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HOUSE OF REPRESENTATIVES
REPORT
104–530

MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT

APRIL 23, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 2024]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2024) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mercury-Containing and Rechargeable Battery Management Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) it is in the public interest to—

(A) 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 other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BUTTON CELL.—The term "button cell" means a button- or coin-shaped battery.

(3) EASILY REMOVABLE.—The term "easily removable", with respect to a battery, means detachable or removable at the end of the life of the battery—

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

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) MERCURIC-OXIDE BATTERY.—The term "mercuric-oxide battery" means a battery that uses a mercuric-oxide electrode.

(5) RECHARGEABLE BATTERY.—The term "rechargeable battery"—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually); but

(C) does not include—

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

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(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—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).

(8) REMANUFACTURED PRODUCT.—The term "remanufactured product" means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

SEC. 4. INFORMATION DISSEMINATION.

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

SEC. 5. ENFORCEMENT.

(a) CIVIL PENALTY.—When on the basis of any information the Administrator determines that a person has violated, or is in violation of, any requirement of this Act (except a requirement of section 104) the Administrator—

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

(2) in the case of any violation or failure to comply with an order issued under this section, may commence a civil action in the United States district court in the district in which the violation occurred or in the district in which the violator resides for appropriate relief, including a temporary or permanent injunction.

(b) CONTENTS OF ORDER.—An order under subsection (a)(1) shall state with reasonable specificity the nature of the violation.

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

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

(e) HEARING.—On receiving a request under subsection (d), the Administrator shall promptly conduct a hearing on the record.

(f) SUBPOENA POWER.—In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under subsection (a)(1), the Administrator may assess a civil penalty of not more than $10,000 for the continued noncompliance with the order.

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

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

(2) sold, offered for sale, or offered for promotional purposes without modification.

The preceding sentence shall not apply to a person who is the importer of a battery or product covered by this Act and who has knowledge that the sale, offering for sale, or offering for promotional purposes of such battery or product is prohibited by this Act.

SEC. 6. INFORMATION GATHERING AND ACCESS.

(a) RECORDS AND REPORTS.—A person who is required to carry out the objectives of this Act, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

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

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

(b) ACCESS AND COPYING.—The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a).

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

SEC. 7. STATE AUTHORITY.

Nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is identical to a standard or requirement established or promulgated under this Act. Except as provided in sections 103(e) and 104, nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

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

TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Rechargeable Battery Recycling Act".

SEC. 102. PURPOSE.

The purpose of this title is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) PROHIBITION.—

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

(A) is easily removable from the rechargeable consumer product; or

(B) is sold separately.

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

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

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

(b) LABELING.—Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported shall bear the following labels:

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

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

(B) On each regulated battery which is a lead-acid battery, "Pb" or the words "LEAD", "RETURN", and "RECYCLE" and if the regulated battery is sealed, the phrase "BATTERY MUST BE RECYCLED.".

(3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." or "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.", as applicable.

(4) On the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." or "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.", as applicable.

(c) EXISTING OR ALTERNATIVE LABELING.—

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

(2) CERTIFICATION.—

(A) IN GENERAL.—On application by persons subject to the labeling requirements of subsection (b) or the labeling requirements promulgated by the Administrator under subsection (d), the Administrator shall certify that a different label meets the requirements of subsection (b) or (d), respectively, if the different label—

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

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this title.

(B) CONSTRUCTIVE CERTIFICATION.—Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A) (i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this Act.

(d) RULEMAKING AUTHORITY OF THE ADMINISTRATOR.—

(1) IN GENERAL.—If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) SUBSTANTIAL SIMILARITY.—The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b).

(e) UNIFORMITY.—After the effective dates of a requirement set forth in subsection (a), (b), or (c) or a regulation promulgated by the Administrator under subsection (d), no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) EXEMPTIONS.—

(1) IN GENERAL.—With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

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

(B) The name, business address, and telephone number of the applicant.

(2) GRANTING OF EXEMPTION.—Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) RENEWAL OF EXEMPTION.—A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

SEC. 104. REQUIREMENTS.

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

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

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

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

(2) States may implement and enforce the requirements of subsection (a) if the Administrator finds that—

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

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

TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Mercury-Containing Battery Management Act".

SEC. 202. PURPOSE.

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

SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

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

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after January 1, 1996, that contains mercury that was intentionally introduced as described in section 203.

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

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after January 1, 1996.

SEC. 206. LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.

(a) PROHIBITION.—On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer, or the importer of such a battery—

(1) identifies a collection site in the United States that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

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

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

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

SEC. 207. NEW PRODUCT OR USE.

On petition of a person that proposes a new use for a battery technology described in this title or the use of a battery described in this title in a new product, the Administrator may exempt from this title the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)).

PURPOSE AND SUMMARY

H.R. 2024, the Mercury-Containing and Rechargeable Battery Management Act, phases out the use of mercury in batteries and provides for the efficient and cost-effective collection and recycling of certain other batteries, including nickel cadmium batteries and small sealed lead-acid batteries. The legislation would implement a national, uniform system for the collection and recycling of such batteries and provide for uniform labeling of the batteries. The legislation also provides enforcement mechanisms for violations of these new requirements.

BACKGROUND AND NEED FOR LEGISLATION

A. Environmental hazards posed by batteries

Exposure to mercury and cadmium does not pose health risks through the use of ordinary consumer products, but these elements can pose significant environmental problems when released into the environment.

Exposure to mercury at high levels, which may result from breathing contaminated air or exposure to highly contaminated air, water, or soil near hazardous waste sites, may damage the brain, kidneys, and a developing fetus. Inorganic mercury, which includes metallic mercury and inorganic mercury compounds, can be released into the air from waste incineration. Inorganic mercury compounds are created by the combination of mercury with other elements, such as oxygen, chlorine, or sulfur. Mercury's effects on the brain may result in memory problems, vision and hearing difficulties, tremors, and irritability. Methylmercury exposure is particularly dangerous for young children because of its interference with neurological development. The U.S. Environmental Protection Agency (EPA) limits mercury in drinking water to no more than 2 parts per billion. The Food and Drug Administration (FDA) limits methylmercury in seafood to 1 part per million. The Occupational Safety and Health Administration (OSHA) limits mercury in workplace air to 1 milligram per 10 cubic meters.

Exposure to cadmium, which may occur from inhalation or ingestion of water, can damage the lungs and cause kidney disease. Cadmium can be released into the air from waste incineration and enters the water and soil from waste disposal and leaks near hazardous waste sites. The body retains cadmium for a long time, and

cadmium can build up in the body as a result of long periods of low exposure. The Department of Health and Human Services notes that cadmium may reasonably be anticipated to be a carcinogen. The EPA limits cadmium in drinking water to no more than 5 parts per billion. The FDA limits cadmium in food colors to 15 parts per million parts of food color. OSHA limits cadmium fumes in workplace air to 100 micrograms per cubic meter, and cadmium dust to 200 micrograms per cubic meter.

Batteries are a major source of mercury and cadmium releases into the environment. Although the 2.5 billion dry cell batteries which the United States uses each year are a small portion of the overall amount of waste that is landfilled or incinerated, they represent a much larger portion of the overall amounts of mercury and cadmium in the U.S. waste stream. A New York State report on solid waste found that rechargeable batteries were the source of 68 percent of the cadmium in the State's solid waste, and mercury batteries accounted for 85 percent of the mercury in the State's waste stream. These materials can leach into groundwater after the batteries become corroded in landfills, and cause toxic air emissions from incinerators and increase the concentration of heavy metals in fly ash and bottom ash.

There are two main categories of dry cell batteries: primary batteries, which are disposable batteries used in common household items like flashlights and radios, and secondary batteries or rechargeable batteries, typically used in items like cellular phones, cordless phones and cordless power tools. Primary batteries do not typically contain lead or cadmium electrodes or other significant amounts of toxic metals, but they may contain very small amounts of metals to prevent the formation of dangerous gases and to extend the life of the battery. The main primary battery chemistries are alkaline-manganese and zinc-carbon. The exception is the mercuric-oxide cell, used in medical, military, computer, and other equipment that requires constant voltage to operate. Mercuric-oxide batteries are being replaced increasingly with other alternatives.

Secondary or rechargeable batteries include heavy metal nickel-cadmium and sealed lead batteries. Manufacturers most often market these batteries with products like portable power tools and razors and include external rechargers. Some 85 percent of the 350 million rechargeable batteries purchased annually today in the United States are nickel-cadmium batteries, although new chemistries are expected to become a larger portion of the total over the next few years as rechargeable battery use grows.

A broad industry group encompassing nearly all major battery manufacturing, consuming, and retailing companies is supporting H.R. 2024. The battery manufacturing and consuming companies organized the Portable Rechargeable Battery Association (PRBA) after the State of Minnesota passed the first State law establishing a rechargeable battery recycling program in 1991. The association, which now includes over 100 member companies, was formed to promote battery recycling programs.

The PRBA formed the Rechargeable Battery Recycling Corporation (RBRC) to recycle the rechargeable batteries with funding from the PRBA companies. The RBRC now operates battery pro-

grams in three States. The PRBA and the RBRC testified that Federal legislation is necessary to allow them to operate a uniform battery recycling program nationwide to quickly reduce cadmium levels in household waste. The PRBA also supports provisions in the bills to phase out mercury in most batteries.

B. Federal and State battery recycling initiatives and current law

Both regulators and the regulated community agree that government should take steps to reduce the presence of mercury, cadmium, and other metals from batteries in the solid waste stream. Additionally, there appear to be few disagreements that recycling programs would be an efficient method of reduction.

Because of their heavy metal content, used rechargeable batteries are considered to be "hazardous waste" under the Resource Conservation and Recovery Act (RCRA), and therefore have been subject to the regulatory requirements applicable to hazardous waste under subtitle C of that Act. "Household waste," however, is exempted from the requirements of subtitle C, so batteries disposed of through ordinary municipal collection have ended up in landfills or incinerators. Waste from sources other than households does not fall into this exemption. If businesses were to undertake collection of rechargeable batteries, as is envisioned by the battery industry for its recycling program, the batteries would be subject to RCRA hazardous waste requirements. Those requirements include licensing and manifesting requirements for hazardous waste transporters; permitting requirements for the storage of hazardous waste; a requirement that hazardous waste be disposed of in specially permitted landfills; and various reporting and inspection requirements. The expensive subtitle C requirements are ill-suited to used rechargeable batteries, which are typically no more hazardous when transported and handled after use than when they are transported new. Their hazardous constituents do not pose risks to human health or the environment until incinerated or until they become corroded from exposure to the elements.

Recognizing that certain hazardous wastes do not require the extensive regulatory control of subtitle C, and in an effort to facilitate environmentally-sound collection and recycling or treatment of hazardous waste nickel-cadmium and other batteries and other widely generated hazardous wastes, the EPA promulgated the Universal Waste Rule (40 CFR 273). Promulgated on May 11, 1995, the Universal Waste Rule applies to batteries which have been characterized as "hazardous waste" under RCRA. The regulatory definition of "battery" for such purposes is a broad one which covers rechargeable batteries and other battery types.

The effect of the Universal Waste Rule is to streamline the regulations of subtitle C for the purpose of fostering battery recycling. The rule instead subjects rechargeable battery handlers and transporters to separate, less stringent requirements, distinguishing between "large quantity handlers of universal waste" (those which handle more than 5,000 kilograms of universal waste at one time) and "small quantity handlers of universal waste" (those which handle less than 5,000 kilograms at once). For large quantity handlers, the rule requires that the handler notify the Administrator of the Environmental Protection Agency (the Administrator) or authorized

State of its activities and shipments, ensure appropriate employee training in handling such wastes, and track and keep records of shipments. Universal waste transporters and destination facilities are also subject to management and tracking requirements. The regulations for destination facilities remain the same as under the full subtitle C.

The proposed legislation goes further than the Universal Waste Rule. Unlike H.R. 2024, the Universal Waste Rule does not set forth labeling requirements for rechargeable batteries and rechargeable consumer products. This means consumers do not have notice that rechargeable batteries can be recycled.

RCRA provides that States may put in place their own hazardous waste programs in lieu of RCRA if the program is no less stringent than the Federal program. States may also adopt more restrictive requirements if they so choose. Only three States—Alaska, Hawaii, and Iowa—have not sought authorization to run a State program in lieu of RCRA. This means that in those three States, the Federal RCRA program, including regulations, applies and therefore the Universal Waste Rule also applies without any further action from the States.

In the other 47 States, most RCRA regulations, including the Universal Waste Rule, do not automatically apply. Each State must affirmatively adopt the Federal regulations, and may do so with changes. The adopted State rule must then be approved by the EPA. To date, nine States—Alabama, Arkansas, Colorado, Florida, Mississippi, Nevada, North Carolina, Tennessee, and Utah—have promulgated regulations implementing the Universal Waste Rule. Another two States—Georgia, and Michigan—have passed statutes incorporating the Universal Waste Rule. Others are considering the rule; some have issued discretionary guidance stating intentions not to enforce their existing laws to the detriment of battery recycling programs.

In addition, 13 States—California, Connecticut, Florida, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, Oregon, Rhode Island, and Vermont—have enacted their own legislation, mostly prior to the issuance of the Universal Waste Rule, requiring that nickel-cadmium and small sealed lead-acid batteries be labeled as recyclable and be "easily removable" from rechargeable consumer products. All of these States except California, New Hampshire, New York, and Oregon have also set up battery collection and recycling programs. There are slight differences among these statutes as to which words are required on the labels, and how the collection and recycling programs must be operated.

The battery industry has made a strong case that there are at least two impediments that prevent establishment of a truly national recycling program and compel Federal legislation.

First, the Universal Waste Rule is a helpful step toward establishing a national program. However, until all States adopt the rule, battery collection, handling, and transportation may be subject to inconsistent regulations among the States. Transporters may not be able to travel through certain States unless they comply with manifesting, reporting and other requirements, which are some of the requirements the Universal Waste Rule is designed to streamline. Furthermore, States are not required to adopt identical

versions of the rule, which potentially could lead to transporters facing inconsistent requirements.

Second, the inconsistencies also arise with respect to separate State rechargeable battery recycling statutes. Although the labeling requirements are very similar in virtually all States with such requirements, the exact words required in each vary slightly. Battery manufacturers must therefore produce separate labels for different States. Retailers who collect batteries for recycling may also have to set up different programs depending on State requirements.

The Commerce Committee does not intend to establish this bill as a precedent for preempting State laws or affecting the enactment of State public health and environmental protections that are more stringent than Federal standards. The Committee does not intend to restrict the addition of wastes eligible for regulation under the Universal Waste Rule.

H.R. 2024 is necessary because of a set of unique circumstances which requires national uniformity and preemption of State laws: (1) Battery manufacturers and manufacturers whose products require the use of such batteries have demonstrated a long-term commitment to protect the environment and to improve public health through collection and recycling capacity building, significant financial investments, and encouraging retailer and consumer participation; (2) While the batteries subject to Title I of H.R. 2024 can cause serious environmental hazards when disposed of or incinerated in large quantities, they will pose at most a de minimis environmental and public health threat if removed from the solid waste stream and managed in accordance with the requirements of the Universal Waste Rule; and (3) Uniform national incentives to create a voluntary recycling program will provide the opportunity to considerably enhance public health and the environment.

C. Support for legislation

The community to be regulated by H.R. 2024—battery manufacturers, industries that use batteries in their consumer products, and the retail industry—all strongly support the legislation.

The Oxley-Pallone-Klug amendment adopted at the Full Committee markup is designed to address the concerns raised by the EPA at the March 21, 1996, hearing on the bill. The amended version of H.R. 2024 reported by the Committee on Commerce also addresses issues raised by the Department of Justice, the Federal Trade Commission, and the Office of the United States Trade Representative.

A number of local government groups, including the U.S. Conference of Mayors, and the National Conference of State Legislatures are endorsing the bill.

D. Legislative history

In the 102nd Congress, battery legislation was approved by the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works, but did not move further in either the House or the Senate.

In the 103rd Congress, battery legislation was paired with legislation to reduce lead in various consumer items. The House Subcommittee on Transportation and Hazardous Materials approved

H.R. 4882, legislation offered by Congressman Al Swift, for Full Committee consideration by a voice vote. The Senate passed similar legislation, S. 729, offered by Senator Reid, by a nearly unanimous vote.

In the 104th Congress, the Senate passed S. 619, legislation introduced by Senator Bob Smith, by a voice vote on September 21, 1995. Congressman Scott Klug introduced H.R. 2024 on July 12, 1995 with Congressmen Gillmor, Bilirakis, Brown (Ohio), Fields (Texas), Franks (Connecticut), Hastert, Congresswoman Lincoln, Congressmen Manton, Pallone, Richardson, Stearns, Tauzin and Congresswoman Thurman as original cosponsors.

HEARINGS

The Subcommittee on Commerce, Trade, and Hazardous Materials held a legislative hearing on March 21, 1996. Testimony was received from the following witnesses: Mr. Michael Shapiro, Director, Office of Solid Waste, U.S. Environmental Protection Agency; Mr. Jeff Bagby, Vice President, Rechargeable Battery Recycling Corporation; Mr. Norm England, President, Portable Battery Recycling Association; Mr. Ray Balfour, Vice President, Rayovac Corporation; The Honorable Randy Johnson, Commissioner, Board of Hennepin County (Minnesota) Commissioners; and Mr. Ronald Parrish, Vice President, Tandy Corporation.

COMMITTEE CONSIDERATION

On April 16, 1996, the Full Committee met in open markup session to consider H.R. 2024, the Mercury-Containing and Rechargeable Battery Management Act. By unanimous consent, the Subcommittee on Commerce, Trade, and Hazardous Materials was discharged from further consideration of the bill. The Full Committee ordered H.R. 2024 reported to the House, as amended, by a voice vote, a quorum being present.

ROLL CALL VOTES

Clause 2(l)2(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 2024 reported or in adopting the amendment. The voice votes taken in Committee are as follows:

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

April 16, 1996

Bill: H.R. 2024, Mercury-Containing and Rechargeable Battery Management Act.

Amendment: Amendment by Mr. Oxley to make various clarifications to the existing legislation.

Disposition: Agreed To, by a voice vote.

Motion: Motion by Mr. Bliley to order H.R. 2024, as amended, reported to the House.

Disposition: Agreed To, by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2024 would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 1996.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2024, the Mercury-Containing and Rechargeable Battery Management Act, as ordered reported by the House Committee on Commerce on April 16, 1995. CBO estimates that this bill would not have a significant impact on the federal budget, because it does not require any significant regulatory actions that are not anticipated under current law. Because the bill could affect receipts, pay-as-you-go procedures would apply. However, CBO estimates that any change in receipts would be insignificant. The bill would impose new intergovernmental and private sector mandates, but those mandates would not result in significant costs for state or local governments, and would save money for the private sector.

Bill purpose

H.R. 2024 would prohibit the sale of certain consumer products with rechargeable batteries unless labeling requirements specified in the bill are met. Under some circumstances, the Environmental Protection Agency (EPA) could grant two-year exemptions from this requirement. Section 104 would exempt persons involved in the col-

lection, storage, transportation, and recycling or proper disposal of certain rechargeable batteries from regulations governing hazardous waste. In addition, title II would prohibit the sale of batteries containing mercury that was intentionally introduced during the manufacturing process.

Impact on the Federal budget

The bill would require EPA to enforce the provisions of this bill, to provide information to the public concerning proper handling and disposal of certain used rechargeable batteries, and to respond to petitions from manufacturers for exemption from the battery labeling requirements defined by H.R. 2024. Based on information from the agency, we estimate these activities would cost less than $500,000 annually.

Section 5 could increase governmental receipts by creating new civil penalties under the provisions of the bill enforced by the EPA. CBO estimates that any such increase would be less than $500,000 annually.

Estimated impact on State and local governments

The bill contains intergovernmental mandates, as defined in Public Law 104–4, that would preempt state and local laws dealing with rechargeable batteries. CBO estimates that the costs of these mandates would be minimal and would not exceed the $50 million threshold establishes in the law. State and local governments would likely realize lower battery disposal costs as a result of this bill, but those savings would not result from the mandates in the bill.

Section 103 of the bill would prohibit states or localities from enforcing any requirements regarding the case of removal or the environmental labeling of rechargeable batteries that are not identical to the requirements in the bill. CBO estimates that this preemption would not impose significant costs on state and local governments.

Section 104 would exempt handlers of some types of rechargeable batteries from certain hazardous waste regulations. In providing this exemption, the section would immediately preempt all similar state and local laws. States would be allowed to implement and enforce their own requirements only if EPA determined that those requirements were identical to those of the federal government. Under current law, states authorized to administer and enforce the Resource Conservation and Recovery Act (RCRA) may adopt EPA's universal waste rule of May 1995, which provides an exemption to handlers of rechargeable batteries similar to the exemption in this bill. Thus, CBO estimates that this preemption would not impose significant costs on states and localities because it would not significantly change their enforcement activities.

The bill would provide an immediate exemption from certain regulations to handlers of rechargeable batteries. State and local governments that use rechargeable batteries would begin paying lower handling costs one to three years earlier than under current law.

Impact on the private sector

This bill would impose mandates on the manufactures and importers of regulated batteries, mercury-containing batteries, and rechargeable consumer products. The mandates include requirements governing labeling of batteries, elimination of mercury in batteries, establishing and maintaining records of the labeling and the mercury content of batteries, and manufacturing rechargeable consumer products with an easily removable battery or a battery that is sold separately. Manufacturers and importers are unlikely to incur any additional costs from these mandated because they either currently comply with these requirements, or would likely obtain an exemption.

Requirements for standard labels and reduced requirements related to transporting certain batteries would save money for the private sector. The labeling requirements would standardize labels that are now required by a number of states. Because individual states have different labeling requirements, the federal standards would reduce costs for manufacturers. This bill produces additional savings for the rechargeable battery industry by loosening transportation restrictions of rechargeable batteries. The rechargeable battery would no longer be considered a hazardous material and thus could be transported at lower cost as a nonhazardous substance.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs), Pepper Santalucia (for state and local impacts), and Jean Wooster (for private sector impacts).

Sincerely,

PAUL VAN DE WATER,
(For June E. O'Neill, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the "Mercury-Containing and Rechargeable Battery Management Act."

Section 2. Congressional Findings

Congress finds that it is in the public interest to phase out mercury use in batteries and provide for efficient and cost-effective collection and recycling or proper disposal of certain batteries; that uniform national labeling of certain batteries will significantly benefit recycling programs; and that battery recycling programs are to be encouraged.

Section 3. Definitions

Section 3 defines the following terms used in the bill: "Administrator," "button cell," "easily removable," "mercuric oxide battery," "rechargeable battery," "rechargeable consumer product," "regulated battery," and "remanufactured product."

The term "rechargeable battery" excludes lead acid batteries used in vehicles and electric power generators; rechargeable alkaline batteries (which are subject to section 203's mercury requirements); and batteries built into products to deal with power failures and fluctuations. The paragraph 5(C)(iii) exemption and the product exemption in paragraph 6(B) do not apply to external uninterruptible power supply devices or their batteries.

Section 4. Information Dissemination

This section requires the Administrator to establish a program to provide the public with information on the proper handling and disposal of used batteries and rechargeable consumer products with nonremovable batteries.

Section 5. Enforcement

This section provides civil enforcement authority to the Administrator in cases where the Administrator determines that a person has violated any requirement of the Act, except for section 104, which is enforceable under the Solid Waste Disposal Act. The Administrator may assess a civil penalty of up to $10,000 for each violation. In addition, section 5(a)(2) authorizes commencement of a civil judicial action for noncompliance with any term or requirement of an administrative order (including an order to pay a penalty) and may also include additional injunctive or other relief, where appropriate.

It restricts the Administrator's enforcement against retailers for offering to the ultimate consumer for sale or promotional purposes an unmodified battery or product governed by the Act that was purchased ready for final sale, and sold, offered for sale, or offered for promotional purposes. The initial manufacturer of the battery or other persons who modify or sell such batteries to a retailer can be prosecuted for violations of this Act.

This provision is designed to promote retailers' voluntary participation in recycling programs by protecting retailers from prosecution for the sale of batteries that they purchase from a person, such as a manufacturer, who violates the Act. However, if the retailer is an importer who purchases batteries from an overseas manufacturer who may not be within the Administrator's enforcement reach, the legislation does not protect that retailer simply because he obtained the batteries abroad. For this reason, section 5(h) does not provide enforcement protection for an importer selling a battery who has knowledge that the battery he has obtained and is now selling contains the materials described in sections 203, 204, 205, or 206.

Requiring that the importer have "knowledge" of the contents of a battery is a standard that differs from civil enforcement standards of some other environmental statutes. Such an intent standard is adopted in this narrow circumstance to encourage retailers to participate in recycling programs, and because importers may be

misled by foreign vendors from whom the importers purchase batteries.

For the purposes of this Act, the term "ultimate consumer" means a person who obtains a battery or product with no intent to sell, and who does not sell, the battery or product prior to use.

Section 6. Information Gathering and Access

Section 6 authorizes record keeping requirements for battery manufacturers or their agents, and provides the Administrator with information gathering authority on battery collection and recycling.

Section 7. State Authority

This section preserves State authority to enact and enforce standards and requirements more stringent than those established under the Act, except as provided in sections 103(e) and 104. This section also makes clear that States are entitled to adopt and enforce rules and regulations that are identical to the requirements imposed by the Act.

Section 8. Authorization of Appropriations

Section 8 authorizes appropriation of such sums as are necessary to implement the Act.

TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

Section 101. Short Title

Section 101 establishes the short title of this title as the "Rechargeable Battery Recycling Act.'

Section 102. Purpose

Section 102 sets forth the purpose of the title as facilitating efficient recycling of nickel-cadmium rechargeable batteries, small sealed lead-acid rechargeable batteries, and rechargeable batteries in consumer products, through uniform labeling requirements, streamlined regulatory requirements for regulated battery collection programs, and voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

Section 103. Rechargeable Consumer Products and Labeling

Section 103 prohibits the sale for use in the United States of a regulated battery or rechargeable consumer product manufactured one year or more after the date of enactment unless the section's labeling requirements are met and the regulated battery is easily removable from the rechargeable consumer product or sold separately.

The section's labeling requirements apply to regulated batteries and rechargeable consumer products without easily removable batteries. Each such product must bear the three chasing arrows recycling sign and the phrase "BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY" (the exact language differs depending on the type of battery).

To give retailers time to deplete their stocks of products manufactured prior to the Act, the bill provides that products labeled in substantial compliance with the Act are deemed to comply with the labeling requirements.

The section also gives the Administrator authority to certify that labels that convey substantially the same information or conform with international labeling standards comply with the Act; gives the Administrator the authority to adopt similar labeling rules for battery chemistries not covered by section 103 upon a finding that they may cause substantial harm to human health and the environment if discarded into the solid waste stream; prevents enforcement of labeling or easy removability standards that differ from the Act; and provides the Administrator with authority to exempt manufacturers from the section's requirements under certain circumstances.

Section 104. Requirements

This section states that certain batteries which when discarded would otherwise be considered hazardous wastes—including used rechargeable batteries, batteries described in section 3(5)(C) or Title II, and used rechargeable consumer products containing rechargeable batteries that are not easily removable—shall be regulated in essentially the same manner as batteries regulated under 40 CFR 273. That subpart is EPA's so-called "Universal Waste Rule," which provides comprehensive regulation for the management of used batteries. With the exception of mercuric oxide batteries, batteries described in Title II are not hazardous wastes. Under the Universal Waste Rule (40 CFR 273.2(b)), collection, storage, and transportation of any batteries described in Title II which are not hazardous wastes would not be subject to the Universal Waste Rule.

The section also provides that failure to comply with subsection (a) of the section shall be subject to enforcement under the Solid Waste Disposal Act. States may enforce the requirements of subsection (a) if they have adopted requirements identical to those in that subsection and provide for their enforcement. This Act does not concern the disposal of batteries or other products. The disposal of batteries and other products covered by this Act is governed by the Solid Waste Disposal Act and other laws.

TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT

Section 201. Short Title

Section 201 establishes the short title of Title II as the "Mercury-Containing Battery Management Act."

Section 202. Purpose

Section 202 states the purpose of Title II as phasing out the use of mercury in batteries.

Section 203. Limitations on the Sale of Alkaline-Manganese Batteries Containing Mercury

Section 203 prohibits any person from selling alkaline-manganese batteries manufactured after January 1, 1996, with an intentionally introduced mercury content, except for alkaline-manganese button cells, which may contain up to 25 milligrams of mercury.

Section 204. Limitations on the Sale of Zinc-Carbon Batteries Containing Mercury

Section 204 prohibits any person from selling zinc-carbon batteries manufactured after January 1, 1996, with an intentionally introduced mercury content.

Section 205. Limitations on the Sale of Button Cell Mercuric-Oxide Batteries

Section 205 prohibits any person from selling for use in the United States button cell mercuric-oxide batteries manufactured after January 1, 1996.

Section 206. Limitations on the Sale of Other Mercuric-Oxide Batteries

Section 206 prohibits any person or importer from selling for use in the United States other mercuric-oxide batteries unless the manufacturer identifies an approved domestic collection site, and informs purchasers of the location of the site and provides a telephone number for recycling information.

Section 207. New Product or Use

Section 207 authorizes the Administrator to exempt from this title new products or uses for batteries described in this bill, if reasonable safeguards exist that the battery will not be disposed of in an incinerator or landfill other than a facility regulated under subtitle C of the Solid Waste Disposal Act. The 1984 amendments to the Solid Waste Disposal Act prohibit the land disposal of hazardous wastes with two significant options for legal disposal: (1) meet pretreatment standards; or (2) place waste into a unit which has an approved petition certifying that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any Federal statute.

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