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To require the Secretary of Health and Human Services to ensure that the public is provided adequate notice and education on the effects of exposure to mercury through the development of health advisories and by requiring that such appropriate advisories be posted, or made readily available, at all businesses that sell fresh, frozen, and canned fish and seafood where the potential for mercury exposure exists.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 24, 2003

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require the Secretary of Health and Human Services to ensure that the public is provided adequate notice and education on the effects of exposure to mercury through the development of health advisories and by requiring that such appropriate advisories be posted, or made readily available, at all businesses that sell fresh, frozen, and canned fish and seafood where the potential for mercury exposure exists.

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 “Mercury Health Advi-
3 sory Act of 2003”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) Mercury is a persistent, bioaccumulative
8 heavy metal that poses a significant risk to human
9 health, wildlife, and the environment.

10 (2) Mercury discharges into the atmosphere and
11 surface oceans have increased two-to-five fold since
12 the beginning of the industrialized period due to
13 human activities.

14 (3) Substantial evidence is accumulating that
15 exposure to methyl-mercury is widespread in the
16 general public and occurring at higher than health-
17 based levels of concern according to the Food and
18 Drug Administration, the Environmental Protection
19 Agency, and the World Health Organization. Fish
20 and seafood caught or sold in the United States are
21 contaminated with methyl-mercury, a toxic element
22 that may cause neurological damage and other
23 health-related problems as a result of fish or seafood
24 consumption.

25 (4) According to the 1997 Environmental Pro-
26 tection Agency Mercury Report to Congress, mer-

1 cury levels in the following fish, at least occasionally,
2 exceeded the Food and Drug Administration’s “ac-
3 tion level” limit of 1 part per million: tilefish, king
4 mackerel, shark, swordfish, tuna, lobster, red snap-
5 per, saltwater and freshwater bass, bluefish,
6 bluegills, catfish, crappie, groupers, hake, halibut,
7 northern pike, walleye, largemouth bass, pompano,
8 snook, sunfish, and other finfish.

9 (5) The Food and Drug Administration advises
10 pregnant women and women of childbearing age not
11 to eat shark, king mackerel, tilefish, and swordfish
12 and to limit consumption of all other fish to 12
13 ounces per week. The Food and Drug Administra-
14 tion advises other persons to limit their consumption
15 of shark and swordfish to no more than 7 ounces
16 per week.

17 (6) The Environmental Protection Agency rec-
18 ommends that women who are pregnant or who may
19 become pregnant, nursing mothers, and young chil-
20 dren limit fish consumption to 6 meals per week of
21 cooked fish or an 8-ounce meal per week for
22 uncooked fish for adults and 2 meals per week of
23 cooked fish or a 3-ounce meal per week of uncooked
24 fish for young children.

1 (7) In 2003, 44 States issued health advisories
2 that warned the public about consuming mercury-
3 tainted fish, as compared to 27 States that issued
4 such advisories in 1993.

5 (8) Eleven States warn pregnant women and
6 young children to limit consumption of canned tuna,
7 the most consumed fish in the United States, to 1
8 or 2 cans per week and some States warn that the
9 “white” albacore canned tuna has significantly high-
10 er mercury levels than the “light” tuna, based upon
11 Food and Drug Administration testing.

12 (9) Data from the National Health and Nutri-
13 tion Examination Survey Centers indicates that 7.8
14 percent of women of childbearing age have blood
15 mercury levels in their bodies above what is consid-
16 ered safe for the developing fetus, translating into
17 over 300,000 babies born each year in the United
18 States at risk of mercury poisoning.

19 (10) Between 30 percent and 50 percent of
20 women of childbearing age are not aware of the
21 methyl-mercury exposure risks from ingestion of
22 mercury-contaminated fish, according to the Food
23 and Drug Administration.

24 (11) A January 2001 report by the United
25 States General Accounting Office (GAO) criticized

1 the Food and Drug Administration for not providing
2 guidance to the fishing industry to identify and pre-
3 vent fish contaminated with mercury from reaching
4 consumers, even though the Agency's own testing
5 found that, for example, over half of the swordfish
6 exceeded its action level of one part per million
7 (ppm).

8 (12) Evidence is continuing to emerge linking
9 increased risk of coronary heart disease to mercury
10 exposure, as presented in at least 2 peer reviewed
11 studies.

12 (13) Health advisory information on mercury-
13 contaminated fish, which is necessary to protect
14 public health, is not widely known by the State or
15 Federal Government. This lack of awareness poten-
16 tially threatens tens of millions of Americans who
17 may unknowingly ingest harmful amounts of mer-
18 cury because they are not aware of exposure risks
19 from consumption of freshwater fish and seafood.

20 (b) PURPOSES.—The purposes of this Act are to—

21 (1) ensure that the public is adequately in-
22 formed about the potential adverse effects of mer-
23 cury exposure through the consumption of fish prod-
24 ucts;

1 (2) require the Secretary of Health and Human
2 Services to work cooperatively with other Federal
3 and State agencies, as well as nonprofit organiza-
4 tions, to create appropriate advisories for the dis-
5 tribution to the public of explanations of the poten-
6 tial adverse effects of mercury exposure from fish
7 consumption;

8 (3) require the Administrator of the Environ-
9 mental Protection Agency to work cooperatively with
10 State fish and game officials to create an inform-
11 ative guide for distribution to the public about the
12 dangers of the consumption of recreationally-caught
13 fish;

14 (4) require the Food and Drug Administration
15 to resume its seafood methyl-mercury monitoring
16 program to better document mercury levels in var-
17 ious fish species sold in commerce;

18 (5) require the Secretary of Health and Human
19 Services, in cooperation with private and public or-
20 ganizations, to design and implement a National
21 Public Education Program regarding the presence of
22 methyl-mercury in seafood and fish consumption
23 advisories for methyl-mercury; and

24 (6) require the Administrator of the Environ-
25 mental Protection Agency to annually prepare a re-

1 port on the impacts of mercury on human health
2 and the environment.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) COMMISSIONER.—The term “Commis-
9 sioner” means the Commissioner of Food and
10 Drugs.

11 (3) HEALTH PROFESSIONAL.—The term
12 “health professional” means any licensed profes-
13 sional in the dental and medical profession.

14 (4) SECRETARY.—The term “Secretary” means
15 the Secretary of Health and Human Services.

16 **SEC. 4. ADVISORY NOTICES.**

17 (a) CONSUMER MERCURY ADVISORY NOTICE.—

18 (1) IN GENERAL.—The Administrator and the
19 Commissioner shall jointly develop fish consumption
20 advisories for methyl-mercury in fish. Such
21 advisories shall be based on the Environmental Pro-
22 tection Agency’s Reference Dose for—

23 (A) the general population;

24 (B) sensitive populations; and

1 (C) populations consuming above average
2 amounts of fish.

3 (2) CONSUMER'S NOTICE.—The Secretary, in
4 consultation with the Administrator and the heads
5 of State environmental agencies and health depart-
6 ments, shall prepare a consumer's mercury advisory
7 notice. Such notice shall be distributed widely by the
8 Secretary, at no cost, to health professionals, par-
9 ticularly medical offices that provide gynecological,
10 obstetrical, or pediatric care, and to the extent prac-
11 ticable shall be made available and posted in the pa-
12 tient or client areas of all maternal and child health
13 and nutrition program offices, and shall be made
14 available to health care providers, Federal, State,
15 and local government agencies, and the general pub-
16 lic upon request.

17 (3) CRITERIA.—The advisories developed under
18 this subsection shall—

19 (A) explain, in an easily understandable
20 manner, the dangers of mercury exposure
21 through the consumption of mercury contami-
22 nated fish to women of childbearing age, women
23 who expect to become pregnant, women who are
24 pregnant or breast feeding their children, and
25 young children and their parents;

1 (B) describe, in an easily understandable
2 manner, in detail the most current mercury
3 health advisories prepared by the Federal Gov-
4 ernment concerning fish consumption, contain
5 the toll free number established under para-
6 graph (4), and contain such other information
7 as the Secretary determines appropriate; and

8 (C) be printed in large type in English,
9 Spanish, and other languages determined by the
10 Secretary to be culturally and linguistically ap-
11 propriate.

12 (4) TOLL-FREE TELEPHONE NUMBER.—The
13 Secretary shall establish a toll-free telephone number
14 to enable individuals to obtain additional information
15 about the health advisories developed under this sub-
16 section concerning exposure to mercury from con-
17 sumption of fish and seafood, as well as exposure
18 from other sources.

19 (5) UPDATING OF INFORMATION.—The infor-
20 mation provided under this subsection shall be up-
21 dated periodically as determined necessary by the
22 Secretary.

23 (b) MERCURY WARNING CONSUMER'S GUIDE.—

24 (1) IN GENERAL.—The Administrator, in con-
25 sultation with the Secretary, shall prepare a con-

1 sumer's guide to mercury and health advisory for
2 the consumption of recreationally-caught fish. Such
3 guide shall be distributed, at no cost, to—

4 (A) State departments of fisheries, wildlife,
5 and environmental law enforcement;

6 (B) all applicants for a fishing license at
7 the time the license is issued; and

8 (C) to public upon request.

9 (2) CRITERIA.—The guide developed under
10 paragraph (1) shall—

11 (A) be printed in large type in English,
12 Spanish, and other languages determined by the
13 Secretary to be culturally and linguistically ap-
14 propriate;

15 (B) contain the toll free telephone number
16 established by the Environmental Protection
17 Agency that residents may call for further in-
18 formation about the health advisories contained
19 in the guide.

20 (3) UPDATING OF INFORMATION.—The guide
21 developed under paragraph (1) shall be updated pe-
22 riodically as determined necessary by the Secretary.

23 (c) CONSUMPTION ADVISORY.—

24 (1) IN GENERAL.—The Secretary, in consulta-
25 tion with the Secretary of Agriculture and the Ad-

1 administrator, shall work with the States and other ap-
2 propriate entities to—

3 (A) develop and distribute regional and na-
4 tional advisories concerning the presence of
5 methyl-mercury in seafood;

6 (B) develop standardized formats for writ-
7 ten and broadcast advisories regarding methyl-
8 mercury in seafood;

9 (C) develop and periodically upgrade infor-
10 mation related to mercury fish tissue test re-
11 sults and fish consumption advisories for meth-
12 yl-mercury;

13 (D) coordinate State and local advisories
14 in the formation of the National Public Edu-
15 cation Program under subsection (d)(1); and

16 (E) coordinate with that sector of the re-
17 tail food industry that is engaged in the sale of
18 any fresh, packaged, or frozen fish or seafood
19 products intended for human consumption, con-
20 cerning the posting of such advisories in their
21 place of business where fish are sold to inform
22 women of childbearing age, pregnant, and nurs-
23 ing women and the parents of young children
24 on the potential dangers of mercury that is
25 present in certain fish or seafood.

1 (2) CRITERIA.—The advisories and notices de-
2 veloped under paragraph (1) shall include informa-
3 tion both on limiting the consumption of certain
4 high level fish and seafood to the general population
5 and, for sensitive populations such as women of
6 childbearing age and children, stress the importance
7 of limiting consumption of frequently consumed fish
8 that may exceed the Environmental Protection
9 Agency’s Reference Dose.

10 (3) CONSUMPTION ADVISORY.—

11 (A) IN GENERAL.—Based on information
12 compiled by the Environmental Protection
13 Agency, the National Marine Fisheries Services,
14 and the Food and Drug Administration, shall
15 work with State health, fish and wildlife, and
16 environmental agencies to develop and periodi-
17 cally update a consumption advisory for any
18 fresh, packaged, or frozen fish or seafood prod-
19 ucts intended for human consumption for post-
20 ing by retail food establishments and res-
21 taurants pursuant to this Act. The advisory
22 shall provide information about the potential
23 dangers from the ingestion of mercury from the
24 consumption of fish and seafood by women of
25 childbearing age, pregnant women, and young

1 children and other at-risk groups as determined
2 by the Department, including populations con-
3 suming above-average quantities of fish and
4 seafood.

5 (B) DISTRIBUTION.—The Secretary shall
6 make copies of the advisory developed under
7 subparagraph (A) available to State boards of
8 health or other State and local governmental
9 entities that have the same authority as a State
10 board of health for distribution to the public
11 and to local retail food establishments and res-
12 taurants.

13 (4) REQUIREMENTS.—The advisories and no-
14 tices developed under this subsection shall be printed
15 in large type in English, Spanish, and other lan-
16 guages determined by the Secretary to be culturally
17 and linguistically appropriate.

18 (d) PUBLIC EDUCATION AND ADVISORY SYSTEM.—

19 (1) PUBLIC EDUCATION.—The Secretary, in
20 consultation with public and nonprofit private enti-
21 ties (including cooperative extension services and ap-
22 propriate State entities), shall design and implement
23 a national public education program regarding the
24 presence of methyl-mercury in seafood.

1 (2) FEATURES.—The program developed under
2 paragraph (1) shall provide—

3 (A) information to the public regarding—

4 (i) Federal standards and good prac-
5 tice requirements relating to methyl-mer-
6 cury in seafood; and

7 (ii) the promotion of public awareness,
8 understanding, and acceptance of such
9 standards and requirements;

10 (B) information to health professionals so
11 that health professionals may improve the diag-
12 nosis and treatment of mercury-related illness
13 and advise individuals whose health conditions
14 place those individuals at particular risk; and

15 (C) such other information or advice to
16 consumers and other individuals as the Sec-
17 retary determines will promote the purposes of
18 this section.

19 (e) SAMPLING AND MONITORING.—

20 (1) IN GENERAL.—The Commissioner shall re-
21 sume the seafood methyl-mercury monitoring sam-
22 pling program of the Food and Drug Administration
23 to assist in documenting mercury levels in various
24 fish species.

1 (2) MONITORING.—The sampling program de-
2 scribed in paragraph (1) shall be conducted so as to
3 provide statistically valid monitoring data with re-
4 spect to mercury levels in fish and seafood (includ-
5 ing market-basket studies) including documenting
6 the extent to which fish with mercury levels in ex-
7 cess of the action level are sold in commerce. Such
8 information, along with information gathered by the
9 Environmental Protection Agency, shall be compiled
10 into an annual report by the Commissioner to track
11 changes in dietary exposure to mercury from fish
12 and seafood.

13 (3) AVOIDANCE OF DUPLICATION OF EF-
14 FORT.—To the extent practicable, the sampling pro-
15 gram described in paragraph (1) shall be consistent
16 with, and shall be coordinated with, other seafood
17 sampling programs that are in use, so as to avoid
18 duplication of effort.

19 **SEC. 5. HAACP ASSESSMENT.**

20 Not later than 1 year after the date of enactment
21 of this Act, the Secretary shall finalize the Hazard Anal-
22 ysis and Critical Control Point assessment to determine
23 whether or not methyl-mercury exposure through fish con-
24 sumption is a public health hazard.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) PUBLIC EDUCATION AND ADVISORY SYSTEM.—

3 There is authorized to be appropriated to develop and im-
4 plement the public education and advisory system under
5 section 3(d), \$500,000 for each fiscal year.

6 (b) SAMPLING.—There is authorized to be appro-
7 priated to carry out sampling under section 3(e),
8 \$1,000,000 for each fiscal year.

9 (c) STATE SUPPORT.—

10 (1) IN GENERAL.—There is authorized to be
11 appropriated to support the efforts of States to sam-
12 ple noncommercial fish and inland waterways for
13 mercury and to produce State-specific health
14 advisories related to mercury, \$2,000,000 for each
15 fiscal year.

16 (2) EQUITABLE DISTRIBUTION.—The Adminis-
17 trator shall distribute amounts made available under
18 paragraph (1) equitably among the States through
19 programs in existence on the date of enactment of
20 this Act.

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