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2D SESSION

H. R. 2024

IN THE SENATE OF THE UNITED STATES

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Received

AN ACT

To phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and certain other batteries, 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.**

4 This Act may be cited as the “Mercury-Containing
5 and Rechargeable Battery Management Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) it is in the public interest to—

9 (A) phase out the use of mercury in bat-
10 teries and provide for the efficient and cost-ef-
11 fective collection and recycling or proper dis-
12 posal of used nickel cadmium batteries, small
13 sealed lead-acid batteries, and other regulated
14 batteries; and

15 (B) educate the public concerning the col-
16 lection, recycling, and proper disposal of such
17 batteries;

18 (2) uniform national labeling requirements for
19 regulated batteries, rechargeable consumer products,
20 and product packaging will significantly benefit pro-
21 grams for regulated battery collection and recycling
22 or proper disposal; and

23 (3) it is in the public interest to encourage per-
24 sons who use rechargeable batteries to participate in

1 collection for recycling of used nickel-cadmium,
2 small sealed lead-acid, and other regulated batteries.

3 **SEC. 3. DEFINITIONS.**

4 For purposes of this Act:

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

8 (2) BUTTON CELL.—The term “button cell”
9 means a button- or coin-shaped battery.

10 (3) EASILY REMOVABLE.—The term “easily re-
11 movable”, with respect to a battery, means detach-
12 able or removable at the end of the life of the bat-
13 tery—

14 (A) from a consumer product by a
15 consumer with the use of common household
16 tools; or

17 (B) by a retailer of replacements for a bat-
18 tery used as the principal electrical power
19 source for a vehicle.

20 (4) MERCURIC-OXIDE BATTERY.—The term
21 “mercuric-oxide battery” means a battery that uses
22 a mercuric-oxide electrode.

23 (5) RECHARGEABLE BATTERY.—The term “re-
24 chargeable battery”—

1 (A) means 1 or more voltaic or galvanic
2 cells, electrically connected to produce electric
3 energy, that is designed to be recharged for re-
4 peated uses; and

5 (B) includes any type of enclosed device or
6 sealed container consisting of 1 or more such
7 cells, including what is commonly called a bat-
8 tery pack (and in the case of a battery pack, for
9 the purposes of the requirements of easy remov-
10 ability and labeling under section 103, means
11 the battery pack as a whole rather than each
12 component individually); but

13 (C) does not include—

14 (i) a lead-acid battery used to start an
15 internal combustion engine or as the prin-
16 cipal electrical power source for a vehicle,
17 such as an automobile, a truck, construc-
18 tion equipment, a motorcycle, a garden
19 tractor, a golf cart, a wheelchair, or a boat;

20 (ii) a lead-acid battery used for load
21 leveling or for storage of electricity gen-
22 erated by an alternative energy source,
23 such as a solar cell or wind-driven genera-
24 tor;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) RECHARGEABLE CONSUMER PRODUCT.—

The term “rechargeable consumer product”—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) REGULATED BATTERY.—The term “regulated battery” means a rechargeable battery that—

1 (A) contains a cadmium or a lead electrode
2 or any combination of cadmium and lead elec-
3 trodes; or

4 (B) contains other electrode chemistries
5 and is the subject of a determination by the Ad-
6 ministrator under section 103(d).

7 (8) REMANUFACTURED PRODUCT.—The term
8 “remanufactured product” means a rechargeable
9 consumer product that has been altered by the re-
10 placement of parts, repackaged, or repaired after
11 initial sale by the original manufacturer.

12 **SEC. 4. INFORMATION DISSEMINATION.**

13 The Administrator shall, in consultation with rep-
14 resentatives of rechargeable battery manufacturers, re-
15 chargeable consumer product manufacturers, and retail-
16 ers, establish a program to provide information to the pub-
17 lic concerning the proper handling and disposal of used
18 regulated batteries and rechargeable consumer products
19 with nonremovable batteries.

20 **SEC. 5. ENFORCEMENT.**

21 (a) CIVIL PENALTY.—When on the basis of any infor-
22 mation the Administrator determines that a person has
23 violated, or is in violation of, any requirement of this Act
24 (except a requirement of section 104) the Administrator—

1 (1) in the case of any violation, may issue an
2 order assessing a civil penalty of not more than
3 \$10,000 for each violation, or requiring compliance
4 immediately or within a reasonable specified time pe-
5 riod, or both; or

6 (2) in the case of any violation or failure to
7 comply with an order issued under this section, may
8 commence a civil action in the United States district
9 court in the district in which the violation occurred
10 or in the district in which the violator resides for ap-
11 propriate relief, including a temporary or permanent
12 injunction.

13 (b) CONTENTS OF ORDER.—An order under sub-
14 section (a)(1) shall state with reasonable specificity the
15 nature of the violation.

16 (c) CONSIDERATIONS.—In assessing a civil penalty
17 under subsection (a)(1), the Administrator shall take into
18 account the seriousness of the violation and any good faith
19 efforts to comply with applicable requirements.

20 (d) FINALITY OF ORDER; REQUEST FOR HEARING.—
21 An order under subsection (a)(1) shall become final un-
22 less, not later than 30 days after the order is served, a
23 person named in the order requests a hearing on the
24 record.

1 (e) HEARING.—On receiving a request under sub-
2 section (d), the Administrator shall promptly conduct a
3 hearing on the record.

4 (f) SUBPOENA POWER.—In connection with any
5 hearing on the record under this section, the Adminis-
6 trator may issue subpoenas for the attendance and testi-
7 mony of witnesses and for the production of relevant pa-
8 pers, books, and documents.

9 (g) CONTINUED VIOLATION AFTER EXPIRATION OF
10 PERIOD FOR COMPLIANCE.—If a violator fails to take cor-
11 rective action within the time specified in an order under
12 subsection (a)(1), the Administrator may assess a civil
13 penalty of not more than \$10,000 for the continued non-
14 compliance with the order.

15 (h) SAVINGS PROVISION.—The Administrator may
16 not take any enforcement action against a person for sell-
17 ing, offering for sale, or offering for promotional purposes
18 to the ultimate consumer a battery or product covered by
19 this Act that was—

20 (1) purchased ready for sale to the ultimate
21 consumer; and

22 (2) sold, offered for sale, or offered for pro-
23 motional purposes without modification.

24 The preceding sentence shall not apply to a person—

1 (A) who is the importer of a battery covered by
2 this Act, and

3 (B) who has knowledge of the chemical contents
4 of the battery

5 when such chemical contents make the sale, offering for
6 sale, or offering for promotional purposes of such battery
7 unlawful under title II of this Act.

8 **SEC. 6. INFORMATION GATHERING AND ACCESS.**

9 (a) RECORDS AND REPORTS.—A person who is re-
10 quired to carry out the objectives of this Act, including—

11 (1) a regulated battery manufacturer;

12 (2) a rechargeable consumer product manufac-
13 turer;

14 (3) a mercury-containing battery manufacturer;
15 and

16 (4) an authorized agent of a person described
17 in paragraph (1), (2), or (3),

18 shall establish and maintain such records and report such
19 information as the Administrator may by regulation rea-
20 sonably require to carry out the objectives of this Act.

21 (b) ACCESS AND COPYING.—The Administrator or
22 the Administrator's authorized representative, on presen-
23 tation of credentials of the Administrator, may at reason-
24 able times have access to and copy any records required
25 to be maintained under subsection (a).

1 (c) CONFIDENTIALITY.—The Administrator shall
2 maintain the confidentiality of documents and records that
3 contain proprietary information.

4 **SEC. 7. STATE AUTHORITY.**

5 Nothing in this Act shall be construed to prohibit a
6 State from enacting and enforcing a standard or require-
7 ment that is identical to a standard or requirement estab-
8 lished or promulgated under this Act. Except as provided
9 in sections 103(e) and 104, nothing in this Act shall be
10 construed to prohibit a State from enacting and enforcing
11 a standard or requirement that is more stringent than a
12 standard or requirement established or promulgated under
13 this Act.

14 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums
16 as are necessary to carry out this Act.

17 **TITLE I—RECHARGEABLE**
18 **BATTERY RECYCLING ACT**

19 **SEC. 101. SHORT TITLE.**

20 This title may be cited as the “Rechargeable Battery
21 Recycling Act”.

22 **SEC. 102. PURPOSE.**

23 The purpose of this title is to facilitate the efficient
24 recycling or proper disposal of used nickel-cadmium re-
25 chargeable batteries, used small sealed lead-acid recharge-

1 able batteries, other regulated batteries, and such re-
2 chargeable batteries in used consumer products, by—

3 (1) providing for uniform labeling requirements
4 and streamlined regulatory requirements for regu-
5 lated battery collection programs; and

6 (2) encouraging voluntary industry programs by
7 eliminating barriers to funding the collection and re-
8 cycling or proper disposal of used rechargeable bat-
9 teries.

10 **SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LA-**
11 **BELING.**

12 (a) PROHIBITION.—

13 (1) IN GENERAL.—No person shall sell for use
14 in the United States a regulated battery that is
15 ready for retail sale or a rechargeable consumer
16 product that is ready for retail sale, if such battery
17 or product was manufactured on or after the date
18 12 months after the date of enactment of this Act,
19 unless the labeling requirements of subsection (b)
20 are met and, in the case of a regulated battery, the
21 regulated battery—

22 (A) is easily removable from the recharge-
23 able consumer product; or

24 (B) is sold separately.

1 (2) APPLICATION.—Paragraph (1) does not
2 apply to any of the following:

3 (A) The sale of a remanufactured product
4 unit unless paragraph (1) applied to the sale of
5 the unit when originally manufactured.

6 (B) The sale of a product unit intended for
7 export purposes only.

8 (b) LABELING.—Each regulated battery or recharge-
9 able consumer product without an easily removable battery
10 manufactured on or after the date that is 1 year after
11 the date of enactment of this Act, whether produced do-
12 mestically or imported shall bear the following labels:

13 (1) 3 chasing arrows or a comparable recycling
14 symbol.

15 (2)(A) On each regulated battery which is a
16 nickel-cadmium battery, the chemical name or the
17 abbreviation “Ni-Cd” and the phrase “BATTERY
18 MUST BE RECYCLED OR DISPOSED OF
19 PROPERLY.”.

20 (B) On each regulated battery which is a lead-
21 acid battery, “Pb” or the words “LEAD”, “RE-
22 TURN”, and “RECYCLE” and if the regulated bat-
23 tery is sealed, the phrase “BATTERY MUST BE
24 RECYCLED.”.

1 (3) On each rechargeable consumer product
2 containing a regulated battery that is not easily re-
3 movable, the phrase “CONTAINS NICKEL-CAD-
4 MIUM BATTERY. BATTERY MUST BE RECY-
5 CLED OR DISPOSED OF PROPERLY.” or
6 “CONTAINS SEALED LEAD BATTERY. BAT-
7 TERY MUST BE RECYCLED.”, as applicable.

8 (4) On the packaging of each rechargeable
9 consumer product, and the packaging of each regu-
10 lated battery sold separately from such a product,
11 unless the required label is clearly visible through
12 the packaging, the phrase “CONTAINS NICKEL-
13 CADMIUM BATTERY. BATTERY MUST BE
14 RECYCLED OR DISPOSED OF PROPERLY.” or
15 “CONTAINS SEALED LEAD BATTERY. BAT-
16 TERY MUST BE RECYCLED.”, as applicable.

17 (c) EXISTING OR ALTERNATIVE LABELING.—

18 (1) INITIAL PERIOD.—For a period of 2 years
19 after the date of enactment of this Act, regulated
20 batteries, rechargeable consumer products containing
21 regulated batteries, and rechargeable consumer
22 product packages that are labeled in substantial
23 compliance with subsection (b) shall be deemed to
24 comply with the labeling requirements of subsection
25 (b).

1 (2) CERTIFICATION.—

2 (A) IN GENERAL.—On application by per-
3 sons subject to the labeling requirements of
4 subsection (b) or the labeling requirements pro-
5 mulgated by the Administrator under sub-
6 section (d), the Administrator shall certify that
7 a different label meets the requirements of sub-
8 section (b) or (d), respectively, if the different
9 label—

10 (i) conveys the same information as
11 the label required under subsection (b) or
12 (d), respectively; or

13 (ii) conforms with a recognized inter-
14 national standard that is consistent with
15 the overall purposes of this title.

16 (B) CONSTRUCTIVE CERTIFICATION.—
17 Failure of the Administrator to object to an ap-
18 plication under subparagraph (A) on the
19 ground that a different label does not meet ei-
20 ther of the conditions described in subpara-
21 graph (A) (i) or (ii) within 120 days after the
22 date on which the application is made shall con-
23 stitute certification for the purposes of this Act.

24 (d) RULEMAKING AUTHORITY OF THE ADMINIS-
25 TRATOR.—

1 (1) IN GENERAL.—If the Administrator deter-
2 mines that other rechargeable batteries having elec-
3 trode chemistries different from regulated batteries
4 are toxic and may cause substantial harm to human
5 health and the environment if discarded into the
6 solid waste stream for land disposal or incineration,
7 the Administrator may, with the advice and counsel
8 of State regulatory authorities and manufacturers of
9 rechargeable batteries and rechargeable consumer
10 products, and after public comment—

11 (A) promulgate labeling requirements for
12 the batteries with different electrode chem-
13 istries, rechargeable consumer products contain-
14 ing such batteries that are not easily removable
15 batteries, and packaging for the batteries and
16 products; and

17 (B) promulgate requirements for easy re-
18 movability of regulated batteries from recharge-
19 able consumer products designed to contain
20 such batteries.

21 (2) SUBSTANTIAL SIMILARITY.—The regula-
22 tions promulgated under paragraph (1) shall be sub-
23 stantially similar to the requirements set forth in
24 subsections (a) and (b).

1 (e) UNIFORMITY.—After the effective dates of a re-
2 quirement set forth in subsection (a), (b), or (c) or a regu-
3 lation promulgated by the Administrator under subsection
4 (d), no Federal agency, State, or political subdivision of
5 a State may enforce any easy removability or environ-
6 mental labeling requirement for a rechargeable battery or
7 rechargeable consumer product that is not identical to the
8 requirement or regulation.

9 (f) EXEMPTIONS.—

10 (1) IN GENERAL.—With respect to any re-
11 chargeable consumer product, any person may sub-
12 mit an application to the Administrator for an ex-
13 emption from the requirements of subsection (a) in
14 accordance with the procedures under paragraph
15 (2). The application shall include the following infor-
16 mation:

17 (A) A statement of the specific basis for
18 the request for the exemption.

19 (B) The name, business address, and tele-
20 phone number of the applicant.

21 (2) GRANTING OF EXEMPTION.—Not later than
22 60 days after receipt of an application under para-
23 graph (1), the Administrator shall approve or deny
24 the application. On approval of the application the
25 Administrator shall grant an exemption to the appli-

1 cant. The exemption shall be issued for a period of
2 time that the Administrator determines to be appro-
3 priate, except that the period shall not exceed 2
4 years. The Administrator shall grant an exemption
5 on the basis of evidence supplied to the Adminis-
6 trator that the manufacturer has been unable to
7 commence manufacturing the rechargeable consumer
8 product in compliance with the requirements of this
9 section and with an equivalent level of product per-
10 formance without the product—

11 (A) posing a threat to human health, safe-
12 ty, or the environment; or

13 (B) violating requirements for approvals
14 from governmental agencies or widely recog-
15 nized private standard-setting organizations (in-
16 cluding Underwriters Laboratories).

17 (3) RENEWAL OF EXEMPTION.—A person
18 granted an exemption under paragraph (2) may
19 apply for a renewal of the exemption in accordance
20 with the requirements and procedures described in
21 paragraphs (1) and (2). The Administrator may
22 grant a renewal of such an exemption for a period
23 of not more than 2 years after the date of the grant-
24 ing of the renewal.

1 **SEC. 104. REQUIREMENTS.**

2 (a) BATTERIES SUBJECT TO CERTAIN REGULA-
3 TIONS.—The collection, storage, or transportation of used
4 rechargeable batteries, batteries described in section
5 3(5)(C) or in title II, and used rechargeable consumer
6 products containing rechargeable batteries that are not
7 easily removable rechargeable batteries, shall, notwith-
8 standing any law of a State or political subdivision thereof
9 governing such collection, storage, or transportation, be
10 regulated under applicable provisions of the regulations
11 promulgated by the Environmental Protection Agency at
12 60 Fed. Reg. 25492 (May 11, 1995), as effective on May
13 11, 1995, except as provided in paragraph (2) of sub-
14 section (b) and except that—

15 (1) the requirements of 40 CFR 260.20,
16 260.40, and 260.41 and the equivalent requirements
17 of an approved State program shall not apply, and

18 (2) this section shall not apply to any lead acid
19 battery managed under 40 CFR 266 subpart G or
20 the equivalent requirements of an approved State
21 program.

22 (b) ENFORCEMENT UNDER SOLID WASTE DISPOSAL
23 ACT.—(1) Any person who fails to comply with the re-
24 quirements imposed by subsection (a) of this section may
25 be subject to enforcement under applicable provisions of
26 the Solid Waste Disposal Act.

1 (2) States may implement and enforce the require-
2 ments of subsection (a) if the Administrator finds that—

3 (A) the State has adopted requirements that
4 are identical to those referred to in subsection (a)
5 governing the collection, storage, or transportation
6 of batteries referred to in subsection (a); and

7 (B) the State provides for enforcement of such
8 requirements.

9 **TITLE II—MERCURY-CONTAIN-**
10 **ING BATTERY MANAGEMENT**
11 **ACT**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Mercury-Containing
14 Battery Management Act”.

15 **SEC. 202. PURPOSE.**

16 The purpose of this title is to phase out the use of
17 batteries containing mercury.

18 **SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MAN-**
19 **GANESE BATTERIES CONTAINING MERCURY.**

20 No person shall sell, offer for sale, or offer for pro-
21 motional purposes any alkaline-manganese battery manu-
22 factured on or after the date of enactment of this Act,
23 with a mercury content that was intentionally introduced
24 (as distinguished from mercury that may be incidentally
25 present in other materials), except that the limitation on

1 mercury content in alkaline-manganese button cells shall
2 be 25 milligrams of mercury per button cell.

3 **SEC. 204. LIMITATIONS ON THE SALE OF ZINC-CARBON**
4 **BATTERIES CONTAINING MERCURY.**

5 No person shall sell, offer for sale, or offer for pro-
6 motional purposes any zinc-carbon battery manufactured
7 on or after the date of enactment of this Act, that contains
8 mercury that was intentionally introduced as described in
9 section 203.

10 **SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL**
11 **MERCURIC-OXIDE BATTERIES.**

12 No person shall sell, offer for sale, or offer for pro-
13 motional purposes any button cell mercuric-oxide battery
14 for use in the United States on or after the date of enact-
15 ment of this Act.

16 **SEC. 206. LIMITATIONS ON THE SALE OF OTHER MER-**
17 **CURIC-OXIDE BATTERIES.**

18 (a) PROHIBITION.—On or after the date of enact-
19 ment of this Act, no person shall sell, offer for sale, or
20 offer for promotional purposes a mercuric-oxide battery
21 for use in the United States unless the battery manufac-
22 turer, or the importer of such a battery—

23 (1) identifies a collection site in the United
24 States that has all required Federal, State, and local
25 government approvals, to which persons may send

1 used mercuric-oxide batteries for recycling or proper
2 disposal;

3 (2) informs each of its purchasers of mercuric-
4 oxide batteries of the collection site identified under
5 paragraph (1); and

6 (3) informs each of its purchasers of mercuric-
7 oxide batteries of a telephone number that the pur-
8 chaser may call to get information about sending
9 mercuric-oxide batteries for recycling or proper dis-
10 posal.

11 (b) APPLICATION OF SECTION.—This section does
12 not apply to a sale or offer of a mercuric-oxide button
13 cell battery.

14 **SEC. 207. NEW PRODUCT OR USE.**

15 On petition of a person that proposes a new use for
16 a battery technology described in this title or the use of
17 a battery described in this title in a new product, the Ad-
18 ministrators may exempt from this title the new use of the
19 technology or the use of such a battery in the new product
20 on the condition, if appropriate, that there exist reason-
21 able safeguards to ensure that the resulting battery or
22 product without an easily removable battery will not be
23 disposed of in an incinerator, composting facility, or land-

- 1 fill (other than a facility regulated under subtitle C of the
- 2 Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)).

Passed the House of Representatives April 23, 1996.

Attest:

ROBIN H. CARLE,
Clerk.