

104TH CONGRESS
1ST SESSION

H. R. 2835

To reduce the risk of mercury pollution through use reduction, increased recycling, and reduction of emissions into the environment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 22, 1995

Mr. PALLONE introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To reduce the risk of mercury pollution through use reduction, increased recycling, and reduction of emissions into the environment, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 This Act may be cited as the “Mercury Environ-
5 mental Risk and Comprehensive Utilization Reduction Ini-
6 tiative”.

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings and purposes.
- Sec. 3. Prohibition on mercury batteries.
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- Sec. 6. Prohibition on use of mercury as a fungicide.
- Sec. 7. Use and disposal of mercury by Department of Defense.
- Sec. 8. Requirements for waste processors and disposal facilities.
- Sec. 9. Surcharge on mercury air emissions.
- Sec. 10. FDA study of mercury compounds in drugs and food.

1 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) On the basis of available scientific and med-
5 ical evidence, exposure to mercury and other toxic
6 metals, is of concern to human health and the envi-
7 ronment.

8 (2) The presence of mercury and other toxic
9 metals in consumer products is of concern in light
10 of the health consequences associated with exposure
11 to mercury and other toxic metals.

12 (3) The presence of mercury and other toxic
13 metals in certain batteries is of special concern, par-
14 ticularly in light of the substantial quantity of used
15 batteries discarded annually in the solid waste
16 stream and the potential environmental and health
17 consequences associated with land disposal,
18 composting, or incineration.

19 (4) A comprehensive study of the use of mer-
20 cury by the Department of Defense will significantly
21 further the goal of reducing mercury pollution.

22 (b) PURPOSES.—It is the purpose of this Act to—

1 (1) reduce the quantity of mercury and toxic
2 metals entering solid waste landfills, incinerators,
3 and composting facilities by phasing-out or greatly
4 reducing the use of mercury in certain products and
5 by providing for the efficient and cost-effective col-
6 lection and recycling or proper disposal of used bat-
7 teries and other products containing mercury;

8 (2) educate the public concerning the collection,
9 recycling, and proper disposal of such products;

10 (3) reduce the quantity of mercury entering the
11 environment by greatly reducing air emissions of
12 mercury from stationary sources;

13 (4) increase public knowledge of the sources of
14 mercury exposure and the threat to public health
15 posed by such exposure; and

16 (5) significantly decrease the threat to human
17 health and the environment posed by mercury.

18 **SEC. 3. PROHIBITION ON MERCURY BATTERIES.**

19 The Toxic Substances Control Act is amended by in-
20 serting the following after title IV:

21 **“TITLE V—BATTERIES**

22 **“SEC. 501. PROHIBITION ON MERCURY BATTERIES.**

23 “(a) DEFINITIONS.—As used in this section:

1 “(1) **BUTTON CELL.**—The term ‘button cell’,
2 used with respect to a battery, means any button-
3 shaped or coin-shaped battery.

4 “(2) **MERCURIC-OXIDE BATTERY.**—The term
5 ‘mercuric-oxide battery’ means a battery that uses a
6 mercuric-oxide electrode.

7 “(b) **LIMITATIONS ON THE SALE OF ALKALINE-MAN-**
8 **GANESE BATTERIES CONTAINING MERCURY.**—No person
9 shall introduce into interstate commerce, offer for such in-
10 troduction, or offer for promotional purposes any alkaline-
11 manganese battery manufactured on or after January 1,
12 1996, with a mercury content that was intentionally intro-
13 duced (as distinguished from mercury that may be inci-
14 dentally present in other materials), except that the limita-
15 tion on mercury content in alkaline-manganese button cell
16 batteries shall be 25 milligrams of mercury per button cell
17 battery.

18 “(c) **LIMITATIONS ON THE SALE OF ZINC CARBON**
19 **BATTERIES CONTAINING MERCURY.**—No person shall in-
20 troduce into interstate commerce, offer for such introduc-
21 tion, or offer for promotional purposes any zinc carbon
22 battery manufactured on or after January 1, 1997, that
23 contains any mercury that was intentionally introduced as
24 described in subsection (b).

1 “(d) LIMITATIONS ON THE SALE OF BUTTON CELL
2 MERCURIC-OXIDE BATTERIES.—No person shall intro-
3 duce into interstate commerce, offer for such introduction,
4 or offer for promotional purposes any button cell mer-
5 curic-oxide battery on or after January 1, 1997.

6 “(e) LIMITATIONS ON THE SALE OF MERCURIC-
7 OXIDE BATTERIES.—No person shall introduce into inter-
8 state commerce, offer for such introduction, or offer for
9 promotional purposes any mercuric-oxide battery on or
10 after January 1, 1997.

11 “(f) ENFORCEMENT.—(1) Whenever on the basis of
12 any information the Administrator determines that any
13 person has violated or is in violation of any requirement
14 of this section, the Administrator may issue an order as-
15 sessing a civil penalty for any past or current violation,
16 requiring compliance immediately or within a reasonable
17 specified time period, or both, or the Administrator may
18 commence a civil action in the United States district court
19 in the district in which the violation occurred for appro-
20 priate relief, including a temporary or permanent injunc-
21 tion.

22 “(2) Any order issued pursuant to this subsection
23 shall state with reasonable specificity the nature of the vio-
24 lation. Any penalty assessed in the order shall not exceed
25 \$10,000 for each such violation. In assessing such a pen-

1 alty, the Administrator shall take into account the serious-
2 ness of the violation and any good faith efforts to comply
3 with applicable requirements.

4 “(3) Any order issued under this section shall become
5 final unless, not later than 30 days after the order is
6 served, the person or persons named in the order request
7 a public hearing. If such a request is made, the Adminis-
8 trator shall promptly conduct a public hearing. In connec-
9 tion with any proceeding under this subsection, the Ad-
10 ministrator may issue subpoenas for the attendance and
11 testimony of witnesses and the production of relevant pa-
12 pers, books, and documents.

13 “(4) If a violator fails to take corrective action within
14 the time period specified in a compliance order issued
15 under this subsection, the Administrator may assess a civil
16 penalty of not more that \$10,000 for the continued non-
17 compliance with the order.

18 “(5) This section shall be enforced only pursuant to
19 this subsection, notwithstanding the provisions of title I.

20 “(g) INFORMATION GATHERING AND ACCESS.—(1)
21 Any person who is required to comply with this section,
22 including a mercury-containing battery manufacturer and
23 any authorized agent of such a manufacturer shall estab-
24 lish and maintain such records and report such informa-

1 tion as the Administrator may by rule reasonably require
2 to carry out this section.

3 “(2) The Administrator, or an authorized representa-
4 tive of the Administrator upon presentation of credentials,
5 may at reasonable times have access to and copy any
6 records required to be maintained under paragraph (1).

7 “(3) The Administrator shall maintain the confiden-
8 tiality of such records or information maintained or re-
9 ported under this subsection as contain proprietary infor-
10 mation.

11 **“SEC. 502. LABELING AND RECYCLING OF RECHARGEABLE**
12 **BATTERIES AND BATTERY PACKS.**

13 “(a) DEFINITIONS.—As used in this section:

14 “(1) BATTERY PACK.—The term ‘battery pack’
15 means any combination of rechargeable batteries
16 containing 1 or more regulated batteries that com-
17 monly has wire leads, terminals, and dielectric hous-
18 ing.

19 “(2) EASILY REMOVABLE.—The term ‘easily re-
20 movable’, used with respect to a rechargeable battery
21 or battery pack, means the battery or battery pack
22 is detachable or removable from a rechargeable
23 consumer product by a consumer with the use of
24 common household tools at the end of the life of the
25 battery or battery pack.

1 “(3) RECHARGEABLE BATTERY.—The term ‘re-
2 chargeable battery’—

3 “(A) means any type of enclosed device or
4 sealed container consisting of 1 or more voltaic
5 or galvanic cells, electrically connected to
6 produce electric energy, that is designed to be
7 recharged for repeated uses; and

8 “(B) does not include—

9 “(i) any lead-acid battery used to
10 start an internal combustion engine or as
11 the principal electrical power source for a
12 vehicle, such as an automobile, a truck,
13 construction equipment, a motorcycle, a
14 garden tractor, a golf cart, a wheelchair, or
15 a boat;

16 “(ii) any lead-acid battery used for
17 load leveling or for the storage of elec-
18 tricity generated by an alternative energy
19 source, such as a solar cell or wind driven
20 generator;

21 “(iii) any battery used as a backup
22 power source for memory or program in-
23 struction storage, timekeeping, or any
24 similar purpose that requires uninter-
25 rupted electrical power in order to function

1 if the primary energy supply fails or fluctuates momentarily; and

2
3 “(iv) any alkaline battery.

4 “(4) RECHARGEABLE CONSUMER PRODUCT.—

5 The term ‘rechargeable consumer product’—

6 “(A) means any product that when sold at
7 retail includes a regulated battery as a primary
8 energy supply and that is primarily intended for
9 personal or household use; and

10 “(B) does not include any product that
11 uses a battery solely as a backup power source
12 for memory or program instruction storage,
13 timekeeping, or any similar purpose that re-
14 quires uninterrupted electrical power in order to
15 function if the primary energy supply fails or
16 fluctuates momentarily.

17 “(5) REGULATED BATTERY.—The term ‘regu-
18 lated battery’ means any rechargeable battery that—

19 “(A) contains a cadmium or a lead elec-
20 trode or any combination of cadmium and lead
21 electrodes; or

22 “(B) has another electrode chemistry and
23 is the subject of a determination by the Admin-
24 istrator pursuant to subsection (b)(5).

1 “(6) REMANUFACTURED PRODUCT.—The term
2 ‘remanufactured product’ means a rechargeable
3 consumer product that has been altered by the re-
4 placement of a part, repackaged, or repaired, after
5 initial sale by the original manufacturer.

6 “(b) RECHARGEABLE CONSUMER PRODUCTS AND
7 LABELING.—

8 “(1) PROHIBITION.—

9 “(A) IN GENERAL.—No person shall sell at
10 retail for use in the United States a regulated
11 battery or rechargeable consumer product intro-
12 duced into interstate commerce on or after the
13 date that is 1 year after the date of enactment
14 of this subsection, unless—

15 “(i) the regulated battery—

16 “(I) is easily removable from the
17 rechargeable consumer product;

18 “(II) is contained in a battery
19 pack that is easily removable from the
20 product; or

21 “(III) is sold separately from the
22 product; and

23 “(ii) the rechargeable consumer prod-
24 uct and the regulated battery are labeled
25 in accordance with paragraph (2).

1 “(B) APPLICATION.—Subparagraph (A)
2 shall not apply to—

3 “(i) the sale of a remanufactured
4 product unless subparagraph (A) applied
5 to the sale of the product when originally
6 manufactured; and

7 “(ii) a product intended for export
8 purposes only.

9 “(2) LABELING.—Each regulated battery, bat-
10 tery pack, or rechargeable consumer product without
11 an easily removable battery or battery pack, manu-
12 factured on or after the date that is 1 year after the
13 date of enactment of this subsection, shall be labeled
14 with—

15 “(A)(i) 3 chasing arrows or a comparable
16 recycling symbol;

17 “(ii) proximate to such arrows or symbol—

18 “(I) on each nickel-cadmium battery
19 or battery pack, the chemical name or the
20 abbreviation ‘Ni-Cd’; and

21 “(II) on lead-acid battery and battery
22 pack, ‘Pb’ or the words ‘LEAD’, ‘RE-
23 TURN’, and ‘RECYCLE’; and

24 “(iii) on each regulated battery or battery
25 pack, the phrase ‘NICKEL-CADMIUM BAT-

1 TERY. MUST BE RECYCLED OR DIS-
2 POSED OF PROPERLY.’ or ‘SEALED
3 LEAD BATTERY. BATTERY MUST BE
4 RECYCLED.’, as applicable;

5 “(B) on each rechargeable consumer prod-
6 uct without an easily removable battery or bat-
7 tery pack, the phrase ‘CONTAINS NICKEL-
8 CADMIUM BATTERY. BATTERY MUST
9 BE RECYCLED OR DISPOSED OF PROP-
10 ERLY.’ or ‘CONTAINS SEALED LEAD
11 BATTERY. BATTERY MUST BE RECY-
12 CLED.’, as applicable; and

13 “(C) on the packaging of each recharge-
14 able consumer product, and the packaging of
15 each regulated battery or battery pack sold sep-
16 arately from such a product, unless the relevant
17 label is clearly visible through the packaging,
18 the phrase ‘CONTAINS NICKEL-CADMIUM
19 BATTERY. BATTERY MUST BE RECY-
20 CLED OR DISPOSED OF PROPERLY.’ or
21 ‘CONTAINS SEALED LEAD BATTERY.
22 BATTERY MUST BE RECYCLED.’.

23 “(3) EXISTING LABELING.—

24 “(A) SUBSTANTIAL COMPLIANCE.—For a
25 period of 2 years after the date of enactment of

1 this subsection, regulated batteries and battery
2 packs, rechargeable consumer products contain-
3 ing regulated batteries, and rechargeable
4 consumer product packages, that are labeled in
5 substantial compliance with paragraph (2) shall
6 be deemed to comply with the labeling require-
7 ments of paragraph (2).

8 “(B) DIFFERENT LABEL.—Upon applica-
9 tion by a person subject to the labeling require-
10 ments of paragraph (2) or of the labeling re-
11 quirements promulgated by the Administrator
12 under paragraph (5), the Administrator may
13 approve a different label and certify that the
14 different label meets the requirements of para-
15 graph (2) or (5), respectively, if the different
16 label—

17 “(i) is substantially similar to the
18 label required under paragraph (2) or (5),
19 respectively; or

20 “(ii) conforms with a recognized inter-
21 national standard and is consistent with
22 the overall purposes of this section.

23 “(4) POINT OF SALE INFORMATION.—Any retail
24 establishment that offers for sale any battery, bat-
25 tery pack, or product subject to the labeling require-

1 ments of paragraph (2) or the labeling requirements
2 promulgated by the Administrator under paragraph
3 (5), shall display, in a manner visible to a consumer,
4 a written notice that informs the consumer that reg-
5 ulated batteries and battery packs, whether sold sep-
6 arately or in rechargeable consumer products, shall
7 be recycled or disposed of properly.

8 “(5) RULEMAKING AUTHORITY OF THE ADMIN-
9 ISTRATOR.—

10 “(A) IN GENERAL.—If the Administrator
11 determines that other rechargeable batteries
12 having electrode chemistries different from reg-
13 ulated batteries described in subsection
14 (a)(7)(A) are toxic and may cause substantial
15 harm to human health and the environment if
16 discarded into the solid waste stream for land
17 disposal or incineration, the Administrator may,
18 with the advice and counsel of State regulatory
19 authorities and manufacturers of rechargeable
20 batteries, battery packs, and rechargeable
21 consumer products, and after public comment—

22 “(i) promulgate labeling requirements
23 for the batteries with different electrode
24 chemistries, battery packs containing the
25 batteries, rechargeable consumer products

1 containing the batteries that are not easily
2 removable batteries, and packaging for the
3 products; and

4 “(ii) promulgate easily-removable de-
5 sign requirements for rechargeable
6 consumer products designed to contain the
7 batteries or battery packs.

8 “(B) SUBSTANTIAL SIMILARITY.—The reg-
9 ulations promulgated pursuant to subparagraph
10 (A) shall be substantially similar to the require-
11 ments set forth contained in paragraphs (1)
12 and (2).

13 “(6) UNIFORMITY.—After the effective dates of
14 a requirement set forth in paragraph (1), (2), or (3)
15 or a regulation promulgated by the Administrator
16 under paragraph (5), no Federal agency, State, or
17 political subdivision of a State may enforce any easy
18 removability or environmental labeling requirement
19 for a rechargeable battery, battery pack, or re-
20 chargeable consumer product that is not identical to
21 the requirement or regulation.

22 “(7) EXEMPTIONS.—

23 “(A) IN GENERAL.—With respect to any
24 rechargeable consumer product, any person may
25 submit an application to the Administrator for

1 an exemption from the requirements of para-
2 graph (1) in accordance with the procedures
3 under subparagraph (B). The application shall
4 include—

5 “(i) a statement of the specific basis
6 for the request for the exemption; and

7 “(ii) the name, business address, and
8 telephone number of the applicant.

9 “(B) GRANTING OF EXEMPTION.—Within
10 60 days after receipt of an application under
11 subparagraph (A), the Administrator shall ap-
12 prove or deny the application. Upon approval of
13 the application, the Administrator shall grant
14 an exemption to the applicant. The exemption
15 shall be issued for a period of time that the Ad-
16 ministrator determines to be appropriate, ex-
17 cept that such period shall not exceed 1 year.
18 The Administrator shall grant an exemption on
19 the basis of evidence supplied to the Adminis-
20 trator that the manufacturer has been unable
21 to commence manufacturing the rechargeable
22 consumer product in compliance with this sub-
23 section and with an equivalent level of product
24 performance without the product—

1 “(i) resulting in danger to human
2 health, safety, or the environment; or

3 “(ii) violating requirements for ap-
4 provals from governmental agencies or
5 widely recognized private standard-setting
6 organizations (including Underwriters Lab-
7 oratories).

8 “(C) RENEWAL OF EXEMPTION.—A person
9 granted an exemption under subparagraph (B)
10 may apply for a renewal of the exemption in ac-
11 cordance with the requirements and procedures
12 described in subparagraphs (A) and (B). The
13 Administrator may grant a renewal of such an
14 exemption for a period of not more than 1 year
15 after the date of granting of the renewal.

16 “(c) REQUIREMENTS.—For the purposes of carrying
17 out the collection, storage, transportation, recycling, or
18 proper disposal of used rechargeable batteries, used bat-
19 tery packs, and used rechargeable consumer products con-
20 taining rechargeable batteries that are not easily remov-
21 able rechargeable batteries, persons involved in collecting,
22 storing, or transporting such batteries, battery packs, or
23 products to a facility for recycling or proper disposal shall
24 be subject, in the same manner and with the same limita-
25 tions, to the same requirements as would apply if the per-

1 sons were collecting, storing, or transporting batteries
2 subject to subpart G of part 266 of title 40, Code of Fed-
3 eral Regulations, as in effect on January 1, 1993, notwith-
4 standing any regulation or statute.

5 “(d) COOPERATIVE EFFORTS.—Notwithstanding any
6 other provision of law, if 2 or more persons who partici-
7 pate in projects or programs to collect and properly man-
8 age used rechargeable batteries, used battery packs, or
9 used rechargeable consumer products advise the Adminis-
10 trator of their intent, the persons may agree to develop
11 jointly, or to share in the costs of participating in, such
12 a project or program and to examine and rely upon such
13 cost information as is collected during the project or pro-
14 gram.

15 “(e) REPORT TO CONGRESS.—

16 “(1) REPORT DEADLINES IN GENERAL.—Not
17 later than 3 years after the date of enactment of
18 this subsection, the Administrator, after consultation
19 with and obtaining relevant industry wide data from
20 the States, environmental and consumer groups, and
21 organizations representing rechargeable battery
22 manufacturers, rechargeable consumer product man-
23 ufacturers, and retailers, and after conducting a
24 public hearing and considering public comment, shall
25 submit to Congress a report that provides the infor-

1 mation specified in paragraph (2). In collecting in-
2 formation for the report, the Administrator shall co-
3 ordinate with such States, environmental and
4 consumer groups, and organizations to minimize the
5 frequency and scope of any reporting requirements
6 associated with the manufacture, sale, or collection
7 of regulated batteries.

8 “(2) CONTENT OF REPORT.—The report de-
9 scribed in paragraph (1) shall include each of the
10 following:

11 “(A) A review of the activities carried out
12 by the entities listed in paragraph (1) with re-
13 spect to the labeling, collection, transportation,
14 recycling, and disposal of regulated batteries.

15 “(B) An estimate, for the period beginning
16 on the date of enactment of this subsection and
17 ending on the date of preparation of the report,
18 of the number of regulated batteries entering
19 the solid waste stream for disposal in inciner-
20 ators, landfills and municipal solid waste facili-
21 ties.

22 “(C) A review of the recycling and rec-
23 lamation rates for regulated batteries.

24 “(D) A review of the availability of per-
25 mitted facilities sufficient to handle the current

1 and projected volume of used regulated bat-
2 teries, along with a complete evaluation of po-
3 tential regulatory impediments to management
4 options.

5 “(E) A list of entities involved in the pro-
6 duction and distribution of regulated batteries
7 or rechargeable consumer products and partici-
8 pating in programs for the collection of regu-
9 lated batteries.

10 “(F) A list of entities involved in the pro-
11 duction and distribution of regulated batteries
12 or rechargeable consumer products, excluding
13 retailers, that are not participating in programs
14 for the collection of regulated batteries. In for-
15 mulating the list, the Administrator shall not
16 require any participant to report the name of
17 any nonparticipant. Prior to listing any entity
18 as such a nonparticipant, the Administrator
19 shall determine that the entity should be a par-
20 ticipant, and independently verify with the en-
21 tity that the entity is not a participant.

22 “(3) FREQUENCY OF REPORT.—Not later than
23 2 years after publication of the report required in
24 paragraph (1), and every 2 years thereafter, the Ad-

1 administrator shall issue a report that provides an up-
2 date of the information specified in paragraph (2).

3 “(f) INFORMATION DISSEMINATION.—In consultation
4 with representatives of rechargeable battery manufactur-
5 ers, rechargeable consumer product manufacturers, and
6 retailers, the Administrator shall establish a program to
7 provide information to the public concerning the proper
8 handling and disposal of used regulated batteries and used
9 rechargeable consumer products with easily removable
10 batteries.

11 “(g) ENFORCEMENT.—For the purposes of this sec-
12 tion:

13 “(1) Whenever on the basis of any information
14 the Administrator determines that any person has
15 violated or is in violation of any requirement of this
16 section, the Administrator may issue an order as-
17 sessing a civil penalty for any past or current viola-
18 tion, requiring compliance immediately or within a
19 reasonable specified time period, or both, or the Ad-
20 ministrator may commence a civil action in the
21 United States district court in the district in which
22 the violation occurred for appropriate relief, includ-
23 ing a temporary or permanent injunction.

24 “(2) Any order issued pursuant to this sub-
25 section shall state with reasonable specificity the na-

1 ture of the violation. Any penalty assessed in the
2 order shall not exceed \$10,000 for each such viola-
3 tion. In assessing such a penalty, the Administrator
4 shall take into account the seriousness of the viola-
5 tion and any good faith efforts to comply with appli-
6 cable requirements.

7 “(3) Any order issued under this section shall
8 become final unless, not later than 30 days after the
9 order is served, the person or persons named in the
10 order request a public hearing. If such a request is
11 made, the Administrator shall promptly conduct a
12 public hearing. In connection with any proceeding
13 under this subsection, the Administrator may issue
14 subpoenas for the attendance and testimony of wit-
15 nesses and the production of relevant papers, books,
16 and documents.

17 “(4) If a violator fails to take corrective action
18 within the time period specified in a compliance
19 order issued under this subsection, the Adminis-
20 trator may assess a civil penalty of not more than
21 \$10,000 for the continued noncompliance with the
22 order.

23 “(5) This section shall be enforced only pursu-
24 ant to this subsection, notwithstanding the provi-
25 sions of title I.

1 “(h) INFORMATION GATHERING AND ACCESS.—(1)

2 Any person who is required to comply with this section,

3 including—

4 “(A) a regulated battery manufacturer;

5 “(B) a rechargeable consumer product manu-
6 facturer;

7 “(C) an authorized agent of a manufacturer de-
8 scribed in subparagraph (A) or (B);

9 shall establish and maintain such records and report such
10 information as the Administrator may by rule reasonably
11 require to carry out this section.

12 “(2) The Administrator, or an authorized representa-
13 tive of the Administrator upon presentation of credentials,
14 may at reasonable times have access to and copy any
15 records required to be maintained under paragraph (1).

16 “(3) The Administrator shall maintain the confiden-
17 tiality of such records or information maintained or re-
18 ported under this subsection as contain proprietary infor-
19 mation.

20 “(i) STATE AUTHORITY.—Except as provided in sub-
21 section (b)(6), or as provided in subsection (c) (relating
22 to requirements and the labeling of rechargeable batteries,
23 battery packs, or rechargeable consumer products or pack-
24 ages containing such products), nothing in this section
25 shall be construed so as to prohibit a State from enacting

1 and enforcing a standard or requirement that is more
2 stringent than a standard or requirement established or
3 promulgated under this section.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as are nec-
6 essary to carry out this section.”.

7 **SEC. 4. BATTERY RECYCLING.**

8 (a) AMENDMENT.—The Solid Waste Disposal Act is
9 amended by adding the following new subtitle at the end
10 thereof:

11 **“Subtitle K—Battery Recycling**

12 **“SEC. 12001. DEFINITIONS.**

13 “For purposes of this subtitle:

14 “(1) The term ‘battery’ means an alkaline or
15 lead-acid battery.

16 “(2) The term ‘battery distributor’ means a
17 person who sells or offers for sale batteries in inter-
18 state commerce to battery retailers.

19 “(3) The term ‘battery retailer’ means a person
20 who purchases batteries from a battery distributor
21 for sale to a consumer or who sells or offers to sell
22 in commerce batteries to a consumer.

23 “(4) The term ‘consumer’ means a person who
24 purchases a battery for any use other than resale.

1 “(5) The term ‘refund value’ means the amount
2 specified as the refund value of a battery under sec-
3 tion 12002.

4 **“SEC. 12002. REQUIRED BATTERY LABELING.**

5 “Except as otherwise provided in section 12007, no
6 battery distributor or battery retailer may sell or offer for
7 sale in interstate commerce a battery unless there is clear-
8 ly, prominently, and securely affixed to, or printed on, the
9 container a statement of the refund value of the battery.
10 The Administrator shall promulgate rules establishing
11 uniform standards for the size and location of the refund
12 value statement on batteries. The refund amount for any
13 class or category of batteries shall be specified by, and
14 subject to adjustment by, the Administrator.

15 **“SEC. 12003. ORIGINATION OF REFUND VALUE.**

16 “For each battery sold in interstate commerce to a
17 battery retailer by a battery distributor, the distributor
18 shall collect from the retailer the amount of the refund
19 value shown on the battery. With respect to each battery
20 sold in interstate commerce to a consumer by a battery
21 retailer, the retailer shall collect from the consumer the
22 amount of the refund value shown on the battery. No per-
23 son other than the persons described in this section may
24 collect a deposit on a battery.

1 **“SEC. 12004. RETURN OF REFUND VALUE.**

2 “(a) PAYMENT BY RETAILER.—If any person tenders
3 for refund a used battery to a battery retailer who sells
4 (or has sold at any time during the period of 3 months
5 ending on the date of such tender) the same brand of bat-
6 tery, the retailer shall promptly pay such person the
7 amount of the refund value stated on the battery.

8 “(b) PAYMENT BY DISTRIBUTOR.—If any person
9 tenders for refund a used battery to a battery distributor
10 who sells (or has sold at any time during the period of
11 3 months ending on the date of such tender) the same
12 brand of battery, the distributor shall promptly pay such
13 person (1) the amount of the refund value stated on the
14 battery, plus (2) an amount equal to at least 10 cents per
15 battery to help defray the cost of handling. This sub-
16 section shall not preclude any person from tendering bat-
17 teries to persons other than battery distributors.

18 “(c) AGREEMENTS.—(1) Nothing in this subtitle
19 shall preclude agreements between distributors, retailers,
20 or other persons to establish centralized battery collection
21 centers, including centers which act as agents of such re-
22 tailers.

23 “(2) Nothing in this subtitle shall preclude agree-
24 ments between battery retailers, battery distributors, or
25 other persons for the crushing or bundling (or both) of
26 batteries.

1 **“SEC. 12005. ACCOUNTING FOR UNCLAIMED REFUNDS AND**
2 **PROVISIONS FOR STATE RECYCLING FUNDS.**

3 “(a) UNCLAIMED REFUNDS.—At the end of each cal-
4 endar year each battery distributor shall pay to each State
5 an amount equal to the sum by which the total refund
6 value of all batteries sold by the distributor for resale in
7 that State during that year exceeds the total sum paid
8 during that year by the distributor under section 12004(b)
9 to persons in that State. The total of unclaimed refunds
10 received by any State under this section shall be available
11 to carry out pollution prevention and recycling programs
12 in that State.

13 “(b) REFUNDS IN EXCESS OF COLLECTIONS.—If the
14 total of payments made by a battery distributor in any
15 calendar year under section 12004(b) for any State exceed
16 the total refund value of all batteries sold by the distribu-
17 tor for resale in that State, the excess shall be credited
18 against the amount otherwise required to be paid by the
19 distributor to that State under subsection (a) for a subse-
20 quent calendar year designated by the battery distributor.

21 **“SEC. 12006. PROHIBITIONS ON POST-REDEMPTION DIS-**
22 **POSAL.**

23 “No retailer or distributor or agent of a retailer or
24 distributor may dispose of any battery labeled under sec-
25 tion 12002 in any landfill or other solid waste disposal
26 facility.

1 **“SEC. 12007. EXEMPTED STATES.**

2 “(a) IN GENERAL.—The provisions of sections 12002
3 through 12005 and sections 12008 and 12009 of this sub-
4 title shall not apply in any State which—

5 “(1) has adopted and implemented require-
6 ments applicable to all batteries sold in that State
7 which the Administrator determines to be substan-
8 tially identical to the provisions of sections 12002
9 through 12005 and sections 12008 and 12009 of
10 this subtitle; or

11 “(2) demonstrates to the Administrator that,
12 for any period of 12 consecutive months following
13 the date of the enactment of this subtitle, such State
14 achieved a recycling or reuse rate for batteries of at
15 least 70 percent.

16 If at any time following a determination under paragraph
17 (2) that a State has achieved a 70 percent recycling or
18 reuse rate the Administrator determines that such State
19 has failed, for any 12-consecutive month period, to main-
20 tain at least a 70 percent recycling or reuse rate of its
21 batteries, the Administrator shall notify such State that,
22 upon the expiration of the 90-day period following such
23 notification, the provisions under sections 12002 through
24 12005 and sections 12008 and 12009 shall be applicable
25 to that State until a subsequent determination is made

1 under subparagraph (A) or a demonstration is made under
2 subparagraph (B).

3 “(b) DETERMINATION OF TAX.—No State or political
4 subdivision which imposes any tax on the sale of any bat-
5 tery may impose a tax on any amount attributable to the
6 refund value of such battery.

7 “(c) EFFECT ON OTHER LAWS.—Nothing in this
8 subtitle shall be construed to affect the authority of any
9 State or political subdivision thereof to enact or enforce
10 (or continue in effect) any law respecting a refund value
11 on batteries or from regulating redemption and other cen-
12 ters which purchase empty batteries from battery retail-
13 ers, consumers, or other persons.

14 **“SEC. 12008. REGULATIONS.**

15 “Not later than 12 months after the enactment of
16 this subtitle, the Administrator shall prescribe regulations
17 to carry out this subtitle. Such regulations shall also ad-
18 just the refund amount required under section 12002 to
19 account for inflation. Such adjustment shall be effective
20 10 years after the enactment of this subtitle and addi-
21 tional adjustments shall take effect at 10 year intervals
22 thereafter.

23 **“SEC. 12009. PENALTIES.**

24 “Any person who violates any provision of section
25 12002, 12003, 12004, or 12006 shall be subject to a civil

1 penalty of not more than \$1,000 for each violation. Any
 2 person who violates any provision of section 12005 shall
 3 be subject to a civil penalty of not more than \$10,000 for
 4 each violation.

5 **“SEC. 12010. EFFECTIVE DATE.**

6 “Except as provided in section 12008, this subtitle
 7 shall take effect 2 years after the date of its enactment.”.

8 (b) TABLE OF CONTENTS.—The table of contents for
 9 such Act is amended by adding the following at the end
 10 thereof:

“Subtitle K—Battery Recycling

“Sec. 12001. Definitions.

“Sec. 12002. Required battery labeling.

“Sec. 12003. Origination of refund value.

“Sec. 12004. Return of refund value.

“Sec. 12005. Accounting for unclaimed refunds and provisions for State recycling funds.

“Sec. 12006. Prohibitions on post-redemption disposal.

“Sec. 12007. Exempted States.

“Sec. 12008. Regulations.

“Sec. 12009. Penalties.

“Sec. 12010. Effective date.”.

11 **SEC. 5. REDUCTION OF MERCURY IN PACKAGING.**

12 (a) DEFINITIONS.—As used in this section:

13 (1) ADMINISTRATOR.—The term “Adminis-
 14 trator” means the Administrator of the Environ-
 15 mental Protection Agency.

16 (2) DISTRIBUTOR.—The term “distributor”
 17 means any person who purchases goods from a man-
 18 ufacturer for sale or promotional use.

1 (3) INCIDENTAL PRESENCE.—The term “inci-
2 dental presence” means the presence of mercury in
3 a package or packaging component if the substance
4 was not intentionally introduced into the package or
5 packaging component for its own properties or char-
6 acteristics.

7 (4) INTENTIONAL INTRODUCTION.—

8 (A) IN GENERAL.—The term “intentional
9 introduction” means the purposeful introduc-
10 tion of mercury into a package or packaging
11 component with an intent that one or more of
12 the substances be present in the package or
13 packaging component.

14 (B) EXCLUSION.—The term does not in-
15 clude—

16 (i) the background levels of mercury
17 that naturally occur in raw materials or
18 are present as postconsumer additions, and
19 that are not purposefully added to perform
20 as part of a package or packaging compo-
21 nent; and

22 (ii) any trace quantities of a process-
23 ing aid or similar material used to produce
24 a product from which a package or pack-
25 aging component is manufactured, if the

1 processing aid or similar material is rea-
2 sonably expected to be consumed or trans-
3 formed into a nonregulated material dur-
4 ing the process.

5 (5) MANUFACTURER.—The term “manufac-
6 turer” means any person in the chain of production
7 who makes a package or packaging component for
8 sale or promotional purposes, including an importer
9 of packages or packaging components.

10 (6) PACKAGE OR PACKAGING.—The term
11 “package” or “packaging” means a container that
12 provides a means of marketing, protecting, or han-
13 dling a product. The term includes a unit package,
14 an intermediate, and a chipping container as defined
15 in standard D-996 issued by the American Society
16 of Testing and Materials, and unsealed receptacles
17 such as carrying cases, crates, cups, pails, rigid foil,
18 and other trays, wrappers and wrapping films, bags,
19 and tubs.

20 (7) PACKAGING COMPONENT.—The term “pack-
21 aging component” means any individual assembled
22 part of packaging, including any interior or exterior
23 blocking, bracing, cushioning, weatherproofing, exte-
24 rior strapping, coating, closure, ink, label, adhesive,
25 and stabilizer, except that the term does not include

1 steel strapping. For the purposes of this section, tin-
2 plated steel that meets the specification under stand-
3 ard A-623 issued by the American Society of Test-
4 ing and Materials shall be deemed an individual
5 packaging component.

6 (b) PROHIBITION ON ADDITION OF MERCURY IN
7 PACKAGING.—

8 (1) IN GENERAL.—Except as provided in sub-
9 section (c), effective 2 years after the date of enact-
10 ment of this Act, the intentional introduction of
11 mercury to packaging or any component thereof dur-
12 ing manufacturing or distribution by any person is
13 prohibited.

14 (2) CONCENTRATION LEVELS.—The sum of the
15 concentration levels of mercury present in packaging
16 or any component thereof may not exceed the follow-
17 ing amounts:

18 (A) 600 parts per million by weight (0.06
19 percent) on or after the date that is 2 years
20 after the date of enactment of this Act and be-
21 fore the date specified in paragraph (2).

22 (B) 250 parts per million by weight (0.025
23 percent) on or after the date that is 3 years
24 after the date of enactment of this Act and be-
25 fore the date specified in paragraph (3).

1 (C) 100 parts per million by weight (0.01
2 percent) on or after the date that is 4 years
3 after the date of enactment of this Act.

4 (c) EXEMPTIONS.—

5 (1) IN GENERAL.—The requirements of sub-
6 section (b) shall not apply to packaging and any
7 component thereof—

8 (A) with a code indicating a date of manu-
9 facture of the packaging or component, or date
10 of bottling or manufacturing of distilled spirits
11 and wines, that is prior to the effective date of
12 this Act; or

13 (B) if alternative evidence of a date of
14 manufacture or bottling prior to the effective
15 date of this Act is provided to the satisfaction
16 of the Administrator.

17 (2) SAFETY CONSIDERATIONS.—

18 (A) IN GENERAL.—The requirements of
19 subsection (b) shall not apply to packaging and
20 any component thereof to which mercury has
21 been added in the manufacturing, forming,
22 printing, or distribution process—

23 (i) in order to comply with health or
24 safety requirements of Federal law; or

1 (ii) because the addition of one or
2 more of the substances is essential for the
3 protection, safe handling, or functioning of
4 the contents of the packaging,

5 if the Administrator grants an exemption from
6 the requirements of this section to the manufac-
7 turer of the package or packaging component
8 on the basis of either criterion.

9 (B) PERIOD.—If the Administrator deter-
10 mines that circumstances warrant an exemption
11 from the requirements of this section, the Ad-
12 ministrator may grant an exemption for a pe-
13 riod of 2 years.

14 (C) RENEWAL.—An exemption under para-
15 graph (2) may, on meeting either criterion
16 under paragraph (1), be renewed every 2 years.

17 (3) USE OF RECYCLED MATERIALS.—During
18 the 6-year period beginning on the date of enact-
19 ment of this Act, the requirements of subsection (b)
20 shall not apply to packaging and any component
21 thereof that would not exceed the concentration lev-
22 els in subsection (b) but for the addition of recycled
23 materials.

24 (d) CERTIFICATE OF COMPLIANCE.—

25 (1) IN GENERAL.—

1 (A) REQUIREMENT.—Not later than 2
2 years after the date of enactment of this Act,
3 the manufacturer or supplier of packaging or
4 any component thereof shall furnish to each
5 purchaser a certificate of compliance stating
6 that the packaging or packaging component is
7 in compliance with the requirements of this sec-
8 tion.

9 (B) EXEMPTIONS.—If the manufacturer or
10 supplier claims an exemption under subsection
11 (c), the manufacturer or supplier shall state the
12 specific basis on which the exemption is claimed
13 on the certificate of compliance.

14 (C) SIGNATURE.—The certificate of com-
15 pliance shall be signed by an authorized official
16 of the manufacturing or supplying company.

17 (D) RETENTION OF CERTIFICATE BY PUR-
18 CHASER.—The purchaser shall retain the cer-
19 tificate of compliance for as long as the packag-
20 ing is in use.

21 (E) RETENTION OF COPY BY MANUFAC-
22 Turer OR SUPPLIER.—A copy of the certificate
23 of compliance shall be kept on file by the manu-
24 facturer or supplier of the packaging or packag-
25 ing component.

1 (F) COPIES TO ADMINISTRATOR AND PUB-
2 LIC.—A copy of the certificate of compliance
3 shall be furnished to the Administrator on re-
4 quest, and to members of the public in accord-
5 ance with subsection (e).

6 (2) AMENDED OR NEW CERTIFICATE.—If the
7 manufacturer or supplier of packaging or packaging
8 components reformulates or creates a new package
9 or packaging component, the manufacturer or sup-
10 plier shall provide an amended or new certificate of
11 compliance for the reformulated or new package or
12 packaging component.

13 (e) PUBLIC ACCESS.—

14 (1) REQUEST.—A request from a member of
15 the public for a copy of a certificate of compliance
16 from the manufacturer or supplier of packaging or
17 components thereof shall be—

18 (A) in writing, with a copy provided to the
19 Administrator; and

20 (B) specific as to the package or packaging
21 component information requested.

22 (2) RESPONSE TO REQUEST.—A manufacturer
23 shall respond to a request that meets the require-
24 ments of paragraph (1) not later than 60 days after
25 receipt of the request.

1 (f) FEDERAL ENFORCEMENT.—Whenever on the
2 basis of any information the Administrator determines
3 that any person has violated or is in violation of this sec-
4 tion, the Administrator may issue an order assessing a
5 civil penalty in an amount not to exceed \$25,000.

6 (g) NONPREEMPTION.—Nothing in this section shall
7 be construed so as to prohibit a State from establishing
8 and enforcing a standard or requirement with respect to
9 toxic metals in packaging that is more stringent than a
10 standard or requirement relating to toxic metals in pack-
11 aging established or promulgated under this section.

12 (h) REGULATIONS.—Not later than 18 months after
13 the date of enactment of this Act, the Administrator shall
14 promulgate regulations to carry out this section.

15 **SEC. 6. PROHIBITION ON USE OF MERCURY AS A FUN-**
16 **GICIDE.**

17 The Federal Insecticide, Fungicide, and Reodenticide
18 Act is amended is amended by adding the following new
19 paragraph at the end of subsection (c) of section 3:

20 “(9) FUNGICIDES CONTAINING PHENYL-
21 MERCURIC ACETATE.—The Administrator may not
22 register or reregister any fungicide containing
23 phenylmercuric acetate, and any registration of any
24 such fungicide prior to the enactment of this para-

1 graph shall cease to be effective on the date 60 days
2 after the enactment of this paragraph.”.

3 **SEC. 7. USE AND DISPOSAL OF MERCURY BY DEPARTMENT**
4 **OF DEFENSE.**

5 (a) STUDY OF DOD MERCURY USE.—The Adminis-
6 trator of the Comptroller General shall undertake a study
7 of the use and disposal by the Department of Defense of
8 mercury, both as a raw material and in products procured
9 by the Department. Not later than 1 year after the enact-
10 ment of this Act, the Administrator shall submit a report
11 to the Congress containing the results of such study.

12 (b) REDUCTION IN MERCURY USE.—Not later than
13 3 years after the enactment of this Act the Secretary of
14 Defense shall submit to the Congress a program for reduc-
15 ing mercury use in military products.

16 **SEC. 8. REQUIREMENTS FOR WASTE PROCESSORS AND DIS-**
17 **POSAL FACILITIES.**

18 (a) INCINERATORS.—(1) Subtitle D of the Solid
19 Waste Disposal Act is amended by adding the following
20 new section at the end thereof:

21 **“SEC. 4011. PERMITS FOR INCINERATORS.**

22 “After December 31, 1996, no Federal agency, State
23 or local government, or other waste management jurisdic-
24 tion may issue a permit (including a permit under section
25 129(e) of the Clean Air Act) or other prior approval for

1 the construction or expansion of a municipal solid waste
2 incinerator, unless the applicant for the permit or other
3 approval completes, after public notice and comment, an
4 environmental impact statement. Such statement shall be
5 conducted in the same manner and in conformance with
6 the same standards required for environmental impact
7 statements under the National Environmental Policy Act
8 (42 U.S.C. 4321 et seq.) and must be approved by the
9 State.”.

10 (2) The table of contents for such Act is amended
11 by adding the following new item after the item relating
12 to section 4010:

“Sec. 4011. Permits for incinerators.”.

13 (b) SEPARATION OF MERCURY CONTAINING
14 ITEMS.—(1) Section 4003 of the Solid Waste Disposal Act
15 is amended as follows:

16 (A) By adding the following at the end of sub-
17 section (a):

18 “(7) The plan shall provide for the separation,
19 for purposes of recycling, of mercury-containing
20 items listed under subsection (e) prior to disposal or
21 treatment in any solid waste treatment or disposal
22 facility.”.

23 (B) By adding the following new subsection at
24 the end thereof:

1 “(e) SEPARATION OF MERCURY-CONTAINING
2 ITEMS.—The Administrator shall, after notice and oppor-
3 tunity for public comment, publish a list of mercury-con-
4 taining items to be separated from the waste stream prior
5 to disposal or treatment in any solid waste treatment or
6 disposal facility. Such list shall include, but shall not be
7 limited to, batteries, fluorescent light bulbs, electrical
8 switches, and thermostats.”.

9 (2) Section 4007(a)(1) of the Solid Waste Disposal
10 Act is amended by adding before the semicolon the follow-
11 ing: “(a) and it is revised within 2 years after the date
12 of the enactment of the Mercury Environmental Risk and
13 Comprehensive Utilization Reduction Initiative to meets
14 the requirements of paragraph (7) of section 4003(a)”.

15 **SEC. 9. SURCHARGE ON MERCURY AIR EMISSIONS.**

16 The Clean Air Act is amended as follows:

17 (1) Section 112(e)(6) is amended by striking
18 the last sentence.

19 (2) Section 502(b)(3)(A) is amended by strik-
20 ing “and” at the end of clause (v), by striking pe-
21 riod at the end of clause (vi) and inserting “, and”,
22 and by adding the following new clause at the end
23 thereof:

24 “(vii) in the case of electric utility steam
25 generating units (as defined in section 112),

1 municipal waste combustion units, and medical
2 waste incineration units, an additional fee of
3 \$500 per pound of mercury emissions from the
4 unit or such greater amount as the Adminis-
5 trator deems necessary to cover the costs of
6 mercury reduction and remediation research
7 under section 103(l).”.

8 (3) Section 103 is amended by adding the fol-
9 lowing new section at the end thereof:

10 “(1) **MERCURY EMISSION REDUCTION AND REMEDI-**
11 **ATION.**—The Administrator shall undertake a program to
12 research technologies available to reduce emissions of mer-
13 cury into the ambient air and technologies to remediate
14 mercury contamination. There are authorized to be appro-
15 priated to the Administrator to fund the costs of such pro-
16 gram, and amount for each fiscal year equal to the amount
17 estimated by the Secretary of the Treasury to be received
18 in the Treasury from the fees imposed under section
19 502(b)(3)(A)(vii), adjusted by the Secretary to account for
20 errors in such estimates for prior fiscal years.”.

21 **SEC. 10. FDA STUDY OF MERCURY COMPOUNDS IN DRUGS**
22 **AND FOOD.**

23 (a) **LIST AND ANALYSIS.**—The Secretary of Health
24 and Human Services shall, through the Food and Drug
25 Administration—

1 (1) compile a list of drugs and foods that con-
2 tain intentionally introduced mercury compounds,
3 and

4 (2) provide a quantitative and qualitative analy-
5 sis of the mercury compounds in the list under para-
6 graph (1).

7 The Secretary shall compile the list required by paragraph
8 (1) within 2 years after the date of the enactment of this
9 section and shall provide the analysis required by para-
10 graph (2) within of such date of enactment.

11 (b) STUDY.—The Secretary of Health and Human
12 Services, acting through the Food and Drug Administra-
13 tion, shall conduct a study of the effect on humans of the
14 use of mercury compounds in nasal sprays. Such study
15 shall include data from other studies that have been made
16 of such use.

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