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Persistent Organic Pollutants (POPs): Fact Sheet on Three International Agreements

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October 23, 2013

Congressional Research Service

7-5700

www.crs.gov

RS22379

Summary

Persistent organic pollutants (POPs) are chemicals 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. Between 1998 and 2001, the United States signed two international treaties and one executive agreement to reduce the production and use of POPs and to regulate the trade and disposal of them. President Bush signed and submitted the two treaties to the Senate for advice and consent. If the Senate consents by a two-thirds majority, and if Congress passes legislation that would be needed to implement the treaties and the executive agreement in the United States, then the treaties could be ratified and the agreements would become binding U.S. law. Two U.S. statutes are inconsistent with the agreements: the Toxic Substances Control Act (TSCA), which governs production and use of chemicals in U.S. commerce, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates the sale and use of pesticides within the United States. Proposals to amend these statutes were considered but not enacted in the 107th, 108th, 109th, 111th, and 112th Congresses. In the 113th Congress, S. 696 would amend TSCA to allow implementation of the three international agreements, while S. 1009 would provide more limited authority for regulating exported chemicals. There currently are no legislative proposals in the 113th Congress to amend FIFRA.

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Overview

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 United Nations-sponsored international agreements to address global problems associated with POPs. Two are treaties: the 2001 Stockholm Convention on Persistent Organic Pollutants (POPs Convention) and the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention). The 1998 Aarhus Protocol on Persistent Organic Pollutants (POPs Protocol) is an amendment to an executive agreement, the 1979 Geneva Convention on Long-Range Transboundary Air Pollution (LRTAP). The United States has signed but not ratified the three agreements.

In nations that have ratified the Stockholm POPs Convention, the treaty bans or severely restricts the production, use, trade, and disposal of 12 POPs, including polychlorinated biphenyls (PCBs), polychlorinated dibenzo-p-dioxins, the polychlorinated dibenzo-p-furans, and nine pesticides, all of which already are strictly regulated in the United States. Specific exemptions to the prohibitions are allowed (e.g., the use of DDT to control mosquitoes that may carry malaria). The agreement has been ratified by 179 nations, but not by the United States. The treaty entered into force for parties (that is, the countries that have ratified it) on May 17, 2004.¹

The Rotterdam PIC Convention was opened for signature in 1998, has been ratified by 153 nations, and entered into force for its parties on February 24, 2004.² It aims to ensure that importing nations know about and agree to imports of chemicals that are banned or severely restricted in the exporting country or that are severely hazardous pesticide formulations. Many POPs fall into these categories.

The Aarhus POPs Protocol was concluded in 1998, has been ratified by 31 of the 55 States in the United Nations Economic Commission for Europe (UNECE), and entered into force for those parties in October 2003.³ The Protocol aims to eliminate or restrict production and use, ensure environmentally sound disposal, and restrict emissions for many of the same POPs that are covered by the Stockholm POPs Convention. Most are heavily restricted in the United States.

¹ The latest information on the Stockholm Convention is available at <http://chm.pops.int/Home/tabid/2121/mctl/ViewDetails/EventModID/7595/EventID/322/xmid/7598/Default.aspx>.

² The latest information on the PIC Convention is available at <http://www.pic.int/Home/tabid/855/language/en-US/Default.aspx>.

³ 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/status/98pop_st.htm.

Status

President Bush signed and submitted the two treaties to the Senate for advice and consent. If the Senate consents by a two-thirds majority, and if the United States enacts legislation needed to implement the treaties and the executive agreement in the United States, then the treaties could be ratified and the agreements would become binding U.S. law. The POPs Protocol does not require Senate approval; however, legislation is needed to resolve inconsistencies between provisions of all three agreements and two U.S. laws: the Toxic Substances Control Act (TSCA), which governs production and use of chemicals in U.S. commerce, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates pesticide sale and use within the United States.⁴

Bills in the 107th, 108th, 109th, 111th, and 112th Congresses would have authorized the U.S. Environmental Protection Agency to implement the agreements, but no proposal was enacted. No implementing legislation was proposed in the 110th Congress. In the 113th Congress, the Safe Chemicals Act (S. 696) would add a new Section 36 to TSCA to allow full U.S. implementation of all three international agreements. The authority provided by the bill would be specific to the three international agreements, rather than more generally authorizing regulatory activity to implement any ratified international agreement concerning chemicals. New TSCA Section 36 would prohibit production and use of chemicals when it was inconsistent with U.S. obligations under any of the three international agreements if they had entered into force for the United States. The bill also would amend TSCA 12 by eliminating Subsection (a), which provides an exclusion from TSCA requirements for chemicals manufactured, processed, or distributed in commerce solely for the purpose of export. S. 696 also would amend TSCA 12(b) to revise notification requirements for exports of specified chemicals.

The Chemical Safety Improvement Act (S. 1009) provides less clear-cut authority for regulating exported chemicals. S. 1009 would amend TSCA 12(a) to authorize EPA regulation of chemicals (as well as articles and mixtures containing such chemicals above a threshold concentration) manufactured solely for export if EPA had determined that they were not likely to meet, or did not meet, a safety standard. The safety standard established by S. 1009 would be a standard that ensures “no unreasonable risk of harm to human health or the environment” from exposure to the chemical. S. 1009 also would amend TSCA 12(b) to require exporters to notify EPA when intending to export a new chemical substance or mixture⁵ not likely to meet the safety standard; an existing chemical substance or mixture that does not meet the safety standard; or a chemical substance for which the United States is obligated by treaty to provide export notification. S. 1009 would require EPA to provide notice to importing nations that would satisfy any obligation of the United States under an applicable treaty if the chemical substance were covered by treaty.

To date, no legislation has been introduced in the 113th Congress that would amend FIFRA to allow implementation of the international agreements.

⁴ For summaries of these laws, see CRS Report RL31905, *The Toxic Substances Control Act (TSCA): A Summary of the Act and Its Major Requirements*, and CRS Report RL31921, *Pesticide Law: A Summary of the Statutes*, both by Linda-Jo Schierow.

⁵ TSCA and the bills all refer to “new” and “existing” chemicals. Existing chemicals are those in U.S. commerce that EPA has listed on an inventory. New chemicals have never previously been listed, but are proposed to be introduced into U.S. commerce.

Stakeholders appear united in their support for legislation authorizing regulation of the pesticides and other chemicals listed in annexes to the agreements. However, views diverge when changes to TSCA and FIFRA are perceived to either simplify or complicate existing regulatory procedures or standards under those laws, either for the listed POPs or for other chemicals that have been added, or which might be added in the future, through amendments to the agreements. Some believe that, having agreed to international actions (by signing them), the United States should expedite them. Others are more concerned with protecting the power of Congress to decide how and when to regulate particular chemicals.

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Acknowledgments

This report was written by Linda-Jo Schierow, who has retired from CRS.