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SENATE

{ REPORT
108-199

MERCURY REDUCTION ACT OF 2003

NOVEMBER 19, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 616]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 616) to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting the use of mercury fever thermometers and improving the collection and proper management of mercury, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

BACKGROUND

Mercury is a highly lethal and potent neurotoxin that is widespread in the environment. It is particularly harmful to developing children and pregnant women. A 2000 National Academy of Sciences report attributed mercury exposure to birth defects and brain damage in up to 60,000 newborn children each year.

The Environmental Protection Agency (EPA) has estimated that mercury thermometers contributed approximately 17 tons of mercury to solid waste per year through the early 1990's. While this amount has declined since then, mercury fever thermometers continue to represent the largest household source of mercury. Replacement of these household thermometers with non-mercury alternatives (such as digital thermometers) would go a long way toward reducing the amount of mercury that eventually ends up in the environment.

With respect to water pollution, according to the Association of Metropolitan Sewerage Agencies, technologies that reduce discharges of mercury from wastewater treatment plants to required levels are estimated to cost ratepayers and taxpayers anywhere from \$10 million to \$100 million per pound of mercury. Again, mercury fever thermometers are one of the largest household sources of mercury in wastewater.

Presently, numerous cities and ten States—Maine, Oregon, Indiana, California, New Hampshire, Maryland, Minnesota, Connecticut, Rhode Island and Michigan—have already banned the sale of mercury fever thermometers. Over 20,000 of the 32,000 retail stores in the National Association of Chain Drug Stores no longer sell mercury thermometers and 11 of the top 15 national retailers have stopped selling mercury thermometers. Moreover, no mercury fever thermometers are manufactured in the United States; the primary sources are factories in India and China.

OBJECTIVES OF THE LEGISLATION

The bill as reported: (1) prohibits the sale of mercury fever thermometers except by prescription, (2) directs the EPA to establish a national mercury thermometer collection and exchange program, and (3) creates a Federal task force to make recommendations to Congress regarding the cost-effective, long-term management of surplus mercury.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that this Act may be cited as the “Mercury Reduction Act of 2003”.

Sec. 2. Findings

This section lists findings of Congress on the hazards of mercury to human health, to fish and wildlife, and to the environment.

Sec. 3. Mercury

This section amends the Solid Waste Disposal Act, and adds a new provision on mercury. This section contains four provisions:

(1) Prohibition on the sale of mercury fever thermometers—180 days after the enactment date of the legislation, a person shall not sell or supply mercury fever thermometers to consumers, except by prescription. With each mercury fever thermometer sold or supplied by prescription, the manufacturer of the thermometer shall provide clear instructions on both the careful handling and proper cleanup of the thermometer and its contents in the event of breakage.

(2) Thermometer exchange program—Directs the Administrator of the U.S. Environmental Protection Agency (EPA) to make grants to States, municipalities, nonprofit organizations, or other suitable entities for implementation of a national program for the collection of mercury fever thermometers from households and their exchange for thermometers that do not contain mercury.

(3) Management of collected mercury—Requires the Administrator of EPA to take title to the mercury collected under the thermometer exchange program, or mercury collected from any other source,

and ensures no release to the environment or reintroduction into commerce of this mercury. It also requires EPA to conduct research and development on permanent means of safely disposing of mercury.

(4) Interagency Task Force on Mercury-Creates a Task Force to be chaired by the Administrator of the Environmental Protection Agency with one member each to be appointed by the Secretaries of State, Defense, and Energy, and the Director of the National Institute of Environmental Health Sciences of the Department of Health and Human Services. The Task Force shall consult with States, industries, health, environmental, and consumer organizations. Not later than 1 year after the formation of the Task Force, the Task Force shall submit to Congress a report containing recommendations regarding means of reducing the total mercury threat to humans and the environment, including:

- The long-term management of surplus mercury collected from thermometers, and other sources including medical, governmental, and industrial sources;
- Programs to test the long-term durability of technologies to sequester mercury. It is the intent of the committee that ‘sequester’ means stabilization techniques or other long-term storage activities;
- Storage of collected surplus mercury in a manner that ensures there is no release of the mercury into the environment;
- Reduction of the total threat posed by mercury to humans and the environment; and
- Effective means of reducing the total amount of mercury produced, used, and release on a global basis.

A provision was inserted to clarify that the inclusion of the Task Force under Subtitle C of the Solid Waste Disposal Act, which deals with hazardous waste, is not intended to imply that anything the Task Force considers should be considered a hazardous waste. The Solid Waste Disposal Act and its implementing regulations already contain the structure for determining when waste materials are hazardous, and nothing in the Mercury Reduction Act changes those provisions.

Finally, the bill authorizes \$20 million for grants to States and other eligible entities for the collection and exchange of mercury fever thermometers and \$1 million for EPA’s safe management and storage of mercury.

LEGISLATIVE HISTORY

On March 13, 2003, Senator Collins introduced S. 616. Senators Jeffords, Chafee, Kerry, Hutchison, Reed, Lieberman, Voinovich, Dorgan, Leahy and Wyden were cosponsors. The bill was referred to the Senate Committee on Environment and Public Works. A full committee business meeting was held on April 9, 2003, and S. 616 was ordered reported to the Senate. S. 616 is identical to S. 351 in the 107th Congress, which was reported by this committee and passed by the Senate.

HEARINGS

No hearings were held on S. 616 during the 108th Congress.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 616 on April 9, 2003. The Committee voted favorably to report S. 616 by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication of the report of the committee's estimate of the regulatory impact made by the bill as reported. The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 616 would not impose any Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 21, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 616, the Mercury Reduction Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

S. 616, Mercury Reduction Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on April 9, 2003

Summary

Enacting S. 616 would impose a ban on the sale of mercury fever thermometers, except by prescription. This bill would authorize the Environmental Protection Agency (EPA) to provide grants to States, municipalities, and nonprofit organizations for implementa-

tion of a national program to help consumers exchange their mercury thermometers for thermometers that do not contain mercury. In addition, S. 616 would create an interagency task force (to be chaired by the Administrator of EPA) that would consult with States, industry representatives, and health, environmental, and consumer organizations to develop recommendations for reducing the long-term threat of mercury to humans and the environment. EPA also would be responsible for disposing of the mercury waste collected under the thermometer exchange program and for conducting research and development on permanent methods for disposing of mercury.

The bill would authorize the appropriation of \$19 million for the grant program, \$1 million per year for safe management and disposal of the mercury collected, and \$1 million for administrative support for the interagency task force. Assuming appropriation of the specified amounts, CBO estimates that implementing this legislation would cost \$25 million over the 2004–2008 period. The bill would not affect direct spending or revenues.

S. 616 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with the mandate would not be significant and would not exceed the threshold established in that act (\$59 million in 2003, adjusted annually for inflation).

S. 616 also contains private-sector mandates, as defined in UMRA, on the sellers and suppliers of mercury fever thermometers. CBO estimates that the direct cost of those mandates would fall below the annual threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 616 is shown in the following table. CBO estimates that implementing the bill would cost \$25 million over the 2004–2008 period, assuming appropriation of the authorized amounts. This estimate is based on historical spending patterns for similar activities. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Thermometer Exchange Program:					
Estimated Authorization Level	19	0	0	0	0
Estimated Outlays	10	6	3	0	0
Safe Management and Disposal of Mercury:					
Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Interagency Task Force:					
Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0
Total Proposed Changes					
Estimated Authorization Level	21	1	1	1	1
Estimated Outlays	12	7	4	1	1

Estimated Impact on State, Local, and Tribal Governments

S. 616 would prohibit the sale of mercury thermometers without a prescription. Since public hospitals own their own pharmacies, this prohibition would constitute an intergovernmental mandate as defined in UMRA. Based on information from the Public Hospital Pharmacy Coalition, CBO estimates that the cost of complying with the mandate would not be significant and would not exceed the threshold established in that act (\$59 million in 2003, adjusted annually for inflation). The remaining provisions of the bill contain no mandates and would impose no costs on State, local, or tribal governments.

Estimated Impact on the Private Sector

S. 616 contains two private-sector mandates as defined in UMRA. The bill would prohibit the sale or supply of mercury fever thermometers, except by prescription. Second, for each mercury thermometer sold or supplied by prescription, the manufacturer of the thermometer would be required to provide clear instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of the thermometer and its contents in the event of breakage.

Over the past decade, the numbers of mercury fever thermometers sold and supplied has declined because of the environmental and health risks of mercury. Manufacturers, hospitals and most large retail stores have generally shifted away from the production, use, and sale of mercury fever thermometers. Currently, 10 States and about 15 municipalities have enacted bans on mercury thermometers, and over 10 national retail chains have voluntarily committed to sell only mercury-free thermometers.

Given the current trend in the industry, and State, hospital, and retail bans of mercury fever thermometers, the bill would affect only a small number of manufacturers, sellers, and suppliers. Lost income due to a loss in sales would not be significant. In addition, the cost for a manufacturer to provide an insert with clear instructions on handling and cleanup would be small. Thus, CBO estimates that the direct cost of private-sector mandates in the bill would be below the annual threshold established by UMRA (\$117 million in 2003, adjusted annually for inflation).

Estimate Prepared By: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Gregory Waring; Impact on the Private Sector: Cecil McPherson.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

Subtitle A—General Provisions

Sec. 1001. Short title and table of contents.

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Sec. 3024. *Mercury.*

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SEC. 1001. * * *

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Subtitle C—Hazardous Waste Management

Sec. 3001. Identification and listing of hazardous waste.

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SEC. 3023. FEDERALLY OWNED TREATMENT WORKS.

(a) * * *

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SEC. 3024. MERCURY.

(a) *PROHIBITION ON SALE OF MERCURY FEVER THERMOMETERS EXCEPT BY PRESCRIPTION.—Effective beginning 180 days after the date of enactment of this section—*

(1) *a person shall not sell or supply mercury fever thermometers to consumers, except by prescription; and*

(2) *with each mercury fever thermometer sold or supplied by prescription, the manufacturer of the thermometer shall provide clear instructions on—*

(A) *careful handling of the thermometer to avoid breakage; and*

(B) *proper cleanup of the thermometer and its contents in the event of breakage.*

(b) *THERMOMETER EXCHANGE PROGRAM.—The Administrator shall make grants to States, municipalities, nonprofit organizations, or other suitable entities for implementation of a national program*

for the collection of mercury fever thermometers from households and their exchange for thermometers that do not contain liquid mercury.

(c) *MANAGEMENT OF COLLECTED MERCURY.*—

(1) *TASK FORCE.*—

(A) *ESTABLISHMENT.*—*There is established an advisory committee to be known as the ‘Task Force on Mercury’ (referred to in this section as the ‘Task Force’).*

(B) *MEMBERSHIP.*—*The Task Force shall be composed of 5 members, of whom—*

(i) *1 member shall be the Administrator, who shall serve as Chairperson of the Task Force;*

(ii) *1 member shall be the Secretary of State;*

(iii) *1 member shall be the Secretary of Defense;*

(iv) *1 member shall be the Secretary of Energy;*

and

(v) *1 member shall be the Director of the National Institute of Environmental Health Sciences of the Department of Health and Human Services.*

(C) *TERM; VACANCIES.*—

(i) *TERM.*—*A member shall be appointed for the life of the Task Force.*

(ii) *VACANCIES.*—*A vacancy on the Task Force—*

(I) *shall not affect the powers of the Task Force; and*

(II) *shall be filled in the same manner as the original appointment was made.*

(D) *MEETINGS.*—

(i) *INITIAL MEETING.*—*Not later than 30 days after the date of enactment of this section, the Task Force shall hold the initial meeting of the Task Force.*

(ii) *CALLING OF MEETINGS.*—*The Task Force shall meet at the call of the Chairperson.*

(iii) *QUORUM.*—*A majority of the members of the Task Force shall constitute a quorum, but a lesser number of members may hold hearings.*

(E) *DUTIES.*—

(i) *IN GENERAL.*—*Not later than 1 year after the date of the initial meeting of the Task Force, the Task Force shall submit to Congress a report containing recommendations and suggested actions concerning—*

(I) *the long-term management of surplus mercury collected from—*

(aa) *mercury fever thermometers;*

(bb) *other medical and commercial sources;*

(cc) *government sources, including mercury stored by the Department of Defense and the Department of Energy; and*

(dd) *industrial or other sources in the United States;*

(II) *programs to test the long-term durability of promising technologies for sequestration of mercury;*

(III) storage of mercury collected or sequestered under subclause (I) or (II), in a manner that ensures that there is no release of the mercury into the environment;

(IV) reduction of the total threat posed by mercury to humans and the environment; and

(V) reduction of the total quantity of mercury produced, used, and released on a global basis, including whether and how—

(aa) the quantity of virgin mercury mined from the ground and placed in circulation each year can be reduced through bilateral or international agreements or other means;

(bb) the quantity of mercury intentionally used in products, mining, and manufacturing can be reduced through substitution of mercury-free alternatives that are safer, available, and affordable; and

(cc) essential mercury needs can be met through use of stockpiles in existence on the date of enactment of this section rather than through use of virgin mercury.

(ii) CONSULTATION.—In carrying out this subparagraph, the Task Force shall consult with States, industries, and health, environmental, and consumer organizations.

(F) HEARINGS.—The Task Force may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Task Force considers advisable to carry out this section.

(G) INFORMATION FROM FEDERAL AGENCIES.—

(i) IN GENERAL.—The Task Force may secure directly from a Federal agency such information as the Task Force considers necessary to carry out this section.

(ii) PROVISION OF INFORMATION.—On request of the Chairperson of the Task Force, the head of the agency shall provide the information to the Task Force.

(H) POSTAL SERVICES.—The Task Force may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(I) GIFTS.—The Task Force may accept, use, and dispose of gifts or donations of services or property.

(J) COMPENSATION OF MEMBERS; TRAVEL EXPENSES.—

(i) FEDERAL EMPLOYEES.—A member of the Task Force who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(ii) TRAVEL EXPENSES.—A member of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57

of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Task Force.

(K) STAFF AND FUNDING.—

(i) DETERMINATION.—The Chairperson of the Task Force shall determine the level of staff and funding that are adequate to carry out the activities of the Task Force.

(ii) SOURCE.—The staff and funding shall be provided by and drawn equally from the resources of—

(I) the Department of Energy;

(II) the Department of Defense; and

(III) the Environmental Protection Agency.

(iii) APPOINTMENT OF STAFF.—The Chairperson may, without regard to the civil service laws (including regulations), appoint and terminate such staff as are necessary to enable the Task Force to perform the duties of the Task Force.

(iv) COMPENSATION.—

(I) IN GENERAL.—Except as provided in subclause (II), the Chairperson may fix the compensation of the staff of the Task Force that are not officers or employees of the Federal Government without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(II) MAXIMUM RATE OF PAY.—The rate of pay for the staff shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(v) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(I) IN GENERAL.—An employee of the Federal Government may be detailed to the Task Force without reimbursement.

(II) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(vi) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Task Force may procure for the purposes of the Task Force temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(L) TERMINATION OF TASK FORCE.—The Task Force shall terminate on the date that is 90 days after the date on which the Task Force submits the report required under subparagraph (E)(i).

(M) NO EFFECT ON OTHER LAW.—Nothing in this paragraph affects the regulation of mercury under—

(i) any other provision of this subtitle; or

(ii) any other law.

(2) **RESPONSIBILITY OF THE ADMINISTRATOR FOR SAFE MANAGEMENT AND STORAGE OF MERCURY.**—*In consultation with the Task Force, the Administrator shall—*

(A)(i) *purchase or otherwise take title to the mercury collected under the thermometer exchange program established under subsection (b), or collected from any other source;*

(ii) *manage (or designate a contractor to manage) the mercury collected in a manner that ensures that the mercury collected is not released into the environment;*

(iii) *ensure, to the maximum extent practicable, that the mercury collected under the thermometer exchange program established under subsection (b), or an equivalent quantity of mercury, is not reintroduced into commerce; and*

(iv) *provide to the Task Force, for inclusion in the report of the Task Force under paragraph (1)(F)(i), an analysis of, and recommendations relating to, the mercury collection and management activities carried out under this section; and*

(B)(i) *identify potential mercury stabilization technologies and long-term storage measures that ensure minimal release of mercury into the environment; and*

(ii) *conduct such research, development, and demonstration of the technologies and measures as the Administrator determines to be appropriate.*

(d) **RELATION TO OTHER LAW.**—*Nothing in this section—*

(1) *precludes any State from imposing any additional requirement; or*

(2) *diminishes any obligation, liability, or other responsibility under other Federal law.*

(e) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—*There is authorized to be appropriated to carry out this section (other than subsection (c)(2)(A)) \$20,000,000, of which—*

(A) *not more than 2.5 percent shall be used to carry out the activities of the Task Force; and*

(B) *not more than 2.5 percent shall be used to carry out subsection (c)(2)(B).*

(2) **SAFE MANAGEMENT AND STORAGE.**—*In addition to the amount authorized to be appropriated under paragraph (1), there is authorized to be appropriated to carry out subsection (c)(2)(A) \$1,000,000 for each fiscal year.*

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