

Union Calendar No. 275

110TH CONGRESS
1ST SESSION

H. R. 1534

[Report No. 110-444]

To prohibit the sale, distribution, or transfer of mercury, to prohibit the export of mercury, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2007

Mr. ALLEN introduced the following bill; which was referred to the Committee on Energy and Commerce

NOVEMBER 13, 2007

Additional sponsors: Mr. WAXMAN, Mr. FARR, Mr. WYNN, Mr. ELLISON, Mrs. CAPPS, Ms. SOLIS, Mr. KUCINICH, Ms. SCHAKOWSKY, Mr. BUTTERFIELD, Ms. BALDWIN, Mr. HODES, Mr. ENGEL, Ms. MCCOLLUM of Minnesota, and Ms. ESHOO

NOVEMBER 13, 2007

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 15, 2007]

A BILL

To prohibit the sale, distribution, or transfer of mercury, to prohibit the export of mercury, 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 *Congress finds that—*

6 *(1) mercury is highly toxic to humans, eco-*
7 *systems, and wildlife;*

8 *(2) as many as 10 percent of women in the*
9 *United States of childbearing age have mercury in the*
10 *blood at a level that could put a baby at risk;*

11 *(3) as many as 630,000 children born annually*
12 *in the United States are at risk of neurological prob-*
13 *lems related to mercury;*

14 *(4) the most significant source of mercury expo-*
15 *sure to people in the United States is ingestion of*
16 *mercury-contaminated fish;*

17 *(5) the Environmental Protection Agency reports*
18 *that, as of 2004—*

19 *(A) 44 States have fish advisories covering*
20 *over 13,000,000 lake acres and over 750,000*
21 *river miles;*

22 *(B) in 21 States the freshwater advisories*
23 *are statewide; and*

24 *(C) in 12 States the coastal advisories are*
25 *statewide;*

1 (6) *the long-term solution to mercury pollution*
2 *is to minimize global mercury use and releases to*
3 *eventually achieve reduced contamination levels in the*
4 *environment, rather than reducing fish consumption*
5 *since uncontaminated fish represents a critical and*
6 *healthy source of nutrition worldwide;*

7 (7) *mercury pollution is a transboundary pollut-*
8 *ant, depositing locally, regionally, and globally, and*
9 *affecting water bodies near industrial sources (includ-*
10 *ing the Great Lakes) and remote areas (including the*
11 *Arctic Circle);*

12 (8) *the free trade of elemental mercury on the*
13 *world market, at relatively low prices and in ready*
14 *supply, encourages the continued use of elemental*
15 *mercury outside of the United States, often involving*
16 *highly dispersive activities such as artisanal gold*
17 *mining;*

18 (9) *the intentional use of mercury is declining in*
19 *the United States as a consequence of process changes*
20 *to manufactured products (including batteries, paints,*
21 *switches, and measuring devices), but those uses re-*
22 *main substantial in the developing world where re-*
23 *leases from the products are extremely likely due to*
24 *the limited pollution control and waste management*
25 *infrastructures in those countries;*

1 (10) *the member countries of the European*
2 *Union collectively are the largest source of elemental*
3 *mercury exports globally;*

4 (11) *the European Commission has proposed to*
5 *the European Parliament and to the Council of the*
6 *European Union a regulation to ban exports of ele-*
7 *mental mercury from the European Union by 2011;*

8 (12) *the United States is a net exporter of ele-*
9 *mental mercury and, according to the United States*
10 *Geological Survey, exported 506 metric tons of ele-*
11 *mental mercury more than the United States im-*
12 *ported during the period of 2000 through 2004; and*

13 (13) *banning exports of elemental mercury from*
14 *the United States will have a notable effect on the*
15 *market availability of elemental mercury and switch-*
16 *ing to affordable mercury alternatives in the devel-*
17 *oping world.*

18 **SEC. 3. PROHIBITION ON SALE, DISTRIBUTION, OR TRANS-**

19 **FER OF ELEMENTAL MERCURY.**

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

22 “(f) *MERCURY.—*

23 “(1) *PROHIBITION ON SALE, DISTRIBUTION, OR*
24 *TRANSFER OF ELEMENTAL MERCURY BY FEDERAL*
25 *AGENCIES.—Except as provided in paragraph (2), ef-*

1 *fective beginning on the date of enactment of this sub-*
2 *section, no Federal agency shall convey, sell, or dis-*
3 *tribute to any other Federal agency, any State or*
4 *local government agency, or any private individual or*
5 *entity any elemental mercury under the control or ju-*
6 *isdiction of the Federal agency.*

7 “(2) *EXCEPTION.—Paragraph (1) shall not*
8 *apply to a transfer between Federal agencies of ele-*
9 *mental mercury for the sole purpose of facilitating*
10 *storage of mercury to carry out this Act.”.*

11 **SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MER-**
12 **CURY.**

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

15 *(1) in subsection (a) by striking “subsection (b)”*
16 *and inserting “subsections (b) and (c)”; and*

17 *(2) by adding at the end the following:*

18 “(c) *PROHIBITION ON EXPORT OF ELEMENTAL MER-*
19 *CURY.—*

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

23 *“(2) INAPPLICABILITY OF SUBSECTION (a).—Sub-*
24 *section (a) shall not apply to this subsection.*

1 “(3) *REPORT TO CONGRESS ON MERCURY COM-*
2 *POUNDS.—*

3 “(A) *REPORT.—Not later than one year*
4 *after the date of enactment of the Mercury Ex-*
5 *port Ban Act of 2007, the Administrator shall*
6 *publish and submit to Congress a report on mer-*
7 *curic chloride, mercurous chloride or calomel,*
8 *mercuric oxide, and other mercury compounds, if*
9 *any, that may currently be used in significant*
10 *quantities in products or processes. Such report*
11 *shall include an analysis of—*

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

16 “(ii) *the purposes for which each of*
17 *these compounds are used domestically, the*
18 *amount of these compounds currently con-*
19 *sumed annually for each purpose, and the*
20 *estimated amounts to be consumed for each*
21 *purpose in 2010 and beyond;*

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

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

4 “(v) other relevant information that
5 Congress should consider in determining
6 whether to extend the export prohibition to
7 include one or more of these mercury com-
8 pounds.

9 “(B) *PROCEDURE.*—For the purpose of pre-
10 paring the report under this paragraph, the Ad-
11 ministrators may utilize the information gath-
12 ering authorities of this title, including sections
13 10 and 11.

14 “(4) *ESSENTIAL USE EXEMPTION.*—(A) Any per-
15 son residing in the United States may petition the
16 Administrator for an exemption from the prohibition
17 in paragraph (1), and the Administrator may grant
18 by rule, after notice and opportunity for comment, an
19 exemption for a specified use at an identified foreign
20 facility if the Administrator finds that—

21 “(i) nonmercury alternatives for the speci-
22 fied use are not available in the country where
23 the facility is located;

24 “(ii) there is no other source of elemental
25 mercury available from domestic supplies (not

1 including new mercury mines) in the country
2 where the elemental mercury will be used;

3 “(iii) the country where the elemental mer-
4 cury will be used certifies its support for the ex-
5 emption;

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

11 “(v) the elemental mercury will be used in
12 a manner that will protect human health and
13 the environment, taking into account local, re-
14 gional, and global human health and environ-
15 mental impacts;

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

21 “(vii) the export of elemental mercury for
22 the specified use is consistent with international
23 obligations of the United States intended to re-
24 duce global mercury supply, use, and pollution.

1 “(B) *Each exemption issued by the Adminis-*
2 *trator pursuant to this paragraph shall contain such*
3 *terms and conditions as are necessary to minimize*
4 *the export of elemental mercury and ensure that the*
5 *conditions for granting the exemption will be fully*
6 *met, and shall contain such other terms and condi-*
7 *tions as the Administrator may prescribe. No exemp-*
8 *tion granted pursuant to this paragraph shall exceed*
9 *three years in duration and no such exemption shall*
10 *exceed 10 metric tons of elemental mercury.*

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

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

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

1 “(6) *EXPORT OF COAL.*—*Nothing in this sub-*
2 *section shall be construed to prohibit the export of*
3 *coal.*”.

4 **SEC. 5. LONG-TERM STORAGE.**

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

12 (b) *FEES.*—

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

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

25 (B) *may be adjusted annually; and*

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

3 (2) COSTS.—The costs referred to in paragraph
4 (1)(C) are the costs to the Department of Energy of
5 providing such management and storage, including
6 facility operation and maintenance, security, moni-
7 toring, reporting, personnel, administration, inspec-
8 tions, training, fire suppression, closure, and other
9 costs required for compliance with applicable law.
10 Such costs shall not include costs associated with land
11 acquisition or permitting of a designated facility
12 under the Solid Waste Disposal Act or other applica-
13 ble law. Building design and building construction
14 costs shall only be included to the extent that the Sec-
15 retary finds that the management and storage of ele-
16 mental mercury accepted under the program under
17 this section cannot be accomplished without construc-
18 tion of a new building or buildings.

19 (c) REPORT.—Not later than 60 days after the end of
20 each Federal fiscal year, the Secretary shall transmit to the
21 Committee on Energy and Commerce of the House of Rep-
22 resentatives and the Committee on Environment and Public
23 Works of the Senate a report on all of the costs incurred
24 in the previous fiscal year associated with the long-term
25 management and storage of elemental mercury. Such report

1 *shall set forth separately the costs associated with activities*
2 *taken under this section.*

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

4 *(1) GUIDANCE.—Not later than October 1, 2009,*
5 *the Secretary, after consultation with the Adminis-*
6 *trator of the Environmental Protection Agency and*
7 *all appropriate State agencies in affected States, shall*
8 *make available, including to potential users of the*
9 *long-term management and storage program estab-*
10 *lished under subsection (a), guidance that establishes*
11 *procedures and standards for the receipt, manage-*
12 *ment, and long-term storage of elemental mercury at*
13 *a designated facility or facilities, including require-*
14 *ments to ensure appropriate use of flasks or other*
15 *suitable shipping containers. Such procedures and*
16 *standards shall be protective of human health and the*
17 *environment and shall ensure that the elemental mer-*
18 *cury is stored in a safe, secure, and effective manner.*
19 *In addition to such procedures and standards, ele-*
20 *mental mercury managed and stored under this sec-*
21 *tion at a designated facility shall be subject to the re-*
22 *quirements of the Solid Waste Disposal Act, including*
23 *the requirements of subtitle C of that Act, except as*
24 *provided in subsection (g)(2) of this section. A des-*
25 *ignated facility in existence on or before January 1,*

1 2010, is authorized to operate under interim status
2 pursuant to section 3005(e) of the Solid Waste Dis-
3 posal Act until a final decision on a permit applica-
4 tion is made pursuant to section 3005(c) of the Solid
5 Waste Disposal Act. Not later than January 1, 2012,
6 the Administrator of the Environmental Protection
7 Agency (or an authorized State) shall issue a final
8 decision on the permit application.

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

14 (3) *EQUIPMENT.*—The Secretary shall ensure
15 that each designated facility has all equipment nec-
16 essary for routine operations, emergencies, moni-
17 toring, checking inventory, loading, and storing ele-
18 mental mercury at the facility.

19 (4) *FIRE DETECTION AND SUPPRESSION SYS-*
20 *TEMS.*—The Secretary shall—

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

24 (B) ensure the installation of a permanent
25 fire suppression system, unless the Secretary de-

1 *termines that a permanent fire suppression sys-*
2 *tem is not necessary to protect human health*
3 *and the environment.*

4 *(e) INDEMNIFICATION OF PERSONS DELIVERING ELE-*
5 *MENTAL MERCURY.—*

6 *(1) IN GENERAL.—(A) Except as provided in*
7 *subparagraph (B) and subject to paragraph (2), the*
8 *Secretary shall hold harmless, defend, and indemnify*
9 *in full any person who delivers elemental mercury to*
10 *a designated facility under the program established*
11 *under subsection (a) from and against any suit,*
12 *claim, demand or action, liability, judgment, cost, or*
13 *other fee arising out of any claim for personal injury*
14 *or property damage (including death, illness, or loss*
15 *of or damage to property or economic loss) that re-*
16 *sults from, or is in any manner predicated upon, the*
17 *release or threatened release of elemental mercury as*
18 *a result of acts or omissions occurring after such mer-*
19 *cury is delivered to a designated facility described in*
20 *subsection (a).*

21 *(B) To the extent that a person described in sub-*
22 *paragraph (A) contributed to any such release or*
23 *threatened release, subparagraph (A) shall not apply.*

1 (2) *CONDITIONS.*—*No indemnification may be*
2 *afforded under this subsection unless the person seek-*
3 *ing indemnification—*

4 (A) *notifies the Secretary in writing within*
5 *30 days after receiving written notice of the*
6 *claim for which indemnification is sought;*

7 (B) *furnishes to the Secretary copies of per-*
8 *tinent papers the person receives;*

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

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

16 (3) *AUTHORITY OF SECRETARY.*—(A) *In any*
17 *case in which the Secretary determines that the De-*
18 *partment of Energy may be required to make indem-*
19 *nification payments to a person under this subsection*
20 *for any suit, claim, demand or action, liability, judg-*
21 *ment, cost, or other fee arising out of any claim for*
22 *personal injury or property damage referred to in*
23 *paragraph (1)(A), the Secretary may settle or defend,*
24 *on behalf of that person, the claim for personal injury*
25 *or property damage.*

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

7 (f) *TERMS, CONDITIONS, AND PROCEDURES.—The Sec-*
8 *retary is authorized to establish such terms, conditions, and*
9 *procedures as are necessary to carry out this section.*

10 (g) *EFFECT ON OTHER LAW.—*

11 (1) *IN GENERAL.—Except as provided in para-*
12 *graph (2), nothing in this section changes or affects*
13 *any Federal, State, or local law or the obligation of*
14 *any person to comply with such law.*

15 (2) *EXCEPTION.—(A) Elemental mercury that*
16 *the Secretary is storing on a long-term basis shall not*
17 *be subject to the storage prohibition of section 3004(j)*
18 *of the Solid Waste Disposal Act (42 U.S.C. 6924(j)).*
19 *For the purposes of section 3004(j) of the Solid Waste*
20 *Disposal Act, a generator accumulating elemental*
21 *mercury destined for a facility designated by the Sec-*
22 *retary under subsection (a) for 90 days or less shall*
23 *be deemed to be accumulating the mercury to facili-*
24 *tate proper treatment, recovery, or disposal.*

1 (B) *Elemental mercury that is stored at a facil-*
2 *ity with respect to which a permit has been issued*
3 *under section 3005(c) of the Solid Waste Disposal Act*
4 *(42 U.S.C. 6925(c)) shall not be subject to the storage*
5 *prohibition of section 3004(j) of the Solid Waste Dis-*
6 *posal Act (42 U.S.C. 6924(j)) if—*

7 *(i) the Secretary is unable to accept the*
8 *mercury at a facility designated by the Secretary*
9 *under subsection (a) for reasons beyond the con-*
10 *trol of the owner or operator of the permitted fa-*
11 *cility;*

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

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

21 *This subparagraph shall not apply to mercury with*
22 *respect to which the owner or operator of the per-*
23 *mitted facility fails to comply with a certification*
24 *provided under clause (ii) or (iii).*

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

5 (1) *determines the impact of the long-term stor-*
6 *age program under this section on mercury recycling;*
7 *and*

8 (2) *includes proposals, if necessary, to mitigate*
9 *any negative impact identified under paragraph (1).*

10 **SEC. 6. REPORT TO CONGRESS.**

11 *At least 3 years after the effective date of the prohibi-*
12 *tion on export of elemental mercury under section 12(c) of*
13 *the Toxic Substances Control Act (15 U.S.C. 2611(c)), as*
14 *added by section 4 of this Act, but not later than January*
15 *1, 2014, the Administrator of the Environmental Protection*
16 *Agency shall transmit to the Committee on Energy and*
17 *Commerce of the House of Representatives and the Com-*
18 *mittee on Environment and Public Works of the Senate a*
19 *report on the global supply and trade of elemental mercury,*
20 *including but not limited to the amount of elemental mer-*
21 *cury traded globally that originates from primary mining,*
22 *where such primary mining is conducted, and whether ad-*
23 *ditional primary mining has occurred as a consequence of*
24 *this Act.*

Amend the title so as to read: “A bill to prohibit certain sales, distributions, and transfers of elemental mer-

cury, to prohibit the export of elemental mercury, and for other purposes.”.

Union Calendar No. 275

110TH CONGRESS
1ST Session

H. R. 1534

[Report No. 110-444]

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NOVEMBER 13, 2007

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed