

MERCURY EXPORT BAN ACT OF 2007

NOVEMBER 13, 2007.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1534]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred
the bill (H.R. 1534) to prohibit the sale, distribution, or transfer of
mercury, to prohibit the export of mercury, and for other purposes,
having considered the same, report favorably thereon with amend-
ments and recommend that the bill as amended do pass.

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AMENDMENTS

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mercury Export Ban Act of 2007”.

SEC. 2. FINDINGS.

Congress finds that—

- (1) mercury is highly toxic to humans, ecosystems, and wildlife;
- (2) as many as 10 percent of women in the United States of childbearing age have mercury in the blood at a level that could put a baby at risk;
- (3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;
- (4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;
- (5) the Environmental Protection Agency reports that, as of 2004—
 - (A) 44 States have fish advisories covering over 13,000,000 lake acres and over 750,000 river miles;
 - (B) in 21 States the freshwater advisories are statewide; and
 - (C) in 12 States the coastal advisories are statewide;
- (6) the long-term solution to mercury pollution is to minimize global mercury use and releases to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption since uncontaminated fish represents a critical and healthy source of nutrition worldwide;
- (7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);
- (8) the free trade of elemental mercury on the world market, at relatively low prices and in ready supply, encourages the continued use of elemental mercury outside of the United States, often involving highly dispersive activities such as artisanal gold mining;
- (9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;
- (10) the member countries of the European Union collectively are the largest source of elemental mercury exports globally;
- (11) the European Commission has proposed to the European Parliament and to the Council of the European Union a regulation to ban exports of elemental mercury from the European Union by 2011;
- (12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and
- (13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world.

SEC. 3. PROHIBITION ON SALE, DISTRIBUTION, OR TRANSFER OF ELEMENTAL MERCURY.

Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended by adding at the end the following:

“(f) MERCURY.—

“(1) PROHIBITION ON SALE, DISTRIBUTION, OR TRANSFER OF ELEMENTAL MERCURY BY FEDERAL AGENCIES.—Except as provided in paragraph (2), effective beginning on the date of enactment of this subsection, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

“(2) EXCEPTION.—Paragraph (1) shall not apply to a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this Act.”.

SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.

Section 12 of the Toxic Substances Control Act (15 U.S.C. 2611) is amended—

- (1) in subsection (a) by striking “subsection (b)” and inserting “subsections (b) and (c)”; and
- (2) by adding at the end the following:

“(c) PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.—

“(1) PROHIBITION.—Effective January 1, 2010, the export of elemental mercury from the United States is prohibited.

“(2) INAPPLICABILITY OF SUBSECTION (a).—Subsection (a) shall not apply to this subsection.

“(3) REPORT TO CONGRESS ON MERCURY COMPOUNDS.—

“(A) REPORT.—Not later than one year after the date of enactment of the Mercury Export Ban Act of 2007, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

“(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

“(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

“(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

“(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

“(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

“(B) PROCEDURE.—For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11.

“(4) ESSENTIAL USE EXEMPTION.—(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

“(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

“(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

“(iii) the country where the elemental mercury will be used certifies its support for the exemption;

“(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

“(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

“(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

“(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

“(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

“(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

“(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15, and shall be subject to penalties under section 16, injunctive relief under section 17, and citizen suits under section 20.

“(5) CONSISTENCY WITH TRADE OBLIGATIONS.—Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

“(6) EXPORT OF COAL.—Nothing in this subsection shall be construed to prohibit the export of coal.”.

SEC. 5. LONG-TERM STORAGE.

(a) **ESTABLISHMENT OF PROGRAM.**—Not later than January 1, 2010, the Secretary of Energy (in this section referred to as the “Secretary”) shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to a facility of the Department of Energy designated by the Secretary.

(b) **FEES.**—

(1) **IN GENERAL.**—After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility. The amount of such fees—

(A) shall be made publically available not later than October 1, 2009;

(B) may be adjusted annually; and

(C) shall be set in an amount sufficient to cover the costs described in paragraph (2).

(2) **COSTS.**—The costs referred to in paragraph (1)(C) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

(c) **REPORT.**—Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) **MANAGEMENT STANDARDS FOR A FACILITY.**—

(1) **GUIDANCE.**—Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act, including the requirements of subtitle C of that Act, except as provided in subsection (g)(2) of this section. A designated facility in existence on or before January 1, 2010, is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act. Not later than January 1, 2012, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) **TRAINING.**—The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) **EQUIPMENT.**—The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) **FIRE DETECTION AND SUPPRESSION SYSTEMS.**—The Secretary shall—

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) INDEMNIFICATION OF PERSONS DELIVERING ELEMENTAL MERCURY.—

(1) IN GENERAL.—(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) CONDITIONS.—No indemnification may be afforded under this subsection unless the person seeking indemnification—

(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;

(B) furnishes to the Secretary copies of pertinent papers the person receives;

(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and

(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) AUTHORITY OF SECRETARY.—(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) TERMS, CONDITIONS, AND PROCEDURES.—The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) EFFECT ON OTHER LAW.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) EXCEPTION.—(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury that is stored at a facility with respect to which a permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)) shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

This subparagraph shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii).

(h) **STUDY.**—Not later than July 1, 2011, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

- (1) determines the impact of the long-term storage program under this section on mercury recycling; and
- (2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

SEC. 6. REPORT TO CONGRESS.

At least 3 years after the effective date of the prohibition on export of elemental mercury under section 12(c) of the Toxic Substances Control Act (15 U.S.C. 2611(c)), as added by section 4 of this Act, but not later than January 1, 2014, the Administrator of the Environmental Protection Agency shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the global supply and trade of elemental mercury, including but not limited to the amount of elemental mercury traded globally that originates from primary mining, where such primary mining is conducted, and whether additional primary mining has occurred as a consequence of this Act.

Amend the title so as to read:

A bill to prohibit certain sales, distributions, and transfers of elemental mercury, to prohibit the export of elemental mercury, and for other purposes.

PURPOSE AND SUMMARY

The purpose of H.R.1534, the Mercury Export Ban Act of 2007, is to prohibit the sale, distribution, and transfer of elemental mercury held by Federal agencies (except for its transfer between Federal agencies to facilitate storage), as of the date of enactment; ban the export of elemental mercury beginning in 2010; and provide a long-term management and storage option for elemental mercury generated by private sources by 2010. The bill also allows the Administrator of the Environmental Protection Agency (EPA) to grant an exemption from the export prohibition by rule, after notice and opportunity for comment, if the Administrator finds that certain conditions have been met.

The Mercury Export Ban Act of 2007 also directs EPA to submit a report to Congress one year after enactment regarding (1) sources and amounts of mercury compounds used, processed, imported into the United States, and exported from the United States and (2) the potential for exported mercury compounds to be processed into elemental mercury. The EPA is also required to report by 2013 on the global supply and trade of elemental mercury, including the amount that originates from primary mining and whether additional primary mining has occurred as a consequence of this Act.

The Mercury Export Ban Act of 2007 directs the Secretary of Energy (Secretary) to report annually on the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. The Secretary is also required to report by July 1, 2011, on the affect of the long-term storage program on mercury recycling, including any necessary proposals to mitigate negative impacts of the long-term storage program.

BACKGROUND AND NEED FOR LEGISLATION

Mercury is a neurotoxin that is harmful even at low exposure levels. Children and developing fetuses are especially at risk if exposed. An increase in awareness about exposure risks, coupled with the development of effective mercury substitutes in manufacturing and for products, has led to decreased use in the United States. Be-

tween 1980 and 2001, annual mercury use in the United States fell from 2,225 to 271 metric tons. According to EPA, however, exports of elemental mercury to the global market in 2006 were the highest they have been in the past five years (390 metric tons gross and 296 metric tons net).

Mercury exists in three basic forms. Elemental mercury is a very dense, shiny, silver-colored metal. Elemental mercury is the pure form of mercury (i.e., it is not combined with any other elements). A second form of mercury is inorganic mercury compounds. This form is created when elemental mercury is combined with other elements such as oxygen, chlorine, or sulfur. Inorganic mercury compounds are used in fungicides, disinfectant agents, and antiseptics. The third basic form is organic mercury compounds. These compounds are combinations of mercury and carbon. The most common organic mercury compound is methylmercury.

The Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry have determined that all forms of mercury have adverse health effects. The nature and severity of the health effects will depend on the type of mercury involved, as well as the level and length of exposure. For example, elemental mercury and methylmercury vapors are more harmful than other forms because more mercury reaches the brain. Prolonged exposure to high levels of elemental, inorganic, or organic mercury can permanently damage the brain, kidneys, and the developing fetus. Short-term exposures to high levels of elemental mercury vapors can cause lung damage, nausea, vomiting, diarrhea, increases in blood pressure or heart rate, skin rashes, and eye irritation. Very young children are more sensitive to mercury than adults, and the nervous system is especially sensitive. Mercury in the mother's body passes to the fetus and may accumulate there.

Surplus elemental mercury from the United States is sold to metals recyclers and brokers who offer the mercury to buyers on the global market. Through this market, much of the surplus elemental mercury from the United States and other industrialized nations ends up in developing countries. Often it is sold to artisanal and small-scale gold miners located primarily in Africa, Asia, and South America. These miners, and their family members, are usually unaware of the dangers of mercury exposure, and are unprepared to handle the material safely.

According to the United Nations Industrial Development Organization (UNIDO), 10 to 15 million people are now engaged in artisanal and small-scale gold mining, including 4.5 million women and 1 million children. In addition to the occupational hazards associated with the use of elemental mercury by these small-scale miners, thousands of polluted sites have been created in developing countries. It is estimated that each year, artisanal and small-scale mining operations volatilize as much as 300 metric tons of mercury into the Earth's atmosphere, and discharge as much as 700 metric tons of mercury from mine tailings into soil, rivers, and lakes.

The effect of mercury emissions and discharges from artisanal and small-scale gold mining is not localized. Mercury emissions are transported over long distances and can remain in the atmosphere for a year or more before falling to Earth. Once deposited, the methylated mercury contaminates water bodies and land, and en-

ters the food chain. Deposition modeling conducted by EPA and other research organizations indicates that 60 percent to 80 percent of all mercury deposited in the United States comes from global sources.

The most common route of mercury exposure in the United States is through consumption of mercury-contaminated fish. EPA's most recent National Listing of Fish Advisories (July 2007) shows that 48 States, one Territory, and two Tribes have issued mercury fish advisories. In 2006, these advisories covered more than 14 million lake acres and almost 890,000 river miles. Twenty-three States have issued statewide advisories for lakes and/or rivers, and 12 States have statewide advisories for their coastal waters.

According to EPA's list, the total number of fish advisories for mercury was 2,436 in 2004, 2,682 in 2005, and 3,080 in 2006. The increase in the number of mercury advisories in 2005 and 2006 can be attributed to the issuance of new mercury advisories by 25 States, and American Samoa. Most of the new mercury advisories issued in 2005 and 2006 were in Wisconsin (293), Michigan (46), New York (36), and Minnesota (32). In 2005, American Samoa, Kansas, Oklahoma, and Utah issued mercury advisories for the first time. Iowa issued its first mercury advisories in 2006.

Currently, 23 States (Connecticut, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and West Virginia) have issued statewide advisories for mercury in freshwater lakes and/or rivers. Twelve States (Alabama, Florida, Georgia, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, Rhode Island, South Carolina, and Texas) have issued statewide advisories for mercury in their coastal waters. Hawaii has a statewide advisory for mercury in marine fish.

The Federal Government's supply of surplus elemental mercury is currently stored in government stockpiles maintained by the Department of Defense (4,436 metric tons) and the Department of Energy (1,206 metric tons). The Committee received testimony and information from officials of the Department of Energy that storage of elemental mercury began at its facility in Oak Ridge, Tennessee in 1963 and that there is no history of a flask that has leaked. Further, the current storage facility is a building constructed to be environmentally protective, with a sealed, concrete floor with a leak-proof coating, a 6–8 inch dike around the outer edge of the building to contain any material in the event of a spill, and an automatic dry-pipe (water supply) fire suppression system. The Department of Defense informed the Committee that the elemental mercury in the National Defense Stockpile has been safely stored for more than 50 years.

In the past, surplus elemental mercury from these government stockpiles was sold for domestic uses or for export. Based on environmental concerns, the Department of Defense stopped selling surplus mercury in 1994, and the Department of Energy announced in 2006 it would no longer market any of its mercury. Consistent with these departmental policies, the Mercury Export Ban Act of 2007 would ensure that the Federal Government's elemental mercury remains in storage by prohibiting the sale, dis-

tribution, and transfer of elemental mercury held by Federal agencies, as of the date of enactment. Transfer of elemental mercury between Federal agencies would continue to be allowed for the sole purpose of facilitating storage of elemental mercury to carry out this Act.

The largest non-governmental reserves of elemental mercury are currently held by the chlor-alkali industry. The elemental mercury is contained in plants that continue to use mercury-cell technology for the production of chlorine, caustic soda, and other chemicals. At one time, there were a number of these plants in the United States, but with the advent of mercury-free alternative technologies, many companies have closed or converted their plants. Today, 90 percent of United States chlorine production is done without using elemental mercury. According to the Chlorine Institute, Inc., by 2010 only four mercury-cell chlor-alkali plants will remain in operation. The plants are owned by three companies and are located in four States (Georgia, Ohio, Tennessee, and West Virginia). The Chlorine Institute, Inc. estimates that if these four plants were to convert their processes or close, collectively they would generate approximately 1,000 metric tons of elemental mercury.

Other non-governmental sources of elemental mercury include the mining industry and mercury recycling and recovery operations. There are no mercury mines in the United States. Elemental mercury is, however, generated as a by-product of gold mining, primarily conducted in Nevada. EPA estimates that approximately 118 metric tons of elemental mercury was generated as a by-product of gold mining in 2006. Elemental mercury is also generated through recycling programs and by companies that collect old thermometers, fluorescent light bulbs, auto switches, electronics, and other consumer products. EPA estimates that recycling and waste recovery produced at least 50 to 80 metric tons in 2006.

H.R. 1534 has precedent internationally. The European Union's legislative body, the European Parliament, voted in June of 2007 to prohibit the export of elemental mercury and mercury compounds by 2010. The European Parliament also adopted a safe storage requirement for holders of excess elemental mercury. The Environmental Ministers for the member nations of the European Union have proposed that the mercury export prohibition take effect in 2011.

HEARINGS

The Subcommittee on Environment and Hazardous Materials held a hearing on H.R. 1534, the Mercury Export Ban Act of 2007, on Friday, June 22, 2007. The Subcommittee received testimony from: Ms. Alice Williams, Deputy Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration, U.S. Department of Energy; Mr. Cornel Holder, Administrator, Defense National Stockpile Center, Defense Logistics Agency, U.S. Department of Defense; the Honorable James Gulliford, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, U.S. Environmental Protection Agency; Linda Greer, Ph.D., Senior Scientist, National Resources Defense Council; Michael Shannon, MD, MPH, FAAP, on behalf of the American Association of Pediatrics; Mr. C. Mark Smith, Ph.D., Acting Commis-

sioner, Massachusetts Department of Environmental Protection on behalf of the Environmental Council of States; Mr. Arthur Dungan, President, the Chlorine Institute, Inc.; and Mr. Bruce Lawrence, President, Bethlehem Apparatus Company, Inc.

COMMITTEE CONSIDERATION

On Thursday, August 2, 2007, the Subcommittee on Environment and Hazardous Materials met in open markup session and favorably forwarded H.R. 1534, amended, to the full Committee for consideration, by a voice vote. On Tuesday, October 30, 2007, the full Committee met in open markup session and ordered H.R. 1534 favorably reported to the House, amended, by a recorded vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Allen to order H.R. 1534 favorably reported to the House, amended, was agreed to by a recorded vote of 45 yeas and 2 nays. The following is the recorded vote taken on the motion, including the names of those Members voting for and against.

**COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 30**

BILL: H.R. 1534, the "Mercury Export Ban Act of 2007".

MOTION: A Motion by Mr. Dingell to order H.R. 1534 favorably reported to the House, amended.

DISPOSITION: AGREED TO, by a roll call vote of 45 yeas to 2 nays.

| REPRESENTATIVE | YEAS | NAYS | PRESENT | REPRESENTATIVE | YEAS | NAYS | PRESENT |
|-----------------|------|------|---------|----------------|------|------|---------|
| Mr. Dingell | X | | | Mr. Barton | X | | |
| Mr. Waxman | | | | Mr. Hall | | | |
| Mr. Markey | X | | | Mr. Hastert | | | |
| Mr. Boucher | | | | Mr. Upton | X | | |
| Mr. Towns | X | | | Mr. Stearns | X | | |
| Mr. Pallone | X | | | Mr. Deal | | | |
| Mr. Gordon | | | | Mr. Whitfield | X | | |
| Mr. Rush | X | | | Mrs. Cubin | | | |
| Ms. Eshoo | X | | | Mr. Shimkus | X | | |
| Mr. Stupak | X | | | Mrs. Wilson | | | |
| Mr. Engel | X | | | Mr. Shadegg | X | | |
| Mr. Wynn | X | | | Mr. Pickering | X | | |
| Mr. Green | X | | | Mr. Fossella | | | |
| Ms. DeGette | | | | Mr. Buyer | X | | |
| Ms. Capps | X | | | Mr. Radanovich | X | | |
| Mr. Doyle | X | | | Mr. Pitts | X | | |
| Ms. Harman | X | | | Ms. Bono | X | | |
| Mr. Allen | X | | | Mr. Walden | X | | |
| Ms. Schakowsky | X | | | Mr. Terry | X | | |
| Ms. Solis | X | | | Mr. Ferguson | X | | |
| Mr. Gonzalez | X | | | Mr. Rogers | X | | |
| Mr. Inslee | X | | | Mrs. Myrick | X | | |
| Ms. Baldwin | X | | | Mr. Sullivan | X | | |
| Mr. Ross | X | | | Mr. Murphy | X | | |
| Ms. Hooley | X | | | Mr. Burgess | | X | |
| Mr. Weiner | X | | | Ms. Blackburn | | X | |
| Mr. Matheson | X | | | | | | |
| Mr. Butterfield | X | | | | | | |
| Mr. Melancon | X | | | | | | |
| Mr. Barrow | X | | | | | | |
| Mr. Hill | X | | | | | | |

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Subcommittee on Environment and Hazardous Materials held a legislative hearing on H.R. 1534, and the oversight findings of the Committee are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 1534 is to prohibit the sale, distribution, or transfer of elemental mercury by Federal agencies, except for its transfer between Federal agencies in order to facilitate storage; to prohibit the export of elemental mercury beginning in 2010 to reduce global mercury pollution; and to provide a long-term management and storage option for elemental mercury generated by private sources, at a facility to be designated by the Secretary of Energy, by 2010.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority and revenues regarding H.R.1534 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee finds that H.R.1534 would result in no new or increased entitlement authority or tax expenditures.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1534 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1534 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 1534 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 9, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1534, the Mercury Export Ban Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1534—Mercury Export Ban Act of 2007

Summary: H.R. 1534 would ban the export of elemental mercury, prohibit federal agencies from selling or distributing mercury, and direct the Department of Energy (DOE) to provide permanent storage for domestic stocks of mercury under certain conditions. Under this bill, firms would be allowed to begin delivering mercury to DOE on January 1, 2010, and would be required to pay a one-time fee sufficient to cover most of the department's long-term costs of storing it. DOE would indemnify those entities from legal actions resulting from any actual or threatened release of mercury occurring after the materials are delivered to the federal facility. In addition, DOE's mercury storage operations would have to comply with various performance standards, including the Solid Waste Disposal Act. Finally, the bill would direct DOE and the Environmental Protection Agency (EPA) to prepare reports on issues related to the storage of domestic mercury and the disposition of global supplies.

Implementing this bill would affect both discretionary spending and direct spending. Assuming appropriation of the necessary amounts, CBO estimates that DOE would spend \$8 million over the 2008–2012 period and additional amounts thereafter to provide for the permanent storage of commercially generated mercury. CBO also estimates that enacting this bill would reduce net direct spending by \$8 million over the 2008–2017 period by increasing off-setting receipts (an offset to direct spending) from the one-time fee that would be paid by firms transferring mercury to DOE. Enacting this legislation would not affect revenues.

H.R. 1534 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 1534 would impose a private-sector mandate as defined in UMRA. It would prohibit the export of elemental mercury from the United States beginning in 2010. Based on information from the U.S. Geological Survey, CBO estimates that the cost of that mandate would fall below the annual threshold established in UMRA (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1534 is shown in the following table. The costs of this legislation fall within budget functions 270 (energy) and 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | |
|--|---|------|------|------|------|
| | 2008 | 2009 | 2010 | 2011 | 2012 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | |
| Estimated Authorization Level | 0 | 2 | 2 | 3 | 2 |
| Estimated Outlays | 0 | 1 | 2 | 3 | 2 |
| CHANGES IN DIRECT SPENDING ¹ | | | | | |
| Estimated Budget Authority | 0 | 0 | * | –2 | –2 |

| | By fiscal year, in millions of dollars— | | | | |
|-------------------------|---|------|------|------|------|
| | 2008 | 2009 | 2010 | 2011 | 2012 |
| Estimated Outlays | 0 | 0 | * | -2 | -2 |

¹ CBO estimates that enacting this bill would result in a net increase in offsetting receipts of \$8 million over the 2008–2017 period.
Note: * = between zero and –\$500,000.

Basis of estimate: For this estimate, CBO assumes that the amounts necessary to implement the bill will be appropriated each year. Estimated outlays reflect historical spending patterns for similar activities.

H.R. 1534 would require DOE to take custody of commercial stocks of domestic mercury, subject to certain conditions. According to reports from EPA-sponsored stakeholders' meetings held in 2007, the cumulative volume of mercury eligible for DOE storage would probably range between 7,500 metric tons and 10,000 metric tons. The amounts likely to be delivered over the next several years are difficult to predict because they will depend on investment decisions made by individual firms. Based on information in those reports, CBO expects that the demand for permanent storage would total about 1,700 metric tons over the next 10 years.

For this estimate, CBO assumes that DOE could store an additional 1,200 metric tons of mercury in its existing mercury storage building in Oak Ridge, Tennessee, but would have to build or renovate additional facilities to accommodate the remainder. Thus, we expect that DOE would have to begin developing new capacity within the next five years and would start receiving materials at the new facility sometime after 2012. Any fees collected for mercury delivered to DOE's existing storage facility would be deposited in the Treasury as offsetting receipts, which would reduce direct spending. (By contrast, fees paid for materials delivered to a new or renovated facility would be contingent on appropriation actions, and thus, are not attributable to H.R. 1534.)

Spending subject to appropriation

Based on information from DOE, EPA, and the stakeholders' meetings, CBO estimates that implementing this bill would require the appropriation of about \$9 million over the 2008–2012 period and additional sums over the life of the mercury storage operation. CBO expects that DOE would have to spend about \$2 million to develop guidelines, reports, and analyses required by the bill; another \$2 million for building upgrades, training, and staff needed to store the commercial mercury in a manner consistent with the environmental and safety standards in the bill; and roughly \$5 million to plan and develop new storage capacity. In addition, CBO estimates that EPA would spend less than \$500,000 a year to develop the guidelines and reports required by the bill. Estimated spending for DOE and EPA activities would total \$8 million over the next five years.

DOE's costs could exceed the amounts included in this estimate if state or federal regulatory agencies determined that other upgrades to its Oak Ridge facility were needed to comply with the new performance standards. For example, replacing the department's 40-year-old mercury storage flasks would cost about \$21 million according to DOE. Whether such costs would be imposed is

unknown, and such potential costs are not included in this estimate.

Direct spending

H.R. 1534 would affect direct spending in two ways. First, any fees collected for mercury delivered to the existing storage facility at Oak Ridge would increase offsetting receipts (a credit against direct spending). Second, the provisions requiring DOE to indemnify those firms from certain environmental actions could result in a net cost to the government if the fees do not fully cover DOE's liabilities under this legislation.

Proceeds from the one-time storage fees would depend on how much DOE would charge. H.R. 1534 would direct the department to set fees sufficient to cover the long-term costs of permanently storing the commercial stocks of mercury, excluding regulatory compliance and land acquisition expenses. The legislation does not limit the time for cost recovery (storage of this toxic element would continue indefinitely), or allow for any other adjustments to the cost calculation. CBO expects that the fees necessary to cover the cost of permanent storage would likely exceed the amount that industry would be willing to pay. For this estimate, however, CBO assumes that DOE would accept custody of the mercury that could be stored at its Oak Ridge facility and would set the fee at about \$3 per pound (or \$6,600 per metric ton), which is at the high end of the range shown in reports from the stakeholders' meetings but less than a fee that would be needed to fully offset the agency's costs. At that level, we estimate that the fee would generate offsetting receipts of \$8 million over the 2010–2017 period.

Based on guidelines issued by EPA and the Office of Management and Budget, CBO assumes that DOE would set fees sufficient to compensate the government for the environmental liabilities associated with storing commercial mercury. Thus, CBO estimates that the government's indemnification of owners of mercury from environmental liability under this bill would have no net impact on direct spending over the 2008–2017 period.

Estimated impact on state, local, and tribal governments: H.R. 1534 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 1534 would impose a private-sector mandate as defined in UMRA. It would prohibit, with some exceptions, the export of elemental mercury from the United States beginning in 2010. The cost of the mandate to the private sector would be the loss of net income to entities currently involved in exporting mercury and, in some cases, the cost to those exporters of storing the mercury that cannot otherwise be sold. Information from the U.S. Geological Survey indicates that the value of mercury exports was less than \$10 million in 2006.

Further, CBO expects that the cost of storage would not be substantial. Consequently, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA (\$131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Kathleen Gramp (DOE costs) and Susanne Mehlman (EPA costs), Impact on State, Local,

and Tribal Governments: Neil Hood, Impact on the Private Sector: Amy Petz.

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

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1534 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the Act as the “Mercury Export Ban Act of 2007”.

Section 2. Findings

This section contains findings related to mercury pollution, health effects attributed to mercury, and global use of elemental mercury.

Section 3. Prohibition on sale, distribution, or transfer of elemental mercury

Section 3 establishes a new subsection (f) to Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (1976). This new subsection would, beginning on the date of enactment, prohibit the sale, distribution, or transfer of elemental mercury by any Federal agency to any other Federal agency, any State or local Government agency, or any private individual or entity. This prohibition does not apply to the transfer of elemental mercury between Federal agencies for the sole purpose of storage.

Section 4. Prohibition on export of elemental mercury

Section 4 establishes a new subsection (c) to Section 12 of the Toxic Substances Control Act. This new subsection would prohibit the export of elemental mercury from the United States beginning January 1, 2010. The export ban does not affect the sale, recovery, or other use of mercury in the United States. Further, the Committee does not intend that this prohibition prevent exportation of fly ash, a by-product of coal combustion, or manufactured consumer products containing elemental mercury.

New subsection (c)(3) requires the EPA to submit a report to Congress one year after enactment addressing:

- (i) the sources and amounts of mercury compounds that may be used in significant quantities in products and processes produced annually in the United States or imported into the United States;
- (ii) the purposes for which each of these compounds are used domestically and the amount of these compounds consumed annually;
- (iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;
- (iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and
- (v) other information that Congress should consider in determining whether to extend export prohibition to include one or more of these mercury compounds.

The Administrator may utilize the information gathering authorities of the Toxic Substances Control Act for the purpose of preparing the report.

New subsection (c)(4) allows any person residing in the United States to petition the Administrator for an exemption from the prohibition on export of elemental mercury. The Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if each of the following findings is satisfied:

- (i) non-mercury alternatives for the specified use are not available in the country where the facility is located;
- (ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;
- (iii) the country where the elemental mercury will be used certifies its support for the exemption;
- (iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility and not otherwise diverted for other uses for any reason;
- (v) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental effects; and
- (vi) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

The Administrator must also include in the exemption such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the

exemption will be fully met. No single exemption can exceed 3 years in duration and 10 metric tons of elemental mercury.

The Administrator may by order suspend or cancel an exemption in the case of a violation of the subsection, a violation of the terms and conditions of an exemption, or the submission of false information. Violations of the statutory requirements or the terms and conditions of an exemption, or the submission of false information in connection therewith are a prohibited act under Section 15 of the Toxic Substances Control Act. Such violations shall be subject to penalties, injunctive relief, and citizen suits as provided in the Toxic Substances Control Act.

In new subsection (c)(5) “prior” law refers to any law in existence before the enactment of this Act. It is the intent of the Committee to not affect, replace, or amend existing law relating to the need for consistency with international trade obligations.

New subsection (c)(6) provides that nothing in the subsection shall be construed to prohibit the export of coal.

Section 5. Long-term storage

Section 5(a) requires the Secretary of Energy not later than January 1, 2010, to accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to a facility of the Department of Energy designated by the Secretary. The Committee purposely did not designate any particular facility of the Department of Energy but left that choice in the discretion of the Secretary.

Subsection (b)(1) requires the Secretary, after appropriate consultation with interested parties, to assess and collect a fee at the time of delivery to cover the pro rata cost of long-term management and storage of elemental mercury delivered to the facility. The amount of the fees is to be made publicly available not later than October 1, 2009, and may be adjusted annually.

Subsection (b)(2) provides that the costs covered by the fee are the costs to the Department of Energy of providing management and storage for the elemental mercury delivered to the facility, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq. (1976), or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury, accepted under the program created by this section, cannot be accomplished without construction of a new building or buildings.

Subsection (c) requires the Secretary to report annually to the appropriate Committees of jurisdiction on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury, including a separate accounting of the costs associated with activities taken under this section.

Subsection (d) requires the Secretary not later than October 1, 2009, after consultation with EPA and all appropriate State agencies in affected States, to make guidance available to potential

users of the program setting forth procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities. The procedures must be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. Additionally, the elemental mercury managed and stored at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act. The only exception is set forth in subsection (g)(2) which provides that the elemental mercury the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act.

Subsection (d)(1) further provides that a designated facility in existence on or before January 1, 2010, is authorized to operate under interim status pursuant to section 3005 (e) of the Solid Waste Disposal Act until a final decision on a permit application is made pursuant to Section 3005(c) of the Solid Waste Disposal Act. The Administrator of EPA (or an authorized State) is required to issue a final decision on the permit application not later than January 1, 2012.

Subsections (d)(2), (3), and (4), provide for the conduct of operational and emergency training, assurance that the designated facility will have necessary equipment, and the installation of fire detection systems and fire suppression systems, respectively.

Subsection (e) provides indemnification for persons delivering elemental mercury for a claim that results from, or is in a manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility. Indemnification is not applicable to a person who has contributed to any such release or threatened release.

Subsection (e)(2) provides that no indemnification may be afforded unless the person seeking indemnification follows certain procedures and provides relevant information concerning the claim, loss, or damage. Subsection (e)(3) gives the Secretary the authority to settle or defend the claim for personal injury or property damage in any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection.

Subsection (f) authorizes the Secretary to establish such terms, conditions, and procedures as are necessary to carry out this section.

Subsection (g)(1) provides that except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law. Paragraph (2) allows a generator accumulating elemental mercury destined for a facility designated by the Secretary to store mercury for a period of 90 days or less. Further, paragraph (2) provides authority to store elemental mercury at a facility that has been issued a permit under section 3005(c) of the Solid Waste Disposal Act, notwithstanding section 3004(j) of that Act, if the Secretary is unable to accept mercury at a facility designated by the Secretary for reasons beyond the control of the owner or operator of the permitted facility. The owner or operator of the permitted facility must also make certain certifications set forth in subsection

(g)(2)(B) (ii) and (iii) and comply with them to benefit from this provision.

Subsection (h) requires the Secretary, in consultation with Administrator of EPA, to report to Congress by July 1, 2011, on the effect of the long-term storage program on mercury recycling and include proposals, if necessary, to mitigate any negative effect.

Section 6. Report to Congress

This section requires the EPA Administrator to report by January 1, 2014, on the global supply and trade of elemental mercury and whether additional primary mining has occurred as a consequence of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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):

TOXIC SUBSTANCES CONTROL ACT

* * * * *

TITLE I—CONTROL OF TOXIC SUBSTANCES

* * * * *

SEC. 6. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

(a) * * *

* * * * *

(f) *MERCURY.*—

(1) *PROHIBITION ON SALE, DISTRIBUTION, OR TRANSFER OF ELEMENTAL MERCURY BY FEDERAL AGENCIES.*—*Except as provided in paragraph (2), effective beginning on the date of enactment of this subsection, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.*

(2) *EXCEPTION.*—*Paragraph (1) shall not apply to a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this Act.*

* * * * *

SEC. 12. EXPORTS.

(a) *IN GENERAL.*—(1) Except as provided in paragraph (2) and [subsection (b)] *subsections (b) and (c)*, this Act (other than section 8) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) * * *

* * * * *

(c) *PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.*—

(1) *PROHIBITION.*—*Effective January 1, 2010, the export of elemental mercury from the United States is prohibited.*

(2) *INAPPLICABILITY OF SUBSECTION (a).*—Subsection (a) shall not apply to this subsection.

(3) *REPORT TO CONGRESS ON MERCURY COMPOUNDS.*—

(A) *REPORT.*—Not later than one year after the date of enactment of the Mercury Export Ban Act of 2007, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) *PROCEDURE.*—For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11.

(4) *ESSENTIAL USE EXEMPTION.*—(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) *the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and*

(vii) *the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.*

(B) *Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.*

(C) *The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).*

(D) *A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15, and shall be subject to penalties under section 16, injunctive relief under section 17, and citizen suits under section 20.*

(5) *CONSISTENCY WITH TRADE OBLIGATIONS.—Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.*

(6) *EXPORT OF COAL.—Nothing in this subsection shall be construed to prohibit the export of coal.*

* * * * *

