

Union Calendar No. 399

109TH CONGRESS
2^D SESSION

H. R. 3849

[Report No. 109-668]

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2005

Mr. LUCAS (for himself, Mr. GOODLATTE, Mr. PETERSON of Minnesota, and Mr. HOLDEN) introduced the following bill; which was referred to the Committee on Agriculture

SEPTEMBER 19, 2006

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “PIC and POPs Con-
3 ventions and the LRTAP POPs Protocol Implementation
4 Act”.

5 **SEC. 2. DEFINITIONS.**

6 Section 2 of the Federal Insecticide, Fungicide, and
7 Rodenticide Act (7 U.S.C. 136 et seq.) is amended by add-
8 ing at the end the following:

9 “(pp) CONFERENCE.—The term ‘Conference’ means
10 the Conference of the Parties established by paragraph 1
11 of Article 19 of the POPs Convention.

12 “(qq) CONFERENCE LISTING DECISION.—The term
13 ‘Conference Listing Decision’ means a decision by the
14 Conference to approve an amendment to list a pesticide
15 in Annex A or Annex B to the POPs Convention.

16 “(rr) DESIGNATED NATIONAL AUTHORITY.—The
17 term ‘designated national authority’ means the authority
18 or authorities that a government has designated in a noti-
19 fication to the PIC Convention Secretariat in accordance
20 with Article 4 of the PIC Convention.

21 “(ss) EXECUTIVE BODY.—The term ‘Executive
22 Body’ means the Executive Body established by Article 10
23 of the 1979 Convention on Long-Range Transboundary
24 Air Pollution.

25 “(tt) EXECUTIVE BODY DECISION 1998/2.—The
26 term ‘Executive Body Decision 1998/2’ means the decision

1 of the Executive Body titled ‘Executive Body Decision
2 1998/2 on Information to Be Submitted and the Proce-
3 dure for Adding Substances to Annexes I, II, or III to
4 the Protocol on Persistent Organic Pollutants’ and any
5 other Executive Body decision done pursuant to Article
6 14 of the LRTAP POPs Protocol.

7 “(uu) HCH.—The term ‘HCH’ means
8 hexachlorocyclohexane.

9 “(vv) LRTAP POPs PESTICIDE.—The term
10 ‘LRTAP POPs pesticide’ means—

11 “(1) aldrin;

12 “(2) chlordane;

13 “(3) chlordecone;

14 “(4) dichlorodiphenyltrichloroethane (DDT);

15 “(5) dieldrin;

16 “(6) endrin;

17 “(7) HCH;

18 “(8) heptachlor;

19 “(9) hexachlorobenzene;

20 “(10) hexabromobiphenyl;

21 “(11) mirex;

22 “(12) PCBs;

23 “(13) toxaphene; and

24 “(14) any other pesticide—

1 “(A) that is listed on Annex I or Annex II
2 of the LRTAP POPs Protocol;

3 “(B) that has no existing United States
4 registrations that would prevent the United
5 States from complying with its obligations
6 under the LRTAP POPs Protocol if the United
7 States were to become a party to the LRTAP
8 POPs Protocol for that pesticide; and

9 “(C) for which an amendment listing it on
10 Annex I or Annex II of the LRTAP POPs Pro-
11 tocol has entered into force for the United
12 States.

13 “(ww) LRTAP POPs PROTOCOL.—The term
14 ‘LRTAP POPs Protocol’ means the Protocol on Persistent
15 Organic Pollutants to the 1979 Convention on Long-
16 Range Transboundary Air Pollution done at Aarhus on
17 June 24, 1998, if the United States is a party and any
18 subsequent amendment to which the United States is a
19 party.

20 “(xx) PCB.—The term ‘PCB’ means a poly-
21 chlorinated biphenyl.

22 “(yy) PIC CONVENTION.—The term ‘PIC Conven-
23 tion’ means the Rotterdam Convention on the Prior In-
24 formed Consent Procedure for Certain Hazardous Chemi-
25 cals and Pesticides in International Trade done at Rot-

1 terdam on September 10, 1998, if the United States is
2 a party and any subsequent amendment to which the
3 United States is a party.

4 “(zz) POPs CONVENTION.—The term ‘POPs Con-
5 vention’ means the Stockholm Convention on Persistent
6 Organic Pollutants done at Stockholm on May 22, 2001,
7 if the United States is a party and any subsequent amend-
8 ment to which the United States is a party.

9 “(aaa) POPs PESTICIDE.—The term ‘POPs pes-
10 ticide’ means—

11 “(1) aldrin;

12 “(2) chlordane;

13 “(3) dichlorodiphenyltrichloroethane (DDT);

14 “(4) dieldrin;

15 “(5) endrin;

16 “(6) heptachlor;

17 “(7) hexachlorobenzene;

18 “(8) mirex;

19 “(9) PCBs;

20 “(10) toxaphene; and

21 “(11) any other pesticide—

22 “(A) that is listed on Annex A or Annex
23 B of the POPs Convention;

24 “(B) that has no existing United States
25 registrations that would prevent the United

1 States from complying with its obligations
 2 under the POPs Convention if the United
 3 States were to become a party to the POPs
 4 Convention for that pesticide; and

5 “(C) for which an amendment listing it on
 6 Annex A or Annex B of the POPs Convention
 7 has entered into force for the United States.

8 “(bbb) POPs REVIEW COMMITTEE.—The term
 9 ‘POPs Review Committee’ means the Persistent Organic
 10 Pollutants Review Committee established under paragraph
 11 6 of Article 19 of the POPs Convention.”.

12 **SEC. 3. POPS CONVENTION, LRTAP POPS PROTOCOL, AND**
 13 **PIC CONVENTION.**

14 Section 17 of the Federal Insecticide, Fungicide, and
 15 Rodenticide Act (7 U.S.C. 136o) is amended—

16 (1) in the heading for the section, by striking
 17 “**IMPORTS AND EXPORTS.**” and inserting “**IM-**
 18 **PORTS, EXPORTS, AND INTERNATIONAL CON-**
 19 **VENTIONS.**”;

20 (2) in subsection (a)—

21 (A) in the matter preceding paragraph (1),
 22 by striking “this Act—” and inserting “this
 23 Act, if—”;

24 (B) in paragraph (1)—

1 (i) by striking “when” and inserting
2 “the pesticide or device or active ingredient
3 used in producing a pesticide is”; and

4 (ii) by striking “and” after the semi-
5 colon; and

6 (C) by striking paragraph (2) and all that
7 follows and inserting the following:

8 “(2) in the case of any pesticide other than a
9 pesticide registered under section 3 or sold under
10 section 6(a)(1), the foreign purchaser has, prior to
11 export, signed a statement acknowledging that the
12 purchaser understands that the pesticide is not reg-
13 istered for use in the United States and cannot be
14 sold in the United States under this Act; and

15 “(3) such export is in compliance with all of the
16 applicable provisions of this section.

17 A copy of the statement under paragraph (2) shall be
18 transmitted to an appropriate official of the government
19 of the importing country.”;

20 (3) in subsection (c), by adding at the end the
21 following: “Nothing in this subsection shall permit
22 the import of any POPS pesticide or LRTAP POPS
23 pesticide that otherwise is prohibited under sub-
24 section (e) of this section.”; and

1 (4) by striking subsections (d) and (e) and in-
2 serting the following:

3 “(d) COOPERATION IN INTERNATIONAL EFFORTS
4 GENERALLY.—The Administrator shall participate and
5 cooperate in any international efforts to develop improved
6 pesticide research and regulations.

7 “(e) POPS CONVENTION, LRTAP POPS PROTOCOL,
8 AND PIC CONVENTION.—

9 “(1) IN GENERAL.—The Administrator shall
10 participate in technical cooperation and capacity
11 building activities designed to support implementa-
12 tion of the POPs Convention, the LRTAP POPs
13 Protocol, and the PIC Convention.

14 “(2) PROHIBITIONS.—No person may sell, dis-
15 tribute, use, produce, or dispose of a POPS pesticide
16 or LRTAP POPS pesticide in a manner inconsistent
17 with obligations of the United States under the
18 POPs Convention or LRTAP POPs Protocol.

19 “(3) NOTICE AND REPORT AFTER DECISION
20 THAT SCREENING CRITERIA ARE MET UNDER THE
21 POPS CONVENTION OR AFTER RISK PROFILE SUB-
22 MITTED UNDER THE LRTAP POPS PROTOCOL.—

23 “(A) APPLICABILITY.—This paragraph ap-
24 plies if—

1 “(i) the POPs Review Committee or
2 Conference decides—

3 “(I) under paragraph 4(a) of Ar-
4 ticle 8 of the POPs Convention, that
5 a proposal for listing a pesticide in
6 Annex A, B, or C to the POPs Con-
7 vention fulfills the screening criteria
8 specified in Annex D to the POPs
9 Convention; or

10 “(II) under paragraph 5 of Arti-
11 cle 8 of the POPs Convention, that
12 such a proposal shall proceed; or

13 “(ii) a party to the LRTAP POPs
14 Protocol submits to the Executive Body a
15 risk profile in support of a proposal to list
16 a pesticide in Annex I, II, or III to the
17 LRTAP POPs Protocol.

18 “(B) NOTICE.—After the date of the POPs
19 Review Committee or Conference decision on a
20 proposal or the submission of a risk profile in
21 support of a proposal under the LRTAP POPs
22 Protocol described in clauses (i) or (ii) of sub-
23 paragraph (A), respectively, the Administrator
24 may—

1 “(i) publish in the Federal Register a
2 notice of the proposal; and

3 “(ii) provide opportunity for comment
4 on the proposal.

5 “(C) REQUIRED ELEMENTS OF NOTICE.—

6 A notice under subparagraph (B) shall—

7 “(i) identify the pesticide that is the
8 subject of the proposal;

9 “(ii) include a summary of the process
10 under the POPs Convention or the
11 LRTAP POPs Protocol for the submission
12 of a proposal and listing of a pesticide that
13 is the subject of a proposal (including cri-
14 teria applied in that process);

15 “(iii) include a summary of the POPs
16 Review Committee or Conference decision
17 and the basis for the decision or a sum-
18 mary of the risk profile that a party to the
19 LRTAP POPs Protocol submitted to the
20 Executive Body;

21 “(iv) request information relevant to
22 and comment on—

23 “(I) in the case of a pesticide
24 proposed for listing in an Annex to
25 the POPs Convention, the information

1 requirements and screening criteria
2 elements covered under Annex D to
3 the POPs Convention; or

4 “(II) in the case of a pesticide
5 proposed for listing in an Annex to
6 the LRTAP POPs Protocol, the infor-
7 mation referenced in paragraph 6(a)
8 of Article 14 of the LRTAP POPs
9 Protocol;

10 “(v) request information set forth in
11 subparagraph (D);

12 “(vi) include any other information
13 that the Administrator considers to be rel-
14 evant to the proposal;

15 “(vii) request information and com-
16 ment on information relevant to the risk
17 profile of the POPs Review Committee cov-
18 ered under Annex E to the POPs Conven-
19 tion and on information relevant to any
20 technical review conducted under para-
21 graph 2 of Executive Body Decision 1998/
22 2; and

23 “(viii) include a statement that any
24 information submitted may be part of the
25 record of any cancellation proceeding re-

1 lated to the pesticide that the Adminis-
2 trator may undertake under section 6.

3 “(D) PROVISION OF INFORMATION.—

4 “(i) PROVISION OF INFORMATION
5 UNDER POPS CONVENTION.—Within 60
6 days after the date of publication of the
7 notice under subparagraph (B) regarding a
8 proposal to list a pesticide on an Annex to
9 the POPs Convention, or within a later
10 date as determined by the Administrator,
11 any interested person may provide to the
12 Administrator information or comment
13 on—

14 “(I) the annual quantity of the
15 pesticide manufactured and the loca-
16 tions of the manufacture;

17 “(II) the uses of the pesticide;

18 “(III) the approximate annual
19 quantity of the pesticide that is re-
20 leased into the environment; and

21 “(IV) other information or moni-
22 toring data relating to the pesticide
23 that is consistent with the information
24 specified in paragraph 1 of Annex D,

1 and subsections (b) through (e) of
2 Annex E, to the POPs Convention.

3 “(ii) PROVISION OF INFORMATION
4 UNDER LRTAP POPS PROTOCOL.—Within
5 60 days after the date of publication of the
6 notice under subparagraph (B) regarding a
7 proposal to list a pesticide on an Annex of
8 the LRTAP POPs Protocol, or within a
9 later date as determined by the Adminis-
10 trator, any interested person may provide
11 to the Administrator information on—

12 “(I) the potential for long-range
13 transboundary atmospheric transport
14 of the pesticide;

15 “(II) the toxicity of the pesticide;

16 “(III) the persistence of the pes-
17 ticide, including biotic degradation
18 process and rates of degradation prod-
19 ucts;

20 “(IV) the bioaccumulation of the
21 pesticide, including bioavailability;

22 “(V) the annual quantity of the
23 pesticide manufactured and the loca-
24 tions of the manufacture;

25 “(VI) the uses of the pesticide;

1 “(VII) the approximate annual
2 quantity of the pesticide released into
3 the environment;

4 “(VIII) environmental monitoring
5 data relating to the pesticide (in areas
6 distant from sources);

7 “(IX) information on—

8 “(aa) alternatives to the
9 uses of the pesticide and the effi-
10 cacy of each alternative; and

11 “(bb) known adverse envi-
12 ronmental or human health ef-
13 fects associated with each alter-
14 native;

15 “(X) information on—

16 “(aa) process changes, con-
17 trol technologies, operating prac-
18 tices, and other pollution preven-
19 tion techniques that can be used
20 to reduce the emissions of the
21 pesticide; and

22 “(bb) the applicability and
23 effectiveness of each technique
24 describe in item (aa); and

1 “(XI) information on nonmone-
2 tary costs and benefits and the quan-
3 tifiable costs and benefits associated
4 with the use of each alternative de-
5 scribed in subclause (IX) or technique
6 described in subclause (X)(aa).

7 “(E) REPORT BY ADMINISTRATOR.—Based
8 upon information received under this paragraph
9 and any other relevant information available to
10 the Administrator, the Administrator, not later
11 than 240 days after the date of publication of
12 a notice under subparagraph (B), after con-
13 sulting with the Secretary of Agriculture or, for
14 public health pesticides, with the Secretary of
15 Health and Human Services, shall issue for
16 public comment and peer review a report that
17 contains, at a minimum—

18 “(i) information on the production
19 and uses in the United States of the pes-
20 ticide; and

21 “(ii) a review of the benefits and risks
22 in the United States and internationally
23 associated with the production and uses in
24 the United States and internationally of
25 the pesticide.

1 “(4) NOTICE AND REPORT AFTER DECISION
2 THAT GLOBAL ACTION IS WARRANTED UNDER THE
3 POPS CONVENTION OR THAT FURTHER CONSIDER-
4 ATION OF THE PESTICIDE IS WARRANTED UNDER
5 THE LRTAP POPS PROTOCOL.—

6 “(A) APPLICABILITY.—This paragraph ap-
7 plies if—

8 “(i) the POPs Review Committee de-
9 cides, under paragraph 7(a) of Article 8 of
10 the POPs Convention, that global action is
11 warranted with respect to the pesticide
12 that is the subject of the proposal, or the
13 Conference decides under paragraph 8 of
14 that Article that the proposal shall pro-
15 ceed; or

16 “(ii) the Executive Body determines
17 pursuant to paragraph 2 of Executive
18 Body Decision 1998/2 that further consid-
19 eration of the pesticide is warranted and
20 therefore requires 1 or more technical re-
21 views of the proposal.

22 “(B) NOTICE.—After the date of the deci-
23 sion or determination under subparagraph (A),
24 the Administrator may—

1 “(i) publish in the Federal Register a
2 notice of the decision or determination;
3 and

4 “(ii) provide an opportunity for com-
5 ment on the decision or determination.

6 “(C) REQUIRED ELEMENTS OF NOTICE.—

7 A notice under subparagraph (B) shall—

8 “(i) identify the pesticide that is the
9 subject of the proposal;

10 “(ii) include a summary of the POPs
11 Review Committee or Conference decision
12 and the basis for the decision or the Exec-
13 utive Body determination and the basis for
14 the determination;

15 “(iii) for a pesticide proposed for ad-
16 dition to an Annex of the POPs Conven-
17 tion, request information and comment on
18 socioeconomic considerations covered under
19 Annex F of the POPs Convention, includ-
20 ing on the technical feasibility and costs
21 and benefits of the range of possible prohi-
22 bitions outlined pursuant to clause (vii);

23 “(iv) for a pesticide proposed for list-
24 ing on an Annex to the LRTAP POPs

1 Protocol, request information and comment
2 on—

3 “(I) any additional measures not
4 outlined in the notice published pursu-
5 ant to clause (vii) that may exist to
6 reduce the risks of adverse health ef-
7 fects on human health or the environ-
8 ment that result from its long-range
9 transboundary atmospheric transport;

10 “(II) whether any of the addi-
11 tional measures or the measures out-
12 lined in the notice published pursuant
13 to subparagraph (vii) are technically
14 feasible; and

15 “(III) the associated costs and
16 benefits of the additional measures
17 and the measures outlined in the no-
18 tice published pursuant to subpara-
19 graph (vii);

20 “(v) request information on any cur-
21 rent or anticipated production or use of
22 the pesticide that is the subject of the pro-
23 posal for which the United States may
24 wish to seek an exemption or acceptable
25 purpose under the POPs Convention or al-

1 lowed restricted use or condition under the
2 LRTAP POPs Protocol;

3 “(vi) request information set forth
4 under subparagraph (D);

5 “(vii) outline a broad range of pos-
6 sible actions that the United States might
7 take to address any risks that the pesticide
8 may pose;

9 “(viii) specify whether there have been
10 any changes to registrations of or toler-
11 ances for the pesticide since the date of
12 publication of the notice under paragraph
13 (3); and

14 “(ix) include a statement that any in-
15 formation submitted may be part of the
16 record of any cancellation proceeding re-
17 lated to the pesticide that the Adminis-
18 trator may undertake under section 6.

19 “(D) PROVISION OF INFORMATION.—With-
20 in 60 days after the date of publication of the
21 notice under subparagraph (B), or within a
22 later date as determined by the Administrator,
23 any interested person may provide to the Ad-
24 ministrator—

1 “(i) consistent with the information
2 needs described in Annex F to the POPs
3 Convention, any information relevant to—

4 “(I) a risk management evalua-
5 tion carried out under paragraph 7 of
6 Article 8 of the POPs Convention; or

7 “(II) a decision by the Con-
8 ference under paragraph 9 of Article
9 8 of the POPs Convention;

10 “(ii) consistent with the information
11 needs for the technical review described in
12 paragraph 2 of Executive Body Decision
13 1998/2, any information relevant to such
14 technical review or to an Executive Body
15 decision made under paragraph 3 of Arti-
16 cle 14 of the LRTAP POPs Protocol;

17 “(iii) any information relevant to an
18 action under this subsection; and

19 “(iv) information on any article in use
20 that consists of, contains, or is contami-
21 nated with the pesticide.

22 “(E) REPORT BY ADMINISTRATOR.—Based
23 upon information received under this paragraph
24 and any other information available to the Ad-
25 ministrator, the Administrator, not later than

240 days after the date of publication of the notice under subparagraph (B), after consulting with the Secretary of Agriculture or, for public health pesticides, with the Secretary of Health and Human Services, shall issue a report for public comment and peer review that contains, at a minimum, information relating to the costs and benefits of the prohibitions or restrictions outlined in response to paragraph (4)(C)(vii) that could be placed on the sale, distribution, production, use, or disposal of the pesticide (including the possible consequences of using alternative products or processes).

“(5) NOTICE AFTER RECOMMENDATION THAT CONFERENCE CONSIDER LISTING OR AFTER COMPLETION OF A TECHNICAL REVIEW.—

“(A) IN GENERAL.—If the POPs Review Committee recommends, under paragraph 9 of Article 8 of the POPs Convention, that the Conference consider making a Conference listing decision with respect to the pesticide in accordance with the proposal, or after completion of a technical review of a proposal to list a pesticide on an Annex to the LRTAP POPs Protocol, the Administrator may—

1 “(i) publish in the Federal Register a
2 notice of the recommendation or comple-
3 tion of the technical review; and

4 “(ii) provide opportunity for comment
5 on the recommendation or the technical re-
6 view.

7 “(B) REQUIRED ELEMENTS.—A notice
8 under subparagraph (A) shall—

9 “(i) include a summary of the POPs
10 Review Committee recommendation and
11 the basis for the recommendation or a
12 summary of the technical review;

13 “(ii) summarize any control measures
14 for the pesticide that are identified by the
15 POPs Review Committee or in the tech-
16 nical review; and

17 “(iii) include a statement that any in-
18 formation submitted may be part of the
19 record of any cancellation proceeding re-
20 lated to the pesticide that the Adminis-
21 trator may undertake under section 6.

22 “(6) PROVISION OF INFORMATION TO THE PUB-
23 LIC.—Not later than March 1st of each calendar
24 year (and September 1st of each calendar year un-
25 less nothing has changed from the March 1st notice

1 or the Administrator has notified the public in other
2 Federal Register notices of the changes), the Admin-
3 istrator shall publish a notice in the Federal Reg-
4 ister that—

5 “(A) identifies any pesticide that is the
6 subject of a listing proposal under Article 8 of
7 the POPs Convention or Article 14 of the
8 LRTAP POPs Protocol and describes, as of
9 December 31st of the previous calendar year
10 (or June 31st of the current calendar year for
11 notices published on September 1st), the exact
12 status of the proposal in the relevant listing
13 process, including—

14 “(i) whether the POPs Review Com-
15 mittee or Conference has decided that,
16 under Article 8, paragraphs 4 or 5 of the
17 POPs Convention, the proposal to list the
18 pesticide shall proceed to preparation of a
19 risk profile of the pesticide;

20 “(ii) whether the POPs Review Com-
21 mittee has completed a risk profile;

22 “(iii) whether the POPs Review Com-
23 mittee or Conference has decided that,
24 under Article 8, paragraph 7(a) or para-
25 graph 8 of the POPs Convention, the pro-

1 positional to list the pesticide shall proceed to
2 preparation of a risk management evaluation
3 of the pesticide that includes analyses
4 of possible control measures for the pesticide;
5

6 “(iv) whether the POPs Review Committee
7 has completed the risk management
8 evaluation;

9 “(v) whether the POPs Review Committee
10 has made a listing recommendation
11 to the Conference regarding the pesticide
12 and a general description of the recommendation;
13

14 “(vi) whether the Executive Body has
15 determined that a technical review of the
16 proposal to list a pesticide on Annex I or
17 II of the LRTAP POPs Protocol is warranted;
18

19 “(vii) whether a technical review of a
20 proposal to list a pesticide on Annex I or
21 II of the LRTAP POPs Protocol has been
22 completed; and

23 “(viii) whether any task force, working
24 group, or other body that is subsidiary
25 to the Executive Body has made a rec-

ommendation regarding the listing of the
pesticide on Annex I or II of the LRTAP
POPs Protocol and a description of the
recommendation;

“(B) identifies any pesticide that the Con-
ference or Executive Body has added to Annex
A or B of the POPs Convention or Annex I or
II of the LRTAP POPs Protocol since the last
notice the Administrator published under this
paragraph and provides a general description of
the control measures related to the pesticide;
and

“(C) describes generally any regulatory ac-
tion that the Administrator has taken, is tak-
ing, or has listed as under development or re-
view in the Unified Regulatory Agenda (as re-
quired by section 602 of title 5, United States
Code) related to any pesticide that the Con-
ference or Executive Body added to Annex A or
B of the POPs Convention or Annex I or II of
the LRTAP POPs Protocol since the last notice
the Administrator published under this para-
graph.

1 The Administrator shall consider any comments that
2 the Administrator receives on the notices that the
3 Administrator publishes under this paragraph.

4 “(7) CONSIDERATION OF INFORMATION IN CAN-
5 CELLATION OF REGISTRATION OR PROHIBITION OF
6 PRODUCTION FOR EXPORT OR EXPORT OF PES-
7 TICIDES.—In a cancellation proceeding under section
8 6 for a pesticide listed on Annex A or Annex B of
9 the POPs Convention or Annex I or Annex II of the
10 LRTAP POPs Protocol, the Administrator may con-
11 sider—

12 “(A) the record compiled under paragraphs
13 (3), (4), and (5) of this subsection;

14 “(B) domestic sale, distribution, produc-
15 tion, export, and use of the pesticide;

16 “(C) national and international con-
17 sequences that are likely to arise as a result of
18 domestic regulatory actions (including the pos-
19 sible consequences of using alternative products
20 or processes);

21 “(D) for pesticides listed on Annex A or
22 Annex B of the POPs Convention—

23 “(i) the POPs Review Committee rec-
24 ommendation under paragraph 9 of Article
25 8 of the POPs Convention;

1 “(ii) the Conference listing decision;

2 “(iii) information that the United
3 States submits to the POPs Review Com-
4 mittee or to the Conference pursuant to
5 Article 8 of the POPs Convention; and

6 “(iv) the reports, including any
7 versions of the reports revised to reflect in-
8 formation received through public comment
9 and peer review, that the Administrator is
10 required to issue for public comment and
11 peer review pursuant to paragraphs (3)(E)
12 and (4)(E) of this subsection;

13 “(E) for pesticides listed on Annex I or
14 Annex II of the LRTAP POPs Protocol—

15 “(i) any technical review conducted
16 pursuant to paragraph 2 of Executive
17 Body Decision 1998/2;

18 “(ii) the LRTAP POPs Protocol list-
19 ing decision;

20 “(iii) the reports, including any
21 version of the reports revised to reflect in-
22 formation received through public comment
23 or peer review, that the Administrator is
24 required to issue for public comment and

1 peer review pursuant to paragraphs (3)(E)
2 and (4)(E) of this subsection; and

3 “(iv) information that the United
4 States submitted to the Executive Body, or
5 a subsidiary of the Executive Body, in re-
6 lation to a technical review or listing deci-
7 sion; and

8 “(F) scientific information included in or
9 used to develop or support the items listed in
10 subparagraphs (A), (B), (C), (D), and (E).

11 In determining the weight to give such scientific in-
12 formation, the Administrator shall consider the ex-
13 tent to which it is consistent with generally accepted
14 scientific principles, including, when available, peer
15 reviewed science and supporting studies.

16 “(8) NO EFFECT ON OTHER PROVISIONS.—
17 Nothing in this subsection authorizes any sale, dis-
18 tribution, use, production, or disposal of any POPS
19 pesticide or LRTAP POPS pesticide that is prohib-
20 ited under any other provision of law. Nothing in
21 this subsection should be interpreted as interfering
22 with or being a prerequisite to the Administrator
23 taking any action authorized by section 6.

24 “(9) REQUIREMENTS FOR EXPORTS.—In the
25 case of a pesticide or active ingredient used in pro-

1 ducing a pesticide identified by the Administrator as
2 listed on Annex III of the PIC Convention in a no-
3 tice issued under paragraph (12)(C), any person
4 that distributes in commerce the pesticide or active
5 ingredient used in producing a pesticide for export
6 shall comply with any export conditions or restric-
7 tions identified by the Administrator in the notice.

8 “(10) PRE-EXPORT NOTICES.—

9 “(A) IN GENERAL.—

10 “(i) REQUIREMENT.—In the case of—

11 “(I) a pesticide or active ingre-
12 dient used in producing a pesticide
13 that the Administrator determines to
14 be banned or severely restricted under
15 paragraph (12)(A);

16 “(II) a pesticide or active ingre-
17 dient used in producing a pesticide
18 identified by the Administrator in a
19 notice issued under paragraph
20 (12)(C); or

21 “(III) a POPs pesticide the ex-
22 port of which is not prohibited under
23 paragraph (2);

24 the exporter of the pesticide or active in-
25 gredient used in producing a pesticide shall

1 provide to the Administrator notice of the
2 intent of the exporter to export the pes-
3 ticide.

4 “(ii) TIMING OF NOTICE FOR BANNED
5 OR SEVERELY RESTRICTED PESTICIDE OR
6 ACTIVE INGREDIENT USED IN PRODUCING
7 A PESTICIDE.—

8 “(I) FIRST EXPORT.—In the case
9 of a first export that an exporter
10 makes from the territory of the
11 United States to each importing for-
12 eign state after the Administrator
13 issues a notice under paragraph
14 (12)(A), the exporter shall provide the
15 notice so that the Administrator re-
16 ceives the notice not earlier than 45
17 nor later than 15 calendar days before
18 the date of export.

19 “(II) SUBSEQUENT EXPORTS.—

20 In the case of subsequent exports to
21 the importing foreign state in cal-
22 endar years subsequent to the notifi-
23 cation provided under subclause (I),
24 the exporter shall provide the notice
25 so that the Administrator receives the

1 notice not earlier than 45 nor later
2 than 15 calendar days before the date
3 of the first export in each calendar
4 year.

5 “(iii) TIMING OF PRE-EXPORT NOTICE
6 FOR PESTICIDES LISTED ON ANNEX III OF
7 THE PIC CONVENTION.—

8 “(I) FIRST EXPORT.—In the case
9 of a first export that an exporter
10 makes from the territory of the
11 United States to each importing for-
12 eign state after the Administrator no-
13 tifies the public under paragraph
14 (12)(C), the exporter shall provide the
15 notice so that the Administrator re-
16 ceives the notice not earlier than 45
17 nor later than 15 calendar days before
18 the date of export.

19 “(II) SUBSEQUENT EXPORTS.—
20 In the case of subsequent exports by
21 the exporter to the importing foreign
22 state in calendar years subsequent to
23 the notification provided under sub-
24 clause (I), the exporter shall provide
25 the notice so that the Administrator

1 receives the notice not earlier than 45
2 nor later than 15 calendar days before
3 the date of the first such subsequent
4 export in each calendar year.

5 “(III) CHANGED CIRCUMSTANCES
6 MERITING NEW NOTICE.—If condi-
7 tions or restrictions imposed by the
8 importing foreign state change and
9 the Administrator notifies the public
10 of the change under paragraph
11 (12)(C), or if an earlier pre-export no-
12 tice no longer applies, the exporter
13 shall provide the notice so that the
14 Administrator receives the notice not
15 earlier than 45 nor later than 15 cal-
16 endar days before the date of export.

17 “(iv) TIMING OF PRE-EXPORT NOTICE
18 FOR PESTICIDE THE EXPORT OF WHICH IS
19 NOT PROHIBITED UNDER PARAGRAPH
20 (2).—

21 “(I) FIRST EXPORT OF THE CAL-
22 ENDAR YEAR.—In the case of the first
23 export that an exporter makes from
24 the territory of the United States to
25 each importing foreign state of a pes-

1 ticide not prohibited from being ex-
2 ported under paragraph (2), the ex-
3 porter shall provide the notice so that
4 the Administrator receives the notice
5 not earlier than 45 nor later than 15
6 calendar days before the date of the
7 first export.

8 “(II) SUBSEQUENT EXPORTS.—

9 In the case of subsequent exports by
10 the exporter to the importing foreign
11 state in calendar years subsequent to
12 the notification provided under sub-
13 clause (I) to the importing foreign
14 state, the exporter shall provide the
15 notice so that the Administrator re-
16 ceives the notice not earlier than 45
17 nor later than 15 calendar days before
18 the date of the first such subsequent
19 export in each calendar year.

20 “(III) CHANGED CIRCUMSTANCES

21 MERITING NEW NOTICE.—If the infor-
22 mation provided in an earlier pre-ex-
23 port notice is no longer accurate, the
24 exporter shall provide the notice so
25 that the Administrator receives the

1 notice not earlier than 45 nor later
2 than 15 calendar days before the date
3 of export.

4 “(B) ALTERNATE TIME FRAME FOR NO-
5 TICES.—

6 “(i) DISCRETIONARY ALTERNATE
7 TIME FRAMES.—Notwithstanding clauses
8 (ii), (iii), and (iv) of subparagraph (A), the
9 Administrator may set an alternate time
10 frame if the Administrator determines that
11 such alternate time frame is appropriate
12 and is able, within such alternate time
13 frame, to administer notice activities in ac-
14 cordance with the PIC Convention and
15 comply with the POPs Convention.

16 “(ii) MANDATORY REVIEW OF STATU-
17 TORY TIME FRAMES AND PROCESSES.—
18 Within 18 months of entry into force for
19 the United States of the PIC Convention
20 and within 18 months of entry into force
21 for the United States of the POPs Conven-
22 tion, the Administrator shall review the
23 statutory time frames for receipt of pre-ex-
24 port notices and the Administrator’s proc-
25 essing of such notices. In review of such

1 time frames and processes, the Adminis-
2 trator shall consider whether amendments
3 to the time frames and modifications to
4 the processes would be appropriate to ad-
5 minister notice activities in accordance
6 with the PIC Convention and to comply
7 with the POPs Convention.

8 “(C) CONTENT OF PRE-EXPORT NO-
9 TICES.—

10 “(i) NOTICES FOR BANNED OR SE-
11 VERELY RESTRICTED PESTICIDE OR AC-
12 TIVE INGREDIENT USED IN PRODUCING A
13 PESTICIDE.—A notice under subparagraph
14 (A)(ii) shall include—

15 “(I) the name and address of the
16 exporter;

17 “(II) the name and address of
18 the appropriate designated national
19 authority of the United States;

20 “(III) the name and address of
21 the appropriate designated national
22 authority of the importing foreign
23 state, if available;

24 “(IV) the name and address of
25 the importer;

1 “(V) the name of the pesticide or
2 active ingredient used in producing a
3 pesticide for which the notice is re-
4 quired;

5 “(VI) the expected date of ex-
6 port;

7 “(VII) information relating to
8 the foreseen uses of the pesticide or
9 active ingredient used in producing a
10 pesticide, if known, in the importing
11 foreign state;

12 “(VIII) information on pre-
13 cautionary measures to reduce expo-
14 sure to, and emission of, the pesticide
15 or active ingredient used in producing
16 a pesticide;

17 “(IX) information relating to the
18 concentration of the pesticide or active
19 ingredient used in producing a pes-
20 ticide; and

21 “(X) any other information speci-
22 fied in Annex V to the PIC Conven-
23 tion.

24 “(ii) NOTICES FOR PESTICIDES LIST-
25 ED ON ANNEX III OF THE PIC CONVEN-

1 TION.—A notice under subparagraph
2 (A)(iii) shall include—

3 “(I) all of the information re-
4 quired to be included under subpara-
5 graph (C)(i);

6 “(II) any information relating to
7 export conditions or restrictions iden-
8 tified by the Administrator in the no-
9 tice issued under paragraph (12)(C)
10 with respect to the pesticide;

11 “(III) a general description of
12 the manner in which the export com-
13 plies with those conditions; and

14 “(IV) any other information that
15 the Administrator determines by order
16 published in the Federal Register to
17 be necessary for effective enforcement
18 of the export conditions or restrictions
19 applicable to the pesticide.

20 “(iii) NOTICES FOR PESTICIDE THE
21 EXPORT OF WHICH IS NOT PROHIBITED
22 UNDER PARAGRAPH (2).—A notice sub-
23 mitted to the Administrator under sub-
24 paragraph (A)(iv) shall include—

1 “(I) the name and address of the
2 exporter;

3 “(II) the name and address of
4 the importer;

5 “(III) a specification of the iden-
6 tity of the POPs pesticide;

7 “(IV) a general description of
8 how the export is in accordance with
9 the provisions related to export in
10 paragraph 2 of Article 3, or other ap-
11 plicable provision, of the POPs Con-
12 vention; and

13 “(V) such other information as
14 the Administrator determines by order
15 published in the Federal Register to
16 be necessary for enforcement of the
17 export-related obligations of the POPs
18 Convention applicable to the pesticide.

19 “(D) PRE-EXPORT NOTICES ACCOM-
20 PANYING EACH EXPORT.—An exporter shall en-
21 sure that a copy of the most recent applicable
22 pre-export notice accompanies each shipment
23 for export and is available for inspection upon
24 export for—

1 “(i) any pesticide or active ingredient
2 used in producing a pesticide that the Ad-
3 ministrator has identified under paragraph
4 (12)(C) as being listed on Annex III of the
5 PIC Convention; or

6 “(ii) any POPs pesticide that is ex-
7 ported.

8 “(E) RETENTION OF PRE-EXPORT NO-
9 TICES.—

10 “(i) IN GENERAL.—An exporter re-
11 quired to provide a notice under clauses
12 (iii) and (iv) of subparagraph (A) shall
13 comply with sections 8 and 9 and any reg-
14 ulations promulgated under those sections
15 with regard to maintenance of the notice
16 and other documents used to generate the
17 notice and with regard to their availability
18 for inspection and copying.

19 “(ii) TIME PERIOD FOR RETEN-
20 TION.—Notwithstanding clause (i), such
21 exporter shall maintain a copy of the no-
22 tice and other documents used to generate
23 the notice for a period of not less than 3
24 years beginning on the date on which the
25 notice is provided.

1 “(11) LABELING REQUIREMENTS.—

2 “(A) IN GENERAL.—In the case of any
3 pesticide or active ingredient used in producing
4 a pesticide that is the subject of a notice issued
5 under subparagraph (A) or (C) of paragraph
6 (12) and that is sold, distributed, or produced,
7 the pesticide or active ingredient used in pro-
8 ducing a pesticide, shall, in accordance with the
9 PIC Convention—

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

13 “(ii) be accompanied by shipping doc-
14 uments that include any relevant safety
15 data sheets on the pesticide.

16 “(B) CUSTOM CODES.—A pesticide or ac-
17 tive ingredient used in producing a pesticide
18 that is the subject of a notice issued under
19 paragraph (12)(C) and that is distributed or
20 sold for export shall be accompanied by ship-
21 ping documents that bear, at a minimum, any
22 appropriate harmonized system customs codes
23 assigned by the World Customs Organization.

24 “(12) NOTICE REQUIREMENTS AND EXEMP-
25 TION.—

1 “(A) DETERMINATION WHETHER PES-
2 TICIDE IS BANNED OR SEVERELY RE-
3 STRICTED.—

4 “(i) IN GENERAL.—The Administrator
5 shall determine whether a pesticide or ac-
6 tive ingredient used in producing a pes-
7 ticide is banned or severely restricted with-
8 in the United States (as those terms are
9 defined by the PIC Convention).

10 “(ii) NOTICE OF DETERMINATIONS.—
11 Notwithstanding any other provision of
12 law, the Administrator shall issue to the
13 Secretariat of the PIC Convention and the
14 public a notice of each determination
15 under subparagraph (A) that includes—

16 “(I) in the case of a notice to the
17 Secretariat of the PIC Convention,
18 the information specified in Annex I
19 to the PIC Convention; and

20 “(II) in the case of a notice to
21 the public, at a minimum, a summary
22 of that information.

23 “(B) NOTICE TO FOREIGN COUNTRIES.—

24 “(i) IN GENERAL.—Notwithstanding
25 any other provision of law, on receipt of a

1 notice of intent to export under paragraph
2 (10)(A)(ii), the Administrator shall provide
3 a copy of the notice to the designated na-
4 tional authority of the importing foreign
5 state.

6 “(ii) NONIDENTIFIED DESIGNATED
7 NATIONAL AUTHORITY.—In a case in
8 which a designated national authority has
9 not been identified, the Administrator shall
10 provide the notice of intent to export to
11 any other appropriate official of the im-
12 porting foreign state, as identified by the
13 Administrator.

14 “(C) NOTICE TO PUBLIC.—

15 “(i) IN GENERAL.—The Administrator
16 shall issue a notice to inform the public
17 of—

18 “(I) any pesticide that is listed
19 on Annex III to the PIC Convention;
20 and

21 “(II) any condition or restriction
22 of an importing foreign state that is
23 applicable to the import, in accord-
24 ance with the PIC Convention, of the
25 pesticide.

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

8 “(I) transmits import decisions of
9 the parties to the PIC Convention; or

10 “(II) provides notice of the fail-
11 ure of the parties to provide import
12 decisions.

13 “(iii) TREATMENT OF CONDITIONS
14 AND RESTRICTIONS.—A condition or re-
15 striction identified by a notice required
16 under clause (i) shall be considered to be
17 an export condition or restriction for the
18 purpose of paragraph (9).

19 “(D) NOTICE OF EXEMPTION.—The Ad-
20 ministrator may issue a notice exempting any
21 pesticide or active ingredient used in producing
22 a pesticide from the requirements of paragraphs
23 (9) through (11) if the Administrator deter-
24 mines that the exemption would be consistent
25 with the PIC Convention or POPs Convention.

1 “(13) HARMONIZATION OF POPS CONVENTION
2 AND LRTAP POPS PROTOCOL.—

3 “(A) IN GENERAL.—If a pesticide is both
4 a POPs pesticide and a LRTAP POPs pes-
5 ticide, in the case of a conflict between a provi-
6 sion of this subsection applicable to a POPs
7 pesticide and a provision of this subsection ap-
8 plicable to a LRTAP POPs pesticide, the more
9 stringent provision shall apply, as determined
10 by the Administrator.

11 “(B) APPLICATION.—In the case of a pes-
12 ticide described in subparagraph (A), this para-
13 graph shall be applied in such a manner as to
14 ensure that the United States is in compliance
15 with its obligations under the POPs Convention
16 and the LRTAP POPs Protocol with respect to
17 the pesticide.

18 “(14) HARMONIZATION OF POPS CONVENTION
19 AND PIC CONVENTION.—

20 “(A) IN GENERAL.—If the export of a pes-
21 ticide is addressed or restricted under para-
22 graphs (2) through (7) and paragraphs (9)
23 through (12), all of those paragraphs shall
24 apply to the pesticide.

1 “(B) CONFLICT.—In the case of a conflict
2 between paragraphs (2) through (7) and para-
3 graphs (9) through (12) with respect to a pes-
4 ticide, the more stringent provision shall gov-
5 ern.

6 “(C) APPLICATION.—With respect to a
7 pesticide, paragraphs (2) through (12) shall be
8 applied in manner as to ensure that the United
9 States is in compliance with its obligations
10 under both the POPs Convention and the PIC
11 Convention with respect to the pesticide.

12 “(f) REGULATIONS.—

13 “(1) IN GENERAL.—The Administrator may
14 promulgate such regulations as the Administrator
15 determines to be necessary—

16 “(A) to facilitate implementation of this
17 section;

18 “(B) to allow the pre-export notice require-
19 ment under this section and any pre-export no-
20 tice requirement in other provisions of this Act
21 or in any other Federal law to be satisfied by
22 a single notice; and

23 “(C) to ensure compliance with the PIC
24 Convention, the POPs Convention, and the
25 LRTAP POPs Protocol.

1 “(2) IMPORTATION OF PESTICIDES AND DE-
2 VICES.—The Secretary of the Treasury, in consulta-
3 tion with the Administrator, shall prescribe regula-
4 tions for the enforcement of subsection (c) of this
5 section.”.

6 **SEC. 4. CONFORMING AMENDMENTS.**

7 The Federal Insecticide, Fungicide, and Rodenticide
8 Act is amended—

9 (1) in section 3(b) (7 U.S.C. 136a(b)), in the
10 matter preceding paragraph (1), by striking “A pes-
11 ticide” and inserting “Except as provided in section
12 17, a pesticide”; and

13 (2) in section 12(a)(2) (7 U.S.C. 136j(a)(2))—

14 (A) in subparagraph (R), by striking “or”
15 after the semicolon;

16 (B) in subparagraph (S), by striking the
17 period and inserting “; or”; and

18 (C) by adding at the end the following:

19 “(T) to violate any provision of section 17
20 or any regulation promulgated under that sec-
21 tion.”.

1 **SEC. 5. CONFORMING AMENDMENTS TO FIFRA TABLE OF**
 2 **CONTENTS.**

3 The table of contents in section 1(b) of the Federal
 4 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
 5 prec. 121) is amended—

6 (1) in the items relating to section 2, by adding
 7 at the end the following:

“(pp) Conference.
 “(qq) Conference Listing Decision.
 “(rr) Designated national authority.
 “(ss) Executive Body.
 “(tt) Executive Body Decision 1998/2.
 “(uu) HCH.
 “(vv) LRTAP POPs pesticide.
 “(ww) LRTAP POPs protocol.
 “(xx) PCB.
 “(yy) PIC Convention.
 “(zz) POPs Convention.
 “(aaa) POPs pesticide.
 “(bbb) POPs Review Committee.”;

8 and

9 (2) in the items relating to section 17, by strik-
 10 ing the items relating to subsections (d) and (e) and
 11 inserting the following:

“(d) Cooperation in international efforts generally.
 “(e) Pops Convention, LRTAP Pops Protocol, and PIC Convention.
 “(1) In general.
 “(2) Prohibitions.
 “(3) Notice and report after decision that screening criteria are met under
 the POPS Convention or after risk profile submitted
 under the LRTAP POPS Protocol.
 “(4) Notice and report after decision that global action is warranted under
 the POPS Convention or that further consideration of the
 pesticide is warranted under the LRTAP POPS Protocol.
 “(5) Notice after recommendation that conference consider listing or after
 completion of a technical review.
 “(6) Provision of information to the public.
 “(7) Consideration of information in cancellation of registration or prohibi-
 tion of production for export or export of pesticides.
 “(8) No effect on other provisions.
 “(9) Requirements for exports.
 “(10) Pre-export notices.

- “(11) Labeling requirements.
 - “(12) Notice requirements and exemption.
 - “(13) Harmonization of POPS convention and LRTAP POPS protocol.
 - “(14) Harmonization of POPS convention and PIC convention.
- “(f) Regulations.
- “(1) In general.
 - “(2) Importation of pesticides and devices.”.

Union Calendar No. 399

109TH CONGRESS
2^D Session

H. R. 3849

[Report No. 109-668]

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

SEPTEMBER 19, 2006

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed