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**MERCURY-CONTAINING AND RECHARGEABLE BATTERY
MANAGEMENT ACT**

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December 31, 2002

**MERCURY-CONTAINING AND RECHARGEABLE BATTERY
MANAGEMENT ACT¹**

[As Amended Through P.L. 107-377, December 31, 2002]

AN ACT 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [42 U.S.C. 14301 note] SHORT TITLE.

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

SEC. 2. [42 U.S.C. 14301 note] FINDINGS.

The Congress finds that—

- (1) it is in the public interest to—
 - (A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and
 - (B) educate the public concerning the collection, recycling, and proper disposal of such batteries;
- (2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and
- (3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

SEC. 3. [42 U.S.C. 14302] DEFINITIONS.

For purposes of this Act:

- (1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.
- (2) BUTTON CELL.—The term “button cell” means a button- or coin-shaped battery.
- (3) EASILY REMOVABLE.—The term “easily removable”, with respect to a battery, means detachable or removable at the end of the life of the battery—
 - (A) from a consumer product by a consumer with the use of common household tools; or

¹The Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14302–14336) consists of Public Law 104–142 (May 13, 1996).

Sec. 3 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT 168

- (B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.
- (4) **MERCURIC-OXIDE BATTERY.**—The term “mercuric-oxide battery” means a battery that uses a mercuric-oxide electrode.
- (5) **RECHARGEABLE BATTERY.**—The term “rechargeable battery”—
- (A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and
 - (B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually); but
 - (C) does not include—
 - (i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;
 - (ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;
 - (iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or
 - (iv) a rechargeable alkaline battery.
- (6) **RECHARGEABLE CONSUMER PRODUCT.**—The term “rechargeable consumer product”—
- (A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but
 - (B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.
- (7) **REGULATED BATTERY.**—The term “regulated battery” means a rechargeable battery that—
- (A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or
 - (B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).
- (8) **REMANUFACTURED PRODUCT.**—The term “remanufactured product” means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

SEC. 4. [42 U.S.C. 14303] INFORMATION DISSEMINATION.

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

SEC. 5. [42 U.S.C. 14304] ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

(1) purchased ready for sale to the ultimate consumer; and
(2) sold, offered for sale, or offered for promotional purposes without modification.

The preceding sentence shall not apply to a person—

(A) who is the importer of a battery covered by this Act,
and

Sec. 6 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT 170

(B) who has knowledge of the chemical contents of the battery when such chemical contents make the sale, offering for sale, or offering for promotional purposes of such battery unlawful under title II of this Act.

SEC. 6. [42 U.S.C. 14305] INFORMATION GATHERING AND ACCESS.

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

- (1) a regulated battery manufacturer;
- (2) a rechargeable consumer product manufacturer;
- (3) a mercury-containing battery manufacturer; and
- (4) an authorized agent of a person described in paragraph

(1), (2), or (3), shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

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

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

SEC. 7. [42 U.S.C. 14306] STATE AUTHORITY.

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

SEC. 8. [42 U.S.C. 14307] AUTHORIZATION OF APPROPRIATIONS.

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

TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

SEC. 101. [42 U.S.C. 14301 note] SHORT TITLE.

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

SEC. 102. [42 U.S.C. 14321] PURPOSE.

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

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

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

SEC. 103. [42 U.S.C. 14322] RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) **PROHIBITION.**—

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

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

(B) is sold separately.

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

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

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

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

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

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

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

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

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

(c) **EXISTING OR ALTERNATIVE LABELING.**—

(1) **INITIAL PERIOD.**—For a period of 2 years after the date of enactment of this Act, regulated batteries, rechargeable con-

Sec. 103 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT 172

sumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) shall be deemed to comply with the labeling requirements of subsection (b).

(2) CERTIFICATION.—

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

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

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

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

(d) RULEMAKING AUTHORITY OF THE ADMINISTRATOR.—

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

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

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

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

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

(f) EXEMPTIONS.—

(1) IN GENERAL.—With respect to any rechargeable consumer product, any person may submit an application to the

173 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT Sec. 104

Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

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

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

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

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

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

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

SEC. 104. [42 U.S.C. 14323] REQUIREMENTS.

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

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

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

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

Sec. 201 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT 174

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

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

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

**TITLE II—MERCURY-CONTAINING
BATTERY MANAGEMENT ACT**

SEC. 201. [42 U.S.C. 14301 note] SHORT TITLE.

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

SEC. 202. [42 U.S.C. 14331] PURPOSE.

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

SEC. 203. [42 U.S.C. 14332] LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.

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

SEC. 204. [42 U.S.C. 14333] LIMITATIONS ON THE SALE OF ZINC-CARBON BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after the date of enactment of this Act, that contains mercury that was intentionally introduced as described in section 203.

SEC. 205. [42 U.S.C. 14334] LIMITATIONS ON THE SALE OF BUTTON CELL MERCURIC-OXIDE BATTERIES.

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after the date of enactment of this Act.

SEC. 206. [42 U.S.C. 14335] LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.

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

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

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

175 MERCURY-CONTAINING & RECHARGEABLE BATTERY MANAGEMENT Sec. 207

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

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

SEC. 207. [42 U.S.C. 14336] NEW PRODUCT OR USE.

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