

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 619

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 23), 1995

Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. FAIRCLOTH, Mr. McCONNELL, Mr. SIMON, Mr. MACK, Mr. BOND, Mr. GRAHAM, Mr. LIEBERMAN, Mr. WARNER, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

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

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION. 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

4 (A) phase out the use of mercury in bat-  
5 teries and provide for the efficient and cost-ef-  
6 fective collection and recycling or proper dis-  
7 posal of used nickel cadmium batteries, small  
8 sealed lead-acid batteries, and other regulated  
9 batteries; and

10 (B) educate the public concerning the col-  
11 lection, recycling, and proper disposal of such  
12 batteries;

13 (2) uniform national labeling requirements for  
14 regulated batteries, rechargeable consumer products,  
15 and product packaging will significantly benefit pro-  
16 grams for regulated battery collection and recycling  
17 or proper disposal; and

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

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) ADMINISTRATOR.—The term “Adminis-  
25 trator” means the Administrator of the Environ-  
26 mental Protection Agency.

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

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

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

10           (B) by a retailer of replacements for a bat-  
11 tery used as the principal electrical power  
12 source for a vehicle.

13           (4) **MERCURIC-OXIDE BATTERY.**—The term  
14 “mercuric-oxide battery” means a battery that uses  
15 a mercuric-oxide electrode.

16           (5) **RECHARGEABLE BATTERY.**—The term “re-  
17 chargeable battery”—

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

22           (B) includes any type of enclosed device or  
23 sealed container consisting of 1 or more such  
24 cells, including what is commonly called a bat-  
25 tery pack (and in the case of a battery pack, for

1 the purposes of the requirements of easy remov-  
2 ability and labeling under section 103, means  
3 the battery pack as a whole rather than each  
4 component individually); but

5 (C) does not include—

6 (i) a lead-acid battery used to start an  
7 internal combustion engine or as the prin-  
8 cipal electrical power source for a vehicle,  
9 such as an automobile, a truck, construc-  
10 tion equipment, a motorcycle, a garden  
11 tractor, a golf cart, a wheelchair, or a boat;

12 (ii) a lead-acid battery used for load  
13 leveling or for storage of electricity gen-  
14 erated by an alternative energy source,  
15 such as a solar cell or wind-driven genera-  
16 tor;

17 (iii) a battery used as a backup power  
18 source for memory or program instruction  
19 storage, timekeeping, or any similar pur-  
20 pose that requires uninterrupted electrical  
21 power in order to function if the primary  
22 energy supply fails or fluctuates momen-  
23 tarily; or

24 (iv) a rechargeable alkaline battery.

1 (6) RECHARGEABLE CONSUMER PRODUCT.—

2 The term “rechargeable consumer product”—

3 (A) means a product that, when sold at re-  
4 tail, includes a regulated battery as a primary  
5 energy supply, and that is primarily intended  
6 for personal or household use; but

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

14 (7) REGULATED BATTERY.—The term “regu-  
15 lated battery” means a rechargeable battery that—

16 (A) contains a cadmium or a lead electrode  
17 or any combination of cadmium and lead elec-  
18 trodes; or

19 (B) contains other electrode chemistries  
20 and is the subject of a determination by the Ad-  
21 ministrator under section 103(d).

22 (8) REMANUFACTURED PRODUCT.—The term  
23 “remanufactured product” means a rechargeable  
24 consumer product that has been altered by the re-

1 placement of parts, repackaged, or repaired after  
2 initial sale by the original manufacturer.

3 **SEC. 4. INFORMATION DISSEMINATION.**

4 The Administrator shall, in consultation with rep-  
5 resentatives of rechargeable battery manufacturers, re-  
6 chargeable consumer product manufacturers, and retail-  
7 ers, establish a program to provide information to the pub-  
8 lic concerning the proper handling and disposal of used  
9 regulated batteries and rechargeable consumer products  
10 with nonremovable batteries.

11 **SEC. 5. ENFORCEMENT.**

12 (a) CIVIL PENALTY.—When on the basis of any infor-  
13 mation the Administrator determines that a person has  
14 violated or is in violation of any requirement of this Act,  
15 the Administrator—

16 (1) in the case of a willful violation, may issue  
17 an order assessing a civil penalty of not more than  
18 \$10,000 for each violation and requiring compliance  
19 immediately or within a reasonable specified time pe-  
20 riod, or both; or

21 (2) in the case of any violation, may commence  
22 a civil action in the United States district court in  
23 the district in which the violation occurred for ap-  
24 propriate relief, including a temporary or permanent  
25 injunction.

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

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

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

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

16 (f) SUBPOENA POWER.—In connection with any  
17 hearing on the record under this section, the Adminis-  
18 trator may issue subpoenas for the attendance and testi-  
19 mony of witnesses and for the production of relevant pa-  
20 pers, books, and documents.

21 (g) CONTINUED VIOLATION AFTER EXPIRATION OF  
22 PERIOD FOR COMPLIANCE.—If a violator fails to take cor-  
23 rective action within the time specified in an order under  
24 subsection (a)(1), the Administrator may assess a civil

1 penalty of not more than \$10,000 for the continued non-  
2 compliance with the order.

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

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

6 (1) a regulated battery manufacturer;

7 (2) a rechargeable consumer product manufac-  
8 turer;

9 (3) a mercury-containing battery manufacturer;

10 and

11 (4) an authorized agent of a person described  
12 in subparagraph (A), (B), or (C),

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

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

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

1 **SEC. 7. STATE AUTHORITY.**

2 Except as provided in sections 103(e) and 104, noth-  
3 ing in this Act shall be construed to prohibit a State from  
4 enacting and enforcing a standard or requirement that is  
5 more stringent than a standard or requirement established  
6 or promulgated under this Act.

7 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

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

10 **TITLE I—RECHARGEABLE**  
11 **BATTERY RECYCLING ACT**

12 **SEC. 101. SHORT TITLE.**

13 This title may be cited as the “Rechargeable Battery  
14 Recycling Act”.

15 **SEC. 102. PURPOSE.**

16 The purpose of this title is to facilitate the efficient  
17 recycling or proper disposal of used nickel-cadmium re-  
18 chargeable batteries, used small sealed lead-acid recharge-  
19 able batteries, other regulated batteries, and such re-  
20 chargeable batteries in used consumer products, by—

21 (1) providing for uniform labeling requirements  
22 and streamlined regulatory requirements for regu-  
23 lated battery collection programs; and

24 (2) encouraging voluntary industry programs by  
25 eliminating barriers to funding the collection and re-

1 cycling or proper disposal of used rechargeable bat-  
2 teries.

3 **SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LA-**  
4 **BELING.**

5 (a) PROHIBITION.—

6 (1) IN GENERAL.—No person shall sell for use  
7 in the United States a regulated battery that is  
8 ready for retail sale or a rechargeable consumer  
9 product that is ready for retail sale, which was man-  
10 ufactured on or after the date that is 12 months  
11 after the date of enactment of this Act, unless—

12 (A) in the case of a regulated battery, the  
13 regulated battery—

14 (i) is easily removable from the re-  
15 chargeable consumer product; or

16 (ii) is sold separately; and

17 (B) in the case of a regulated battery or  
18 rechargeable consumer product, the labeling re-  
19 quirements of subsection (b) are met.

20 (2) APPLICATION.—Paragraph (1) does not  
21 apply to a sale of—

22 (A) a remanufactured product unit unless  
23 paragraph (1) applied to the sale of the unit  
24 when originally manufactured; or

1 (B) a product unit intended for export pur-  
2 poses only.

3 (b) LABELING.—Each regulated battery or recharge-  
4 able consumer product without an easily removable battery  
5 manufactured on or after the date that is 1 year after  
6 the date of enactment of this Act, whether produced do-  
7 mestically or imported, shall be labeled with—

8 (1)(A) 3 chasing arrows or a comparable recy-  
9 cling symbol;

10 (B)(i) on each nickel-cadmium battery, the  
11 chemical name or the abbreviation “Ni-Cd”; and

12 (ii) on each lead-acid battery, “Pb” or the  
13 words “LEAD”, “RETURN”, and “RECYCLE”;

14 (C) on each nickel-cadmium regulated battery,  
15 the phrase “BATTERY MUST BE RECYCLED  
16 OR DISPOSED OF PROPERLY.”; and

17 (D) on each sealed lead acid regulated battery,  
18 the phrase “BATTERY MUST BE RECYCLED.”;

19 (2) on each rechargeable consumer product con-  
20 taining a regulated battery that is not easily remov-  
21 able, the phrase “CONTAINS NICKEL-CADMIUM  
22 BATTERY. BATTERY MUST BE RECYCLED  
23 OR DISPOSED OF PROPERLY.” or “CON-  
24 TAINS SEALED LEAD BATTERY. BATTERY  
25 MUST BE RECYCLED.”, as applicable; and

1           (3) on the packaging of each rechargeable  
2 consumer product, and the packaging of each regu-  
3 lated battery sold separately from such a product,  
4 unless the required label is clearly visible through  
5 the packaging, the phrase “CONTAINS NICKEL-  
6 CADMIUM BATTERY. BATTERY MUST BE  
7 RECYCLED OR DISPOSED OF PROPERLY.” or  
8 “CONTAINS SEALED LEAD BATTERY. BAT-  
9 TERY MUST BE RECYCLED.”, as applicable.

10 (c) EXISTING OR ALTERNATIVE LABELING.—

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

19           (2) CERTIFICATION.—

20           (A) IN GENERAL.—On application by per-  
21 sons subject to the labeling requirements of  
22 subsection (b) or the labeling requirements pro-  
23 mulgated by the Administrator under sub-  
24 section (d), the Administrator shall certify that  
25 a different label meets the requirements of sub-

1 section (b) or (d), respectively, if the different  
2 label—

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

6 (ii) conforms with a recognized inter-  
7 national standard that is consistent with  
8 the overall purposes of this title.

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

17 (d) RULEMAKING AUTHORITY OF THE ADMINIS-  
18 TRATOR.—

19 (1) IN GENERAL.—If the Administrator deter-  
20 mines that other rechargeable batteries having elec-  
21 trode chemistries different from regulated batteries  
22 are toxic and may cause substantial harm to human  
23 health and the environment if discarded into the  
24 solid waste stream for land disposal or incineration,  
25 the Administrator may, with the advice and counsel

1 of State regulatory authorities and manufacturers of  
2 rechargeable batteries and rechargeable consumer  
3 products, and after public comment—

4 (A) promulgate labeling requirements for  
5 the batteries with different electrode chem-  
6 istries, rechargeable consumer products contain-  
7 ing such batteries that are not easily removable  
8 batteries, and packaging for the batteries and  
9 products; and

10 (B) promulgate requirements for easy re-  
11 movability of regulated batteries from recharge-  
12 able consumer products designed to contain  
13 such batteries.

14 (2) SUBSTANTIAL SIMILARITY.—The regula-  
15 tions promulgated under paragraph (1) shall be sub-  
16 stantially similar to the requirements set forth in  
17 subsections (a) and (b).

18 (e) UNIFORMITY.—After the effective dates of a re-  
19 quirement set forth in subsection (a), (b), or (c) or a regu-  
20 lation promulgated by the Administrator under subsection  
21 (d), no Federal agency, State, or political subdivision of  
22 a State may enforce any easy removability or environ-  
23 mental labeling requirement for a rechargeable battery or  
24 rechargeable consumer product that is not identical to the  
25 requirement or regulation.

1 (f) EXEMPTIONS.—

2 (1) IN GENERAL.—With respect to any re-  
3 chargeable consumer product, any person may sub-  
4 mit an application to the Administrator for an ex-  
5 emption from the requirements of subsection (a) in  
6 accordance with the procedures under paragraph  
7 (2). The application shall include the following infor-  
8 mation:

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

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

13 (2) GRANTING OF EXEMPTION.—Not later than  
14 60 days after receipt of an application under para-  
15 graph (1), the Administrator shall approve or deny  
16 the application. On approval of the application the  
17 Administrator shall grant an exemption to the appli-  
18 cant. The exemption shall be issued for a period of  
19 time that the Administrator determines to be appro-  
20 priate, except that the period shall not exceed 2  
21 years. The Administrator shall grant an exemption  
22 on the basis of evidence supplied to the Adminis-  
23 trator that the manufacturer has been unable to  
24 commence manufacturing the rechargeable consumer  
25 product in compliance with the requirements of this

1 section and with an equivalent level of product per-  
2 formance without the product—

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

5 (B) violating requirements for approvals  
6 from governmental agencies or widely recog-  
7 nized private standard-setting organizations (in-  
8 cluding Underwriters Laboratories).

9 (3) RENEWAL OF EXEMPTION.—A person  
10 granted an exemption under paragraph (2) may  
11 apply for a renewal of the exemption in accordance  
12 with the requirements and procedures described in  
13 paragraphs (1) and (2). The Administrator may  
14 grant a renewal of such an exemption for a period  
15 of not more than 2 years after the date of the grant-  
16 ing of the renewal.

17 **SEC. 104. REQUIREMENTS.**

18 For the purposes of carrying out the collection, stor-  
19 age, transportation, and recycling or proper disposal of  
20 used rechargeable batteries, batteries described in section  
21 3(3)(C) or in title II, and used rechargeable consumer  
22 products containing rechargeable batteries that are not  
23 easily removable rechargeable batteries, persons involved  
24 in collecting, storing, or transporting such batteries or  
25 products to a facility for recycling or proper disposal shall,

1 notwithstanding any other law, be regulated in the same  
2 manner and with the same limitations as if the persons  
3 were collecting, storing, or transporting batteries subject  
4 to subpart G of part 266 of title 40, Code of Federal Reg-  
5 ulations, as in effect on January 1, 1993, except that sec-  
6 tions 264.76, 265.76, and 268.7 of that title shall not  
7 apply.

8 **SEC. 105. COOPERATIVE EFFORTS.**

9 Notwithstanding any other law, if 2 or more persons  
10 who participate in projects or programs to collect and  
11 properly manage used rechargeable batteries or products  
12 powered by rechargeable batteries advise the Adminis-  
13 trator of their intent, the persons may agree to develop  
14 jointly, or to share in the costs of participating in, such  
15 a project or program and to examine and rely on such  
16 cost information as is collected during the project or pro-  
17 gram.

18 **TITLE II—MERCURY-CONTAIN-**  
19 **ING BATTERY MANAGEMENT**  
20 **ACT**

21 **SEC. 201. SHORT TITLE.**

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

1 **SEC. 202. PURPOSE.**

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

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

6 No person shall sell, offer for sale, or offer for pro-  
7 motional purposes any alkaline-manganese battery manu-  
8 factured on or after January 1, 1996, with a mercury con-  
9 tent that was intentionally introduced (as distinguished  
10 from mercury that may be incidentally present in other  
11 materials), except that the limitation on mercury content  
12 in alkaline-manganese button cells shall be 25 milligrams  
13 of mercury per button cell.

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

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

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

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

1 **SEC. 206. LIMITATIONS ON THE SALE OF OTHER MER-**  
2 **CURIC-OXIDE BATTERIES.**

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

7 (1) identifies a collection site that has all re-  
8 quired Federal, State, and local government approv-  
9 als, to which persons may send used mercuric-oxide  
10 batteries for recycling or proper disposal;

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

14 (3) informs each of its purchasers of mercuric-  
15 oxide batteries of a telephone number that the pur-  
16 chaser may call to get information about sending  
17 mercuric-oxide batteries for recycling or proper dis-  
18 posal.

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

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

23 On petition of a person that proposes a new use for  
24 a battery technology described in this title or the use of  
25 a battery described in this title in a new product, the Ad-  
26 ministrator may exempt from this title the new use of the

1 technology or use of battery in the new product on the  
2 condition, if appropriate, that there exist reasonable safe-  
3 guards to ensure that the resulting battery or product  
4 without an easily removable battery will not be disposed  
5 of in an incinerator, composting facility, or landfill (other  
6 than a facility regulated under subtitle C of the Solid  
7 Waste Disposal Act (42 U.S.C. 6291 et seq.).

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S 619 IS—2