, paragraph 1.

Judicial Review. TSCA §19 would be amended by H.R. 4591 to authorize any person to file a petition for judicial review within 60 days of the promulgation of a final rule under Title V. The bill would direct the court to set aside a rule that is “not supported by substantial evidence in the rulemaking record ... taken as a whole.” The bill would make all public comments received in response to a rulemaking part of the rulemaking record.

PIC Convention. H.R. 4591 also would amend TSCA §12 by adding a new subsection (c) to implement the PIC Convention. The amended version of TSCA would require EPA to determine, with the concurrence of the Secretary of State, whether chemicals are banned or severely restricted within the United States, and to notify the PIC Secretariat and the public of each such determination. EPA also would be required to inform the public about chemicals listed in Annex III of the PIC Convention and the conditions or restrictions relating to those chemicals imposed by importing foreign states. The amended law would direct people who distribute chemicals in commerce for export that are identified in Annex III to comply with export conditions or restrictions identified by EPA in the public notice. In accord with the PIC Convention, H.R. 4591 would require exporters to notify EPA of their intent to export chemicals that are banned or severely restricted chemicals, chemicals listed in Annex III of the PIC Convention, or Stockholm POPs chemicals that are allowed to be exported. EPA then would be required to provide a copy of the notice to the importing foreign state. However, H.R. 4591 would require EPA to permit export of trace concentrations without prior notification to importing countries, if the agency found that such concentrations did not pose a significant threat to human health or the environment and were not inconsistent with any of the three international agreements.

State Preemption. H.R. 4591 would amend TSCA §18 to preempt state and local requirements (other than requirements under the Clean Air Act, Section 116) that are applicable to any POPs or LRTAP POPs chemical that has been listed in Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol, if the listing has entered into force for the United States. A current exception under TSCA §18(b) would remain available to states that petition EPA for relief. EPA may grant such exceptions for any state or local law that would not cause a violation of a rule promulgated under Title V, if the state or local requirements provided a significantly higher degree of risk protection and did not “unduly burden interstate commerce.”

H.R. 4800

Representative Hilda Solis, Ranking Member of the House Subcommittee on Environment and Hazardous Materials, introduced H.R. 4800 on February 17, 2006. H.R. 4800 is similar to H.R. 4591 in that it would add a new Title V to TSCA, pertaining exclusively to POPs. It also would prohibit the manufacture, processing, distribution in commerce for export, use, and disposal of chemicals currently listed in Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol, other than PCBs. In addition, H.R. 4800 would provide EPA with authority to issue regulations when necessary to enforce these prohibitions, as well as all other provisions of Section 502 in the new TSCA title; Section 502 addresses regulation of chemicals covered by the Stockholm POPs Convention and the LRTAP

POPs Protocol, including chemicals that might be added by amendment of these agreements.

Exemptions. H.R. 4800 would authorize EPA to promulgate rules providing exemptions from the prohibitions, to the extent such exemptions are consistent with the Stockholm POPs Convention or the LRTAP POPs Protocol. Exemptions would apply to POPs chemicals that became waste only if they were managed in a manner consistent with the relevant provision of the applicable international agreement.

Notice and comment. H.R. 4800 has public notice requirements similar to those of H.R. 4591 at the same three decision points in the international process of considering whether to add a new chemical to an annex to the Stockholm POPs Convention or the LRTAP POPs Protocol. However, H.R. 4800 would require EPA to publish a notice within 45 days of each decision point, whereas H.R. 4591 would allow EPA 60 days to act.

Information Gathering. Within 60 days of the publication of the first and second such public notices by EPA, H.R. 4800 would require all manufacturers, processors, distributors in commerce for export, and disposers of the chemical being considered to provide to EPA specified information to assist the agency in evaluating the case for adding the chemical.

Rulemaking for New Chemicals. If a new chemical were added by amendment of Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol, EPA would be required within one year to publish in the *Federal Register* either of the following:

- a proposed rule to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal for such chemical under Title V;
- a statement that such a proposed rule has been issued under other federal law, and a final rule will be issued within two years;
- a statement that additional regulation is not necessary, because the chemical already is regulated; or
- a proposed decision not to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal of the chemical, because those activities are not likely to lead to significant adverse human health or environmental effects.

Within two years of the date of publication of a proposed rule or a proposed decision, H.R. 4800 would require EPA to publish in the *Federal Register* a final rule or a final decision, but such rules could take effect only if the United States had consented to be bound by the listing of the chemical.

H.R. 4800 would require EPA to develop and promulgate rules using the notice and comment procedure of 5 U.S.C. §553. A minimum standard of stringency would be established for all Title V rules: proposed and final rules to regulate a chemical that is newly listed in an annex to an international agreement, and any existing regulations that EPA has identified in a published statement as being adequate to regulate such chemical, must “at a minimum” implement control measures specified

for that chemical in the relevant international agreement, and must protect against “significant adverse human health and environmental effects.” These rulemaking criteria would be substituted for the rulemaking criteria in TSCA §6. In addition, H.R. 4800 would prohibit manufacture, processing, distribution in commerce for export, use, and disposal that is inconsistent with regulations promulgated under Title V for any newly listed chemical. The bill would provide exemptions consistent with the international agreements.

PIC Convention. Most provisions of H.R. 4800 that implement the PIC Convention are similar to provisions of H.R. 4591, with a few exceptions. For example, H.R. 4800 explicitly authorizes EPA to promulgate rules to facilitate implementation of, and ensure compliance with, the PIC Convention. In addition, export of trace concentrations of PIC chemicals is not explicitly authorized.

State Preemption. State and local requirements would not be preempted by H.R. 4800, unless they were less stringent than requirements adopted by the United States under TSCA Title V.

Judicial Review. Finally, H.R. 4800 would authorize any person to file a petition for judicial review of a final rule or final decision. The court would be directed to apply the review standard at 5 U.S.C. §706, which would “set aside” an agency rule or decision found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

Comparison of H.R. 4591 and H.R. 4800

H.R. 4591 and H.R. 4800 both aim to authorize EPA to implement the Stockholm POPs Convention, the LRTAP POPs Protocol, and the PIC Convention by proposing amendments to TSCA. The bills would add a new Title V to the end of the act, and would prohibit (subject to certain exceptions) the manufacture, processing, distribution in commerce for export, use, and disposal of 12 specified chemical substances. On the other hand, these are competing bills, in which many small provisions and several key provisions differ. Of particular note are provisions pertaining to the regulation of chemicals that might be added to the Stockholm POPs Convention or the LRTAP POPs Protocol by amendment. Generally, it appears that H.R. 4591 would provide circumscribed authority to EPA to regulate such chemicals “to the extent necessary to protect human health and the environment,” require extensive analysis of options, and prescribe regulatory outcomes that achieve “a reasonable balance of social, environmental, and economic costs and benefits.” H.R. 4800 would provide clear authority to regulate in accord with amendments to the international agreements, and prescribe chemical regulations that protect against “significant adverse human health and environmental effects.” Some specific differences in policy approaches are discussed below.

Rulemaking for New Chemicals. The bills differ significantly in the scope and direction of regulatory authority provided to EPA with respect to a chemical that might be added by an amendment to Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol. H.R. 4591 would

authorize but not mandate regulations to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal for a newly listed chemical. Authority would be provided to the extent necessary to meet obligations of the United States under the relevant international agreement, and rules could become effective only if the United States consented to be bound by the amendment. In contrast, H.R. 4800 requires EPA to regulate newly listed chemicals unless similar regulations have been or are being promulgated under another federal law, or EPA decides that U.S. manufacture, processing, distribution in commerce for export, use, or disposal of the chemical is not “likely to lead to significant adverse human health or environmental effects.” H.R. 4800 imposes a two-year deadline to ensure a timely promulgation or decision.

The regulatory criteria and processes proposed by the bills also differ. H.R. 4591 would authorize EPA rulemaking that was “necessary to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits.” To provide a basis for a rule, EPA would be required to consider the following:

- “a scientific assessment of the effects of such chemical” on health and the environment and the magnitude and impacts of exposure;
- the benefits of the chemical for various uses and the availability, risks, and economic consequences of substitutes;
- the “reasonably ascertainable economic consequences of the proposed ... regulations,” after considering “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 ... is necessary to prevent significant harm to an important sector of the economy;” and
- national and international consequences likely to arise (“including possible consequences of using alternative products or processes”) due to U.S. regulatory action.¹⁷

H.R. 4591 would require assessments of risk or effects to use “sound and objective scientific practices,” and “determine the weight of the scientific evidence concerning such risks or effects based on the best available scientific information, including peer-reviewed studies.” All of this scientific information would be part of the rulemaking record and subject to judicial review. Rulemaking under H.R. 4591

¹⁷ Some of these requirements could be satisfied, at least in part, by analyses already conducted in connection with rulemaking: EPA routinely analyzes costs, benefits, and risks of chemicals it is regulating, sometimes including the costs, benefits, and risks of substitutes for important uses of those chemicals. Analysis of the risks, benefits, and costs of rules is required for “significant” rules under Executive Order 12866, Regulatory Planning and Review, the Unfunded Mandates Reform Act (2 U.S.C. §§ 1501-1571), and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. §§ 601 et seq).

would follow the procedure established by the Administrative Procedure Act (5 U.S.C. 553).

H.R. 4800 would require U.S. regulation to protect against “significant adverse human health and environmental effects,”¹⁸ and “at a minimum” to implement the control measures specified for that chemical in the relevant annex to an international agreement. Rules would be proposed and made final through the notice and comment procedure of the Administrative Procedure Act (5 U.S.C. 553). No specific analyses are required, but EPA routinely analyzes costs, benefits, and risks of chemicals it is regulating, sometimes including the costs, benefits, and risks of substitutes for important uses of those chemicals. Analysis of the risks, benefits, and costs of rules generally is required, at least for rules with significant economic impacts, under Executive Order 12866, Regulatory Planning and Review, the Unfunded Mandates Reform Act (2 U.S.C. §§1501-1571), and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. §§ 601 et seq). However, H.R. 4800 does not require consideration of costs, risks of substitute chemicals, or benefits in rulemaking for POPs.

Judicial Review. Both bills authorize any person to petition the court for judicial review of a final rule or decision within 60 days of its issuance. The bills provide different standards of review, however. While H.R. 4800 would direct the court to reject rules that are “arbitrary and capricious,” H.R. 4591 would require that rules be “supported by substantial evidence in the rulemaking record ... taken as a whole.” Both standards are contained in Title V, Section 706, of the *United States Code*. Section 706 applies the “arbitrary and capricious” standard to federal regulations developed using the notice and comment procedure of 5 U.S.C. §553, which includes rules implementing most environmental statutes. The “substantial evidence” standard of 5 U.S.C. §706 applies to rules promulgated under TSCA §6(c), which employs a rulemaking process and hearing format that is unique to TSCA. Relative to the “arbitrary and capricious” standard, the “substantial evidence” standard arguably places a greater burden on the federal agency to prove its compliance with statutory directives. However, reviewing courts have often melded the two standards together when assessing the propriety of agency actions.¹⁹

Information Gathering. The bills also take different approaches to gathering information about a chemical when it is being considered as a possible addition to an international agreement by amendment of an annex. H.R. 4591 would authorize EPA to issue administrative orders to manufacturers and others requiring them to submit specified information. H.R. 4800 would direct manufacturers and others to provide such information to EPA within 60 days of publication of the first and

¹⁸ This same language appears in the Stockholm POPs Convention, Article 8, paragraph 7(a), in which it is provided as part of the basis for evaluating a risk profile of a chemical being considered for listing in Annex A, B, or C. If the POPRC decides, based on its evaluation of the risk profile, that a chemical “is likely ... to lead to significant adverse human health and/or environmental effects...,” the proposal to add the chemical proceeds to the third stage, in which possible control measures are evaluated.

¹⁹ McGrath, Matthew J. 1986. “Convergence of the substantial evidence and arbitrary and capricious standards of review during informal rulemaking,” *54 Geo. Wash. L. Rev.* 541.

second notices that a chemical is being considered for listing in an annex to an international agreement.

Sense of the Congress. Another significant difference between the bills is the statement in H.R. 4591, but not in H.R. 4800, that it is the sense of the Congress that the United States should declare its intention to ratify each amendment to an annex before that amendment may enter into force for the United States — that is, that the President should choose the “opt in” treaty provision. Moreover, H.R. 4591 would require the President “as appropriate” to consult with Congress before consenting to bind the United States to an amendment to Annex A, B, or C of the Stockholm POPs Convention.

State Preemption. The bills differ, too, in their approaches to preemption of state and local laws. H.R. 4591 would preempt all state and local laws (except those issued under the Clean Air Act, Section 116) that pertain to any chemical listed in an annex to the Stockholm POPs Convention or the LRTAP POPs Protocol. This is a broader preemption provision than currently exists under TSCA, which does not preempt state or local law that is identical to the federal requirement, adopted under another federal law, or prohibits the use of the chemical within the relevant jurisdiction. However, H.R. 4591 retains the TSCA §18(b) process in which states may petition for relief from the preemption provision. Also, under H.R. 4591, state and local laws would be preempted as soon as a chemical listing entered into force for the United States, even if a final U.S. regulation was not yet in effect.²⁰ In contrast, H.R. 4800 would not preempt state and local laws, unless more stringent federal regulations had been promulgated.

Table 1 summarizes the provisions discussed above as well as other selected provisions, highlighting those that appear to offer distinct policy approaches to U.S. regulation of POPs.

²⁰ However, the United States might defer its approval of an amendment adding a chemical to an annex of an international agreement until domestic regulations were in place.

Table 1. Comparison of Amendments to the Toxic Substances Control Act (TSCA) Proposed by H.R. 4591 and H.R. 4800, as Introduced in the 109th Congress

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|--|--|--|
| <p>Definitions</p> <p><i>LRTAP POPs chemical substance or mixture</i> (hereafter, LRTAP POPs chemicals)</p> <p><i>POPs chemical substance or mixture</i> (hereafter, POPs chemicals)</p> | <p>Section 2 adds a new Title V to TSCA. New TSCA §501 includes the following definitions:</p> <p>Any chemical listed in Annex I or II to the LRTAP POPs Protocol.²¹ These include aldrin, chlordane, chlordecone, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene (HCB), hexabromobiphenyl (HBB), hexachlorocyclohexane (HCH), mirex, PCBs, toxaphene, and “any other ... that is listed.”</p> <p>Any chemical listed in Annex A or B to the Stockholm POPs Convention. These include aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, HCB, mirex, PCBs, toxaphene, and “any other ... that is listed.” [§2]</p> | <p>Same as H.R. 4591.</p> <p>Same as H.R. 4591.</p> <p>Same as H.R. 4591. [§2]</p> |
| <p>Prohibitions for currently listed POPs and LRTAP POPs chemicals</p> | <p>New TSCA §502(a) prohibits manufacture, processing, distribution in commerce for export, use, and disposal, except as otherwise provided within Title V, of aldrin, chlordane, chlordecone, DDT, dieldrin, endrin, HCH, heptachlor, HCB, HBB, mirex, and toxaphene. [§2]</p> | <p>Similar to H.R. 4591, but these prohibitions are subject to subsections (c) and (d) which provide exemptions under the international agreements, and subsection (i) which provides for harmonization between the agreements, and the relevant provisions of the Stockholm POPs Convention and LRTAP POPs Protocol, <i>notwithstanding any other provision of law.</i>” [§2]</p> |

²¹ “Stockholm POPs Convention” means the 2001 Stockholm Convention on Persistent Organic Pollutants. “LRTAP POPs Protocol” refers to the 1998 Aarhus Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution. “PIC Convention” means the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Section numbers in brackets at the end of each entry or provision refer to the section of the bill in which the provisions described are found.

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|---|--|---|
| Authority to regulate | <p>No comparable provision.</p> <p>New TSCA §502(c) authorizes EPA to amend or promulgate regulations for PCBs under TSCA §6(e) or other applicable federal law for the purpose of U.S. compliance with provisions of the Stockholm POPs Convention or the LRTAP POPs Protocol. [§2]</p> | <p>New TSCA §502(j) authorizes EPA to issue regulations “as necessary to implement” §502 (which implements the Stockholm POPs Convention and the LRTAP POPs Protocol.) [§2]</p> <p>No specific provision.</p> |
| Exemptions from prohibitions for currently listed chemicals | <p>New TSCA §502(b) broadly authorizes EPA to promulgate regulations providing specific exceptions to the prohibitions in §502(a), where not inconsistent with U.S. obligations under the Stockholm POPs Convention or the LRTAP POPs Protocol.</p> <p>New TSCA §503(f) and (g) exempt from the prohibitions in §502(a) those activities with respect to POPs chemicals that are consistent with either a “use-specific exemption” or “an acceptable purpose” available to the United States under Annex A or B to the Stockholm POPs Convention, or “an allowed restricted use or condition” available to the United States under Annex I or II to the LRTAP POPs Protocol, as determined by EPA through final rules promulgated with the concurrence of the Secretary of State under the regulatory criteria of new TSCA §503(e). (See below.)</p> <p>Rules will not apply to specified categories of chemicals which appear to be consistent with those exempted by the Stockholm POPs Convention or the LRTAP POPs Protocol, such as chemicals that are unintentional trace contaminants in products or articles. [§2]</p> | <p>No comparable provision.</p> <p>New TSCA §502(c) and (d) provide authority to EPA to provide exemptions from the prohibitions, but rules must be promulgated under the regulatory criteria of new TSCA §502(h) (see below) in consultation, rather than concurrence, with the Secretary of State.</p> <p>Similar to H.R. 4591, but adds the condition that such exemptions “would, as a result, not prevent the United States from complying with the obligations of the United States” under the Stockholm POPs Convention or the LRTAP POPs Protocol. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|-------------------|--|---|
| Exemptions (con.) | <p>Exempts production of HCH, use of technical HCH as an intermediate in chemical manufacturing, and use of lindane for seed treatment and public health, unless EPA by rule restricts such exemption consistent with an amendment to the LRTAP POPs Protocol.</p> <p>Also exempt is any POPs chemical or LRTAP POPs chemical that has become waste that is “otherwise regulated under Federal law.”</p> <p>Authorizes EPA (with concurrence of the Secretary of State) to grant exemptions from rules on its own initiative or in response to a petition, consistent with authorized exemptions under the LRTAP POPs Protocol. Exemptions must be withdrawn if no longer consistent with the conditions requisite to them. [§2]</p> | <p>Exempts production or use of HCH that complies with restrictions and conditions specified for HCH in Annex II to the LRTAP POPs Protocol.</p> <p>Exempts any chemical that has become waste that is managed in a manner consistent with Article 6 of the Stockholm POPs Convention, and any LRTAP POPs chemical that has become waste that is disposed of in an environmentally sound manner in accordance with paragraph 1(b) of Article 3 of the LRTAP POPs Protocol.</p> <p>Similar to H.R. 4591, but requires EPA consultation with the Secretary of State, rather than the Secretary’s concurrence. If an exemption is no longer authorized by the United States, it is unlawful for anyone to manufacture, process, distribute in commerce for export, or use a LRTAP POPs chemical in the manner authorized by such exemption. [§2]</p> |
| PCBs | <p>Section 3 amends TSCA §6(e), to add two new subparagraphs prohibiting exemptions from EPA rules restricting the manufacture, processing, distribution in commerce, or use of any PCB, unless such activity is authorized by rule under new TSCA §503(f) or (g), which provide exemptions, and subject to §503(h), which harmonizes any conflicts.</p> <p>Section 3 also prohibits distribution in commerce for export of equipment containing more than 0.05 liter of a liquid that is more than 50 parts PCBs per million parts of liquid (except for the purpose of environmentally sound disposal, to the extent authorized by federal law). [§3]</p> | <p>Section 3 amends TSCA §6(e), to add one new subparagraph prohibiting exemptions from EPA rules restricting the manufacture, processing, distribution in commerce, or use of any PCB, unless such activity is authorized by rule under new TSCA §502(c) or (d), which provide exemptions, and subject to §502(h), which establishes the regulatory criteria.²²</p> <p>Same as H.R. 4591. [§3]</p> |

²² In the introduced version of H.R. 4800, Section 3 incorrectly references subsections §503(f), §503(g), and §503(h).

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|--|---|---|
| <p>Procedure for considering a proposal to add a chemical by amending an annex to an agreement:</p> <p>First notice</p> | <p>New TSCA §503(a) requires EPA within 60 days to publish in the <i>Federal Register</i> a notice and request for public comment, if under Article 8 of the Stockholm POPs Convention, 1) the POPs Review Committee decides that a proposal to list a new chemical fulfills the screening criteria (under Article 8, ¶4(a), or 2) the Conference of the parties (COP) decides the proposal should proceed (under Article 8, ¶5); or if, under the LRTAP POPs Protocol, a party submits a risk profile in support of a proposal to list a new chemical.</p> <p>Requires notice to include: 1) identity of the chemical; 2) a summary of the criteria applied and process used to consider the proposal or profile for listing a new chemical; 3) a summary of the committee or conference decision and its basis; and 4) a summary of how the chemical is regulated under U.S. law. [§2]</p> | <p>New TSCA §502(e) is similar to H.R. 4591, but requires publication within 45 days.</p> <p>Similar to H.R. 4591, but does not require a summary of how the chemical is regulated under U.S. law. In addition, requires a request for information and comment relevant to the listing decision. (See “Information Provision” below.) [§2]</p> |
| <p>Procedure for considering a proposal to add a chemical by amending an annex to an agreement:</p> <p>Second notice</p> | <p>New TSCA §503(b) requires EPA within 60 days to publish a notice in the <i>Federal Register</i> and to provide for public comment, if under Article 8 of the Stockholm POPs Convention, 1) the POPs Review Committee decides (under ¶7(a)) that global action is warranted, or 2) the conference decides (under ¶8) that a proposal shall proceed, or, if under the LRTAP POPs Protocol, the Executive Body (LRTAP Convention Article 10) determines that further consideration is warranted and requires technical reviews (under Executive Body Decision 1998/2).</p> <p>Requires notice to include 1) identity of the chemical; 2) a summary of the committee or conference decision, or the Executive Body determination and its basis; 3) a summary of comments received in response to the first EPA notice; and 4) solicitation for comments and information regarding any present or planned production or use of the chemical. [§2]</p> | <p>New TSCA §502(f) is similar to H.R. 4591, but EPA must publish within 45 days.</p> <p>Similar to H.R. 4591, but does not require a summary of the comments received in response to the first public notice. In addition, requests information on the potential impact of various risk management approaches on minority and low-income populations. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|---|---|--|
| <p>Procedure for considering a proposal to add a chemical by amending an annex to an agreement:</p> <p>Third notice</p> | <p>New TSCA §503(c) requires EPA to publish a notice in the <i>Federal Register</i> and to provide for public comment within 60 days, if under Article 8, ¶9 of the Stockholm POPs Convention, the POPs Review Committee recommends that the conference consider making a listing decision, or under the LRTAP POPs Protocol, when a technical review of a proposal to list a chemical is complete.</p> <p>Requires notice to include a summary of 1) the recommendation and its basis, or the technical review; 2) any control measures proposed or that exist under U.S. laws; and 3) any public comments received in response to the second EPA notice. [§2]</p> | <p>New TSCA §502(g) is similar to H.R. 4591, but requires publication within 45 days.</p> <p>Similar to H.R. 4591, but no summary is required of control measures that exist under U.S. laws or of public comments received in response to the second EPA notice. [§2]</p> |
| <p>Information Collection</p> | <p>New TSCA §503(d) authorizes EPA to issue a general order in the <i>Federal Register</i> requiring any manufacturer, processor, distributor in commerce for export, or disposer of a chemical that is subject to a first, second, or third public notice requirement under §503(a), (b), or (c), to submit to EPA information “that is known or readily obtainable to that person” to assist the agency in evaluating the case for adding the chemical.</p> <p>Authorizes EPA to require specified information.</p> <p>Authorizes EPA, with the concurrence of the Secretary of State, to require information updates. [§2]</p> | <p>New TSCA §§502(e)(4) and 502(f)(4) require manufacturers, processors, distributors in commerce for export, and disposers of a chemical that is subject to a first or second public notice requirement under §502(e) or (f), within 60 days of the publication of such notice to provide to EPA information “that is known or readily obtainable to that person” to assist the agency in evaluating the case for adding the chemical.</p> <p>Specifies the information to be provided, which is similar to information that may be requested under H.R. 4591.</p> <p>Similar to H.R. 4591, but EPA is required only to consult with the Secretary of State, rather than to obtain concurrence. Also authorizes EPA, after the initial deadline for information submission, to require information from anyone who begins manufacturing, processing, distributing in commerce for export, or disposing of a chemical proposed for listing. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|---|---|---|
| <p>Regulations for chemicals added by amendment of an annex to the Stockholm POPs Convention or LRTAP POPs Protocol</p> <p><i>Authority/Requirement</i></p> | <p>New TSCA §503(e)(1) authorizes EPA to issue or modify rules to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal for any chemical that is added by an amendment to Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol.</p> <p>This authority to issue rules is granted only “to meet, in whole or in part, the obligations of the United States under the Stockholm POPs Convention or LRTAP POPs Protocol if the United States were to consent to be bound for that applicable amendment.” [§2]</p> | <p>New TSCA §502(h) requires EPA to publish in the <i>Federal Register</i> within one year of the addition of a chemical by an amendment to Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol either —</p> <ol style="list-style-type: none"> 1) a proposed rule to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal for such chemical; or 2) a statement that — <ol style="list-style-type: none"> A) a proposed rule has been issued under other federal law to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal for the added chemical; and a final rule will be issued within two years of the publication date of the proposed rule; or B) additional regulation is not necessary, because the chemical already is regulated in the United States; or 3) a proposed decision not to prohibit or restrict U.S. manufacture, processing, distribution in commerce for export, use, or disposal of the chemical, because those activities are not likely to lead to significant adverse human health or environmental effects. <p>Within two years of the date of publication of a proposed rule (under TSCA or other federal law) or proposed decision, requires EPA to publish in the <i>Federal Register</i> either —</p> <ol style="list-style-type: none"> 1) a final rule (under TSCA or other Federal law); or 2) a final decision. [§2] |
| <p><i>Standard</i></p> | <p>New TSCA §503(e)(1) authorizes EPA to issue or modify rules “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.” [§2]</p> | <p>New TSCA §502(h)(1) requires that any proposed or final rule (under TSCA or any other federal law) or existing regulation identified in a statement that is published by EPA to satisfy the provisions of new TSCA §502(h) “at a minimum implements the control measures specified for the chemical ... in Annex A and B of the [Stockholm] POPs Convention and Annex I and II to the LRTAP</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|------------------------|---|---|
| <i>Standard (con.)</i> | | POPs Protocol.” A proposed or final rule promulgated under subsection (h) must protect against “significant adverse human health and environmental effects.” [§2] |
| <i>Analysis</i> | <p>New TSCA §503(e)(2) requires EPA to consider scientific assessments of health and environmental effects and the magnitude and impacts of exposure; the benefits of the chemical for various uses and the availability, risks, and economic consequences of substitutes; the “reasonably ascertainable economic consequences of the proposed ... regulation,” after considering “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 ... is necessary to prevent significant harm to an important sector of the economy”; and national and international consequences likely to arise (“including possible consequences of using alternative products or processes”) due to U.S. regulatory action. New §503(e)(4) requires that assessments of risk or effects use “sound and objective scientific practices,” and “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.”</p> <p>New §503(e)(3) authorizes EPA to consider recommendations of the POPs Review Committee and the conference listing decision (under the Stockholm POPs Convention), any technical review conducted pursuant to the Executive Body Decision 1998/2 and listing decision (under the LRTAP POPs Protocol), and information submitted by the United States in support of a listing decision. [§2]</p> | <p>No comparable provision, but EPA would be conducting analyses of risks, costs, and benefits, including impacts on small entities and responding to public comments during the rulemaking procedure, in compliance with Executive Order 12866, the Administrative Procedure Act (5 U.S.C. §553), and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. §§ 601 et seq).</p> <p>No comparable provision, but EPA does consider relevant views of international bodies when promulgating rules implementing international treaties to which the United States is a party. See, for a recent example, <i>70 Federal Register</i> 25727, May 13, 2005, in which EPA discusses the views of parties with respect to exemptions allowed under the Montreal Protocol.</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
|--|--|---|
| Rulemaking procedure | <p>New TSCA §502(h)(3) exempts these rules from other TSCA rulemaking procedures. [§2]</p> <p>No comparable provision.</p> | <p>States that no other rulemaking procedure under TSCA applies to rules promulgated under TSCA §502(h).</p> <p>Requires promulgation of rules using the notice and comment procedure specified in Title V, Section 553, of the U.S. Code. [§2]</p> |
| Rules tied to amendment's entry into force for the United States | <p>Rules may not take effect until the United States has consented to be bound by the amendment.</p> <p>New TSCA §504 states that 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 Stockholm POPs Convention only after the United States has declared ("opted in") that such amendment shall enter into force upon U.S. ratification, acceptance, approval, or accession to such amendment. [§2]</p> | <p>Same provision. [§2]</p> <p>No comparable provision.</p> |
| Effective date of requirements | <p>New TSCA §506 states that requirements to comply with provisions of the Stockholm POPs Convention, LRTAP POPs Protocol, or PIC Convention may take effect only after the United States has consented to be bound by the amendment. [§2]</p> | <p>New TSCA §507 is similar. [§2]</p> |
| Deadline for promulgation | <p>No comparable provision.</p> | <p>New TSCA §502(h) requires publication of a proposed rule or decision, or a statement within one year and of a final rule or decision within two years. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Prohibitions for chemicals added by amending Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol | No comparable provision. | New TSCA §502(b) prohibits manufacture, processing, distribution in commerce for export, use, and disposal inconsistent with regulations promulgated under subsection (h), of “any other chemical ... listed” in Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol, subject to subsections (c) and (d) which provide exemptions under the international agreements, and subsection (i) which provides for harmonization between the agreements, and the relevant provisions of the Stockholm POPs Convention and LRTAP POPs Protocol, <i>notwithstanding any other provision of law.</i> ” [§2] |
| Exemptions to regulations for chemicals proposed to be added by amending an annex of the Stockholm POPs Convention or LRTAP POPs Protocol | Exemptions provided by new TSCA §503(f) and (g) for currently listed Stockholm POPs Convention and LRTAP POPs Protocol chemicals, apply also to chemicals newly added to an annex of the Stockholm POPs Convention or LRTAP POPs Protocol. [§2] | Exemptions provided by new TSCA §502(c) and (d) for currently listed Stockholm POPs Convention and LRTAP POPs Protocol chemicals, apply also to chemicals newly added to an annex of the Stockholm POPs Convention or LRTAP POPs Protocol. [§2] |
| Protection from information disclosure requirements | No comparable provision, but TSCA §14 currently applies to all information obtained “under this Act.” TSCA §14 generally protects trade secrets while allowing disclosure to U.S. employees and for the purpose of protecting health or the environment against an unreasonable risk of injury. | New TSCA §503(c) explicitly provides that information obtained by EPA under TSCA Title V will be subject to TSCA §14. [§2] |
| Source categories for Annex C chemicals | New TSCA §503(i) requires public notice and opportunity for public comment if parties to the Stockholm POPs Convention decide to add new source categories to Annex C, and such categories are not listed as major sources under the Clean Air Act §112(c). [§2] | No comparable provision. |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Action plans for dibenzo dioxins, dibenzo furans, HCB, and PCBs | New TSCA §503(j) requires EPA within 90 days to issue a public notice and provide an opportunity for public comment, if the United States 1) develops an action plan, 2) reviews a submitted action plan, 3) requires changes in materials, products, or processes, or 4) requires use of “best available techniques,” so as to reduce emissions of chemicals listed in Annex C (polychlorinated dibenzo dioxins and furans, HCB, and PCBs). Prohibits implementation of any action that is not authorized in U.S. statutes. [§2] | No comparable provision. |
| Consultation with Congress | Requires the President “as appropriate” to consult with Congress before consenting to bind the United States to an amendment to Annex A, B, or C to the Stockholm POPs Convention. Directs the President to provide to the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works information relevant to such amendment that is requested by Congress in order to fulfill its duties related to protection of public health and the environment. [§2] | No comparable provision. |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Research and technical cooperation | <p>New TSCA §505 requires EPA, with the State Department and other agencies, to participate in efforts to improve research and regulations on chemical substances, and to participate in technical cooperation and capacity building to support implementation of the Stockholm POPs Convention, LRTAP POPs Protocol, and PIC Convention.</p> <p>Requires that EPA publish in the <i>Federal Register</i> timely advance notice of the known schedule and agenda of meetings concerning the Stockholm POPs Convention, LRTAP POPs Protocol, or PIC Convention.</p> <p>New TSCA §505 also directs EPA to provide timely advance notice of the schedule and agenda of meetings on the three agreements and subsidiary bodies. [§2]</p> | <p>New TSCA §504 has the same provisions as H.R. 4591. [§2]</p> <p>No comparable provision.</p> <p>No comparable provision.</p> |
| Harmonization of Stockholm POPs Convention and LRTAP POPs Protocol | <p>New TSCA §503(h) applies to chemicals that are both Stockholm POPs chemicals and LRTAP POPs chemicals. In the case of conflict between provisions of subsection (f) which provides exemptions from regulations under the Stockholm POPs Convention, and subsection (g), which provides exemptions under the LRTAP POPs Protocol, the more stringent provision will apply, and application shall ensure that the United States is in compliance with both international agreements. [§2]</p> | <p>New TSCA §502(i) is similar to this provision of H.R. 4591, but applies whenever there is a conflict between any provision of §502 applicable to a LRTAP POPs chemical and any provision applicable to a Stockholm POPs chemical, rather than only to provisions that offer exemptions. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Public notice of chemicals subject to requirements of the Stockholm POPs Convention | New TSCA §503(f)(6)(E) requires EPA to make publicly available a list of parties to the Stockholm POPs Convention, production- and use-specific exemptions available to the United States under the Stockholm POPs Convention, parties that are permitted to use chemicals in Annex A or B, and chemicals with no production- or use-specific exemptions. [§2] | New TSCA §503(a) directs EPA to publish in the <i>Federal Register</i> timely notice concerning the chemicals subject to the prohibitions specified in §502, exemptions from the prohibitions, any disallowances of exemptions, and a list of any importing countries that are not parties to the Stockholm POPs Convention but that have provided EPA with a certification of intent to comply with certain requirements of the POPs Convention. Directs EPA to update the record as necessary and to make the record publicly available. [§2] |
| Removal of TSCA exemptions for chemicals intended for export | Section 5 amends TSCA §12(a)(1) so that the exemption it provides from most requirements of TSCA for chemicals intended for export will not apply to the requirements of Title V or new TSCA §12(c). This provision ensures that chemicals produced solely for export may be regulated under TSCA Title V, in accord with the three international agreements. [§5] | Similar provision, but H.R. 4800 does not add a new subsection (c) to TSCA §12. [§4] |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Implementing the PIC Convention | <p>Section 5 adds a new subsection (c) to TSCA §12. New TSCA §12(c)(1) directs those who distribute in commerce for export a chemical substance listed in Annex III of the PIC Convention to comply with export conditions or restrictions identified by EPA in a public notice.</p> <p>New TSCA §12(c)(4)(C) requires EPA, with the concurrence of the Secretary of State, to provide public notice of chemicals listed on Annex III to the PIC Convention, and of conditions or restrictions relating to those chemicals imposed by importing foreign states.</p> <p>New TSCA §12(c)(4)(A) directs EPA to determine, with the concurrence of the Secretary of State, whether a chemical is banned or severely restricted within the United States. Requires EPA to issue notice to the PIC Secretariat and the public of each such determination. [§5]</p> <p>No comparable provision.</p> | <p>New TSCA §505 has the same provision.</p> <p>New TSCA §505(d)(3) has a similar provision, but requires consultation rather than concurrence with the Secretary of State.</p> <p>New TSCA §505(d) has a similar provision, but requires consultation rather than concurrence with the Secretary of State.</p> <p>New TSCA §505(e) authorizes EPA to promulgate rules to facilitate implementation of §505 and to ensure compliance with the PIC Convention. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Export notice requirements | <p>New TSCA §12(c)(2) requires exporters to notify EPA of their intent to export a chemical that is banned or severely restricted, listed in the PIC Convention Annex III, or a Stockholm POPs Convention chemical for which export is not prohibited by new TSCA §502(a) or §503(e).</p> <p>Such notice must be provided between 15 and 45 days prior to the first export to each country in each year of a chemical that is banned or severely restricted, listed in Annex III of the PIC Convention, or a Stockholm POPs Convention chemical.</p> <p>New TSCA §12(c)(4) directs EPA, upon receipt of a notice of intent to export, to provide a copy to the importing foreign state.</p> <p>Authorizes EPA to establish alternate time frames if appropriate.</p> <p>Requires EPA, within 18 months after the PIC Convention enters into force for the United States, and within 18 months after the Stockholm POPs Convention enters into force for the United States, to review time frames for providing notices. [§5]</p> | <p>New TSCA §505(b) has the same provision.</p> <p>New TSCA §505(b) is similar to H.R. 4591, but requires notice to be provided between 15 and 30 days prior to the first export of each chemical to each country in each year.</p> <p>New TSCA §505(d)(2) has the same provision.</p> <p>New TSCA §505(b) has the same provision.</p> <p>No comparable provision. [§2]</p> |
| Content requirements for export notices | <p>New TSCA §12(c)(2)(C) specifies the required contents of pre-export notices for banned or severely restricted chemicals, chemicals listed in Annex III of the PIC Convention, and Stockholm POPs chemicals that may be exported. [§5]</p> | <p>New TSCA §505(b) has similar provisions, but does not require EPA to issue a general order published in the <i>Federal Register</i> when it decides that it needs information other than that specified in this TSCA subsection. [§2]</p> |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Shipment copies and records of notices | New TSCA §12(c)(2)(D) requires exporters to include a copy of the most recent pre-export notice with each shipment of a chemical listed on Annex III of the PIC Convention or a Stockholm POPs chemical. New TSCA §12(c)(2)(E) requires exporters covered by notice requirements to maintain a copy of each notice and other documents used to generate the notice for at least three years following the date on which notice is provided. [§5] | New TSCA §505(b) has the same provisions as H.R. 4591. [§2] |
| Labeling requirements for exports | New TSCA §12(c)(3) requires labeling of chemical substances or mixtures that EPA has identified as banned or severely restricted within the United States or listed in Annex III to the PIC Convention. [§5] | New TSCA §505(c) has the same provisions as H.R. 4591. [§2] |
| Exemptions to PIC requirements | <p>New TSCA §12(c)(6) directs EPA to allow export of trace concentrations without notification if EPA finds export of such concentrations does not pose a significant threat to human health or the environment and is not inconsistent with the PIC Convention, the Stockholm POPs Convention, and the LRTAP POPs Protocol.</p> <p>Authorizes EPA to issue a notice exempting any chemical or use of a chemical from notice requirements of TSCA §12(c)(1), (2), and (3) if EPA determines, with concurrence of the Secretary of State, that the exemption would be consistent with the PIC Convention or Stockholm POPs Convention. [§5]</p> | <p>No comparable provision.</p> <p>New TSCA §505(d)(4) has similar provisions to H.R. 4591, but requires consultation rather than concurrence with the Secretary of State. [§2]</p> |
| Consolidation of reporting requirements | New TSCA §12(c)(5) directs EPA to allow a single notice to satisfy TSCA pre-export notice requirements. [§5] | New TSCA §505(e) is similar, but it authorizes rulemaking, and does not require EPA to allow a single notice. [§2] |
| Harmonization of PIC Convention and Stockholm POPs Convention | No comparable provision. | New TSCA §505(f) provides that if a chemical is covered by the Stockholm POPs Convention or LRTAP POPs Protocol and the PIC Convention, the more stringent provision will apply in the event of a conflict. [§2] |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| Clarification of Title V Authority and Intended Effects | No comparable provision. | New TSCA §506 provides that TSCA Title V should not be construed to require the United States to register for any specific exemption or any acceptable purpose available to the United States under the Stockholm POPs Convention. Neither does Title V affect the authority of EPA to regulate a chemical under any other law or any other provision of TSCA. [§2] |
| Inspection authority | Amends TSCA §11 to provide EPA with inspection authority for enforcement purposes.[§6(b)] | Same as H.R. 4591. [§6(a)] |
| Entry into customs territory | No comparable provision. | Section 6(b) amends TSCA §13 to direct the Secretary of the Treasury to refuse entry into U.S. customs territory of any chemical that is offered for entry in violation of Title V or a rule or order issued under Title V. [§6(b)] |
| Unlawful acts | Section 6(c) amends TSCA §15 to prohibit actions that fail or refuse to comply with any requirement of Title V or rule or order promulgated or issued under Title V. States that it is unlawful to use a chemical for commercial purposes if it was <i>made</i> or distributed in commerce in violation of Title V. [§6(c)] | Section 5 is similar to H.R. 4591, but prohibits using for commercial purposes a chemical that was distributed in commerce <i>for export, used or disposed of</i> in violation of Title V. [§5] |
| Penalties | Amendments to TSCA §15 made by H.R. 4591, Section 6(c), make specified violations of Title V unlawful acts, which are subject to civil and criminal penalties under existing provisions of TSCA §16. [§6(c)] | Section 6(c) amends TSCA §16 to authorize civil and criminal penalties for violations of Title V. [§6(c)] |
| Enforcement and seizure | Section 6(d) amends TSCA §17. The jurisdiction of district courts is extended to cover some civil actions to enforce Title V. Authorizes seizure of a chemical subject to Title V, or any article containing such chemical, if it was manufactured, processed, or distributed in commerce in violation of TSCA. | Similar, but also extends jurisdiction of district courts over civil actions to restrain a violation of Title V. |

| Subject | H.R. 4591, as introduced | H.R. 4800, as introduced |
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| State and Local Preemption | Amends TSCA §18(a)(2) to preempt state or local requirements applicable to a POPs or LRTAP POPs chemical substance, for which a listing under Annex A or B to the Stockholm POPs Convention or Annex I or II to the LRTAP POPs Protocol has entered into force for the United States, except as permitted under the Clean Air Act, Section 116. [§6(e)] | Does not preempt state or local requirements that are more stringent than federal requirements under new TSCA §502(h). [§6(e)] |
| Citizens' civil actions | No comparable provision, but TSCA §20(a) authorizes citizens to commence civil action against alleged violators of the act. | Amends TSCA §20(a) to authorize citizens to commence civil action against alleged violators of Title V or rules promulgated under Title V. [§6(f)] |
| Judicial review | <p>Section 4 amends TSCA §19 to authorize any person to file a petition for judicial review of a rule promulgated under Title V no more than 60 days previously. Directs the court to set aside a rule that is “not supported by substantial evidence in the rulemaking record ... taken as a whole.” Generally, judicial review provisions are similar to those for rules promulgated under the other titles of TSCA, with a few exceptions.</p> <p>For any rule promulgated under new subsection 503(e), all written comments and information received in response to EPA notices or orders issued under TSCA §503(a) through (d) would be part of the rulemaking record. And, such rules would not be subject to the authority provided in TSCA §19(b) that allows a court to order EPA to provide opportunity to petitioners to make additional oral submissions or written presentations available for judicial review of the rule. [§4]</p> | <p>New TSCA §502(h)(2) authorizes any person to file a petition for judicial review of a final rule or final decision under §502(h)(1)(B) within 60 days of publication of the rule or decision. Directs the court to set aside a rule or decision that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Authorizes the court to award costs relating to the review.</p> <p>No comparable provision.</p> |