

112TH CONGRESS
2D SESSION

S. 3697

To amend the Toxic Substances Control Act relating to certain mercury compounds, products, and processes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2012

Mr. WHITEHOUSE (for himself, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Toxic Substances Control Act relating to certain mercury compounds, products, and processes.

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 Use Reduc-
5 tion Act of 2012”.

6 **SEC. 2. REGULATION OF MERCURY.**

7 Section 6(f) of the Toxic Substances Control Act (15
8 U.S.C. 2605(f)) is amended—

9 (1) by redesignating paragraphs (1) through
10 (3) as paragraphs (2) through (4), respectively;

1 (2) by inserting before paragraph (2) (as redesi-
2 gnated by paragraph (1)) the following:

3 “(1) DEFINITION OF MERCURY.—In this sub-
4 section, notwithstanding section 3(2)(B), the term
5 ‘mercury’ means—

6 “(A) elemental mercury;

7 “(B) a mercury compound; and

8 “(C) a mixture that contains elemental
9 mercury or a mercury compound that is mixed
10 with any other material.”;

11 (3) in paragraph (2) (as so redesignated), by
12 striking “paragraph (2)” and inserting “paragraph
13 (3)”;

14 (4) in paragraph (3) (as so redesignated), by
15 striking “Paragraph (1)” and inserting “Paragraph
16 (2)”;

17 (5) by adding at the end the following

18 “(5) PROHIBITION ON PRIMARY MERCURY MIN-
19 ING.—

20 “(A) PROHIBITION ON PRODUCTION.—

21 Notwithstanding any other provision of law and
22 subject to subparagraph (B), effective begin-
23 ning January 1, 2014, the production of mer-
24 cury from the extraction, beneficiation, and

1 processing of mercury-containing ores and min-
2 erals is prohibited.

3 “(B) INCIDENTAL MERCURY MINING.—
4 Nothing in this subsection prohibits the produc-
5 tion of mercury from mining of other ores if the
6 mercury is produced incidentally from the
7 beneficiation or processing of that ore or related
8 pollution control activities.

9 “(6) PROHIBITION ON PRODUCTION OF VINYL
10 CHLORIDE MONOMER USING MERCURY.—Effective
11 beginning January 1, 2014, the production of vinyl
12 chloride monomer using a mercury-added feedstock
13 or catalyst is prohibited.

14 “(7) PROHIBITION ON MERCURY-ADDED BAT-
15 TERIES.—

16 “(A) DEFINITION OF MERCURY-ADDED
17 BATTERY.—In this paragraph, the term ‘mer-
18 cury-added battery’ means a battery that con-
19 tains mercury that is intentionally introduced to
20 the battery in the production process, as distin-
21 guished from a battery that contains mercury
22 that may be incidentally present in other mate-
23 rials used to produce the battery.

24 “(B) PROHIBITION ON MERCURY-ADDED
25 BATTERIES.—

1 “(i) IN GENERAL.—Notwithstanding
2 any other provision of law and effective be-
3 ginning January 1, 2015, the manufac-
4 turing, processing, or distribution in com-
5 merce of a mercury-added battery, individ-
6 ually or as a component of a product, is
7 prohibited.

8 “(ii) EXEMPTION.—Clause (i) does
9 not apply to a battery manufactured before
10 January 1, 2015.

11 “(C) REPEAL.—Effective beginning Janu-
12 ary 1, 2015, title II of the Mercury-Containing
13 and Rechargeable Battery Management Act (42
14 U.S.C. 14331 et seq.) is repealed.

15 “(8) PROHIBITION ON CERTAIN MERCURY-
16 ADDED MEASURING DEVICES.—

17 “(A) PROHIBITION ON MEASURING DE-
18 VICES.—Notwithstanding any other provision of
19 law and subject to subparagraph (B), effective
20 beginning January 1, 2014, the manufacturing,
21 processing, or distribution in commerce of any
22 of the following mercury-added measuring de-
23 vices is prohibited:

24 “(i) Fever thermometer.

25 “(ii) Nonfever thermometer.

1 “(iii) Barometer.

2 “(iv) Esophageal dilator, bougie tube,
3 or gastrointestinal tube.

4 “(v) Flow meter or regulator.

5 “(vi) Hydrometer.

6 “(vii) Hygrometer or psychrometer.

7 “(viii) Manometer.

8 “(ix) Pyrometer.

9 “(x) Sphygmomanometer.

10 “(B) EXEMPTIONS.—

11 “(i) BUTTON CELL BATTERIES.—The
12 prohibition under subparagraph (A) shall
13 not apply to a mercury-added measuring
14 device listed under that subparagraph if
15 the only mercury-added component of the
16 device is a button cell battery.

17 “(ii) MEDICAL USE EXEMPTION.—The
18 Administrator shall authorize the produc-
19 tion and distribution in commerce of lim-
20 ited quantities of a mercury-added medical
21 measuring device, if the Administrator de-
22 termines that—

23 “(I) in consultation with the
24 Commissioner of the Food and Drug
25 Administration, the use of the mer-

1 cury-added medical measuring device
2 is necessary in medical contexts;

3 “(II) no safe and effective alter-
4 native to the use of mercury in the
5 mercury-added medical measuring de-
6 vice is available; and

7 “(III) the mercury-added medical
8 measuring device has, after notice and
9 opportunity for comment, been ap-
10 proved for use by the Commissioner of
11 the Food and Drug Administration.

12 “(iii) EFFECT ON OTHER FEDERAL
13 LAW.—The prohibition under subpara-
14 graph (A) shall not apply if the use of
15 mercury in a specific mercury-added meas-
16 uring device is required by other Federal
17 law (including regulations).

18 “(9) PROHIBITION ON MERCURY-ADDED PES-
19 TICIDES.—

20 “(A) DEFINITION OF MERCURY-ADDED
21 PESTICIDE.—In this paragraph, the term ‘mer-
22 cury-added pesticide’ means a pesticide (as that
23 term is defined in section 2 of the Federal In-
24 secticide, Fungicide, and Rodenticide Act (7
25 U.S.C. 136)) that is produced by the inten-

1 tional addition of mercury in the manufacturing
2 process.

3 “(B) PROHIBITION.—Notwithstanding any
4 other provision of law and effective beginning
5 January 1, 2014, the manufacturing, proc-
6 essing, or distribution in commerce of a mer-
7 cury-added pesticide is prohibited.

8 “(10) PROHIBITION ON MERCURY-ADDED RE-
9 LAYS, SWITCHES, AND THERMOSTATS.—

10 “(A) DEFINITIONS.—In this paragraph:

11 “(i) MERCURY-ADDED RELAY.—

12 “(I) IN GENERAL.—The term
13 ‘mercury-added relay’ means a prod-
14 uct or device that—

15 “(aa) opens or closes elec-
16 trical contacts to effect the oper-
17 ation of other devices in the same
18 or another electrical circuit; and

19 “(bb) is produced by the in-
20 tentional addition of mercury in
21 the manufacturing process of
22 that product or device.

23 “(II) INCLUSIONS.—The term
24 ‘mercury-added relay’ includes a mer-
25 cury displacement relay, a mercury

1 wetted reed relay, and a mercury con-
2 tact relay.

3 “(ii) MERCURY-ADDED SWITCH.—

4 “(I) IN GENERAL.—The term
5 ‘mercury-added switch’ means a prod-
6 uct or device that—

7 “(aa) is used for measuring,
8 controlling, or regulating the flow
9 of gas, other fluids, or electricity;
10 and

11 “(bb) is produced by the in-
12 tentional addition of mercury in
13 the manufacturing process of
14 that product or device.

15 “(II) INCLUSIONS.—The term
16 ‘mercury-added switch’ includes—

17 “(aa) a mercury float switch
18 actuated by rising or falling liq-
19 uid levels;

20 “(bb) a mercury tilt switch
21 actuated by a change in the
22 switch position;

23 “(cc) a mercury pressure
24 switch actuated by a change in
25 pressure;

1 “(dd) a mercury tempera-
2 ture switch activated by a change
3 in temperature;

4 “(ee) a mercury flame sen-
5 sor;

6 “(ff) a mercury connector
7 that makes, breaks, or changes
8 the connection in an electrical
9 circuit; and

10 “(gg) a thermostat that is
11 used to sense and control tem-
12 perature as part of a manufac-
13 turing process.

14 “(III) EXCLUSIONS.—The term
15 ‘mercury-added switch’ does not in-
16 clude a mercury-added thermostat, as
17 that term is defined in clause (iii).

18 “(iii) MERCURY-ADDED THERMO-
19 STAT.—

20 “(I) IN GENERAL.—The term
21 ‘mercury-added thermostat’ means a
22 product or device that uses a mercury-
23 added switch to sense and control
24 room temperature through commu-

1 nication with heating, ventilating, or
2 air-conditioning equipment.

3 “(II) INCLUSIONS.—The term
4 ‘mercury-added thermostat’ includes a
5 thermostat that is used to sense and
6 control room temperature in residen-
7 tial, commercial, industrial, and other
8 buildings.

9 “(III) EXCLUSIONS.—The term
10 ‘mercury-added thermostat’ does not
11 include a thermostat that is used to
12 sense and control temperature as part
13 of a manufacturing process.

14 “(B) PROHIBITION.—

15 “(i) MERCURY-ADDED THERMO-
16 STATS.—Effective beginning January 1,
17 2014, the manufacturing, processing, or
18 distribution in commerce of a mercury-
19 added thermostat is prohibited.

20 “(ii) MERCURY-ADDED RELAY; MER-
21 CURY-ADDED SWITCH.—

22 “(I) IN GENERAL.—Effective be-
23 ginning January 1, 2014, and subject
24 to subclause (II), the manufacturing,
25 processing, or distribution in com-

1 merce (individually or as a product
2 component) of a mercury-added relay
3 or mercury-added switch is prohibited.

4 “(II) EXEMPTIONS.—

5 “(aa) IN GENERAL.—The
6 prohibition under subclause (I)
7 does not apply to a mercury-
8 added relay or mercury-added
9 switch if—

10 “(AA) the relay or
11 switch replaces a relay or
12 switch that is a component
13 of a larger product that is
14 used in manufacturing and
15 is in use prior to January 1,
16 2014;

17 “(BB) the relay or
18 switch replaces a relay or
19 switch that is integrated in,
20 and not physically separate
21 from, other components of a
22 larger product in use prior
23 to January 1, 2014;

24 “(CC) the use of mer-
25 cury in a specific relay or

1 switch is required by other
2 Federal law (including regu-
3 lations); or

4 “(DD) the relay or
5 switch is a component of a
6 larger product that is manu-
7 factured and in use prior to
8 January 1, 2014, and sold
9 after January 1, 2014, by
10 the original or subsequent
11 user of the larger product.

12 “(bb) REFURBISHED PROD-
13 UCTS.—

14 “(AA) IN GENERAL.—
15 Subject to subitem (BB),
16 the prohibition under sub-
17 clause (I) shall not apply to
18 the distribution in commerce
19 of a refurbished product
20 manufactured before Janu-
21 ary 1, 2014, if the mercury-
22 added relay or mercury-
23 added switch is integrated
24 in, and not physically sepa-

1 rate from, other components
2 of a larger product.

3 “(BB) RESTRICTION.—

4 The exemption under this
5 item shall apply only if the
6 manufacturer of the mer-
7 cury-added relay or mer-
8 cury-added switch maintains
9 records, individually or in
10 conjunction with an industry
11 or trade group, that would
12 demonstrate to the Adminis-
13 trator, if the records were
14 inspected or reported under
15 subitem (CC), that the man-
16 ufacturer has developed and
17 implemented a system for
18 the proper collection, trans-
19 portation, and management
20 of the larger product at the
21 end of the useful life of the
22 larger product that is pro-
23 tective of human health and
24 the environment and main-
25 tains records that show that

1 the manufacturer has pro-
2 vided purchasers with suffi-
3 cient information to ensure
4 that users of the larger
5 product are aware that the
6 larger product contains a
7 mercury-added relay or mer-
8 cury-added switch and that
9 users may access the manu-
10 facturer-developed collection
11 program.

12 “(CC) ACCESS TO
13 RECORDS.—On the request
14 of any duly authorized rep-
15 resentative of the Adminis-
16 trator, each person who is
17 required to maintain records
18 under this item shall submit
19 to the representative copies
20 of those records and permit
21 the representative to inspect
22 those records.

23 “(DD) EXPIRATION.—
24 The exemption under this

1 item shall expire on Decem-
2 ber 31, 2022.

3 “(11) ESSENTIAL USE EXEMPTIONS.—

4 “(A) IN GENERAL.—Any person may peti-
5 tion the Administrator for an exemption from a
6 prohibition under paragraphs (7) through (10),
7 and the Administrator may grant an exemption
8 by rule, after notice and opportunity for com-
9 ment, for a mercury-added product if the Ad-
10 ministrator determines that—

11 “(i) a safe and effective nonmercury
12 alternative to the mercury-added product is
13 unavailable;

14 “(ii) a system exists in the United
15 States for the proper collection, transpor-
16 tation, and management of the product at
17 the end of the useful life of the product
18 that is protective of human health and the
19 environment; and

20 “(iii) appropriate and substantial ef-
21 forts are ongoing to develop and produce a
22 nonmercury alternative to the mercury-
23 added product in a timely manner.

24 “(B) TERMS.—

1 “(i) IN GENERAL.—An exemption
2 granted by the Administrator under this
3 paragraph shall contain such terms and
4 conditions as the Administrator may pre-
5 scribe, but shall, at a minimum, include
6 such terms and conditions as the Adminis-
7 trator determines necessary—

8 “(I) to minimize the manufacture
9 and distribution in commerce of re-
10 stricted mercury-added products; and

11 “(II) to ensure that the condi-
12 tions for granting the exemption will
13 be fully met.

14 “(ii) DURATION.—An exemption
15 under this paragraph shall not exceed 5
16 years in duration.

17 “(C) CONSULTATION.—

18 “(i) IN GENERAL.—Prior to providing
19 notice and opportunity for comment under
20 subparagraph (A), the Administrator shall
21 consult with relevant State agencies and
22 organizations, including the Interstate
23 Mercury Education and Reduction Clear-
24 inghouse.

1 “(ii) PROCESS.—If the Administrator
2 proposes granting an exemption under this
3 paragraph for a mercury-added product
4 that has previously been denied an exemp-
5 tion under State law by 1 or more State
6 agencies in States that have mercury prod-
7 uct bans for similar products, the Adminis-
8 trator shall include in the proposed exemp-
9 tion an explanation of the basis of the deci-
10 sion of the Administrator.

11 “(12) REPORT ON USE OF MERCURY TO
12 PRODUCE POLYURETHANE PRODUCTS.—

13 “(A) IN GENERAL.—Not later than Janu-
14 ary 1, 2015, the Administrator shall publish
15 and submit to Congress a report on the use of
16 mercury to produce polyurethane products.

17 “(B) CONTENTS.—The report under sub-
18 paragraph (A) shall include an analysis of—

19 “(i) the extent to which mercury is
20 used to produce polyurethane products in
21 the United States, including—

22 “(I) the quantity of mercury
23 used;

24 “(II) the number of polyurethane
25 manufacturing facilities; and

1 “(III) the quantity of poly-
2 urethane product that is manufac-
3 tured using mercury;

4 “(ii) the types of polyurethane prod-
5 ucts, if any, that are manufactured using
6 mercury;

7 “(iii) the availability of nonmercury
8 alternative products or processes for those
9 polyurethane products that are manufac-
10 tured using mercury;

11 “(iv) the relative proportion of poly-
12 urethane products that are manufactured
13 using mercury in the domestic manufac-
14 turing sector;

15 “(v) any ongoing efforts being made
16 to terminate the use of mercury in the
17 manufacture of polyurethane products;

18 “(vi) any information available on the
19 historic uses of mercury to produce poly-
20 urethane products in the United States, in-
21 cluding—

22 “(I) the nature and extent of po-
23 tential risks to human health or the
24 environment posed by the those poly-
25 urethane products that are still being

1 used and were produced using mer-
2 cury; and

3 “(II) any mitigation measures
4 that may be used to reduce the associ-
5 ated risk to, and protect, human
6 health and the environment; and

7 “(vii) other relevant information that
8 the Administrator determines Congress
9 should consider in determining whether—

10 “(I) to prohibit the manufacture
11 or distribution in commerce of poly-
12 urethane compounds using mercury;
13 or

14 “(II) further action is needed to
15 address polyurethane products that
16 are in use and were produced using
17 mercury.”.

18 **SEC. 3. MERCURY INVENTORY.**

19 Section 8(b) of the Toxic Substances Control Act (42
20 U.S.C. 2607(b)) is amended by adding at the end the fol-
21 lowing:

22 “(3) MERCURY.—

23 “(A) DEFINITION OF MERCURY.—In this
24 subsection, the term ‘mercury’ has the meaning
25 given the term in section 6(f)(1).

1 “(B) PUBLICATION.—Not later than April
2 1, 2014, and every 3 years thereafter, the Ad-
3 ministrator shall publish in the Federal Reg-
4 ister an inventory of mercury supply, use, and
5 trade in the United States.

6 “(C) PROCESS.—In carrying out the inven-
7 tory under subparagraph (B), the Adminis-
8 trator shall—

9 “(i) identify any remaining manufac-
10 turing processes or products that inten-
11 tionally add mercury; and

12 “(ii) recommend actions, including
13 proposed revisions of Federal law (includ-
14 ing regulations), to achieve further reduc-
15 tions in mercury use.

16 “(D) REPORTING.—

17 “(i) IN GENERAL.—To assist in the
18 preparation of the inventory under sub-
19 paragraph (B), any person who manufac-
20 tures mercury or mercury-added products
21 or otherwise intentionally uses mercury in
22 a manufacturing process shall make peri-
23 odic reports to the Administrator, at such
24 time and including such information as the
25 Administrator shall determine by rule.

1 “(ii) COORDINATION.—To avoid dupli-
2 cation, the Administrator shall coordinate
3 the reporting under this subparagraph
4 with the Interstate Mercury Education and
5 Reduction Clearinghouse.

6 “(iii) EXEMPTION.—This subpara-
7 graph shall not apply to a person engaged
8 in the generation, handling, or manage-
9 ment of mercury-containing waste, unless
10 that person manufactures or recovers mer-
11 cury in the management of that waste.”.

12 **SEC. 4. PROHIBITION ON EXPORT OF CERTAIN MERCURY**
13 **COMPOUNDS AND PRODUCTS.**

14 (a) IN GENERAL.—Section 12(c) of the Toxic Sub-
15 stances Control Act (15 U.S.C. 2611(c)) is amended—

16 (1) in the subsection heading, by inserting be-
17 fore the period at the end “AND MERCURY COM-
18 POUNDS”;

19 (2) by striking paragraph (3) and inserting the
20 following:

21 “(3) PROHIBITION ON EXPORT OF CERTAIN
22 MERCURY COMPOUNDS.—

23 “(A) IN GENERAL.—Effective beginning
24 January 1, 2014, the export of the following
25 mercury compounds is prohibited:

1 “(i) Mercury (I) chloride or calomel.

2 “(ii) Mercury (II) oxide.

3 “(iii) Mercury (II) sulfate.

4 “(iv) Mercury (II) nitrate.

5 “(v) Cinnabar ore.

6 “(vi) Any mercury compound that the
7 Administrator, at the discretion of the Ad-
8 ministrator, adds to the list by rule, on de-
9 termining that exporting that mercury
10 compound for the purpose of regenerating
11 elemental mercury is technically feasible.

12 “(B) PUBLICATION.—Not later than 90
13 days after the date of enactment of the Mercury
14 Use Reduction Act of 2012, and as appropriate
15 thereafter, the Administrator shall publish in
16 the Federal Register a list of the mercury com-
17 pounds that are prohibited from export under
18 this paragraph.

19 “(C) PETITION.—Any person may petition
20 the Administrator to add to the list of mercury
21 compounds prohibited from export.”;

22 (3) in paragraph (4)—

23 (A) by striking “elemental mercury” each
24 place it appears and inserting “mercury”; and

1 (B) in subparagraph (A), by inserting “or
2 paragraph (3)” after “paragraph (1)”;

3 (4) by redesignating paragraphs (5) and (6) as
4 paragraphs (6) and (7), respectively; and

5 (5) by inserting after paragraph (4) the fol-
6 lowing:

7 “(5) MERCURY-ADDED PRODUCTS.—

8 “(A) IN GENERAL.—Effective beginning
9 January 1, 2014, the export of a mercury-
10 added product described in paragraphs (8)
11 through (11) of section 6(f) is prohibited.

12 “(B) MERCURY-ADDED BATTERIES.—Ef-
13 fective beginning January 1, 2015, the export
14 of mercury-added batteries described in section
15 6(f)(7) is prohibited.

16 “(C) EXEMPTION.—

17 “(i) IN GENERAL.—Any person resid-
18 ing in the United States may petition the
19 Administrator for an exemption from the
20 prohibition under subparagraph (A) or
21 (B), and the Administrator may, after no-
22 tice and opportunity for comment, grant
23 an exemption by rule for the export of a
24 mercury-added product to an identified
25 country if the Administrator finds that—

1 “(I) a nonmercury alternative to
2 the mercury-added product is not
3 available in the identified country;

4 “(II) the identified country cer-
5 tifies the support of that country for
6 the exemption;

7 “(III) a chain of custody for the
8 exported product exists to ensure that
9 the mercury-added product will be
10 used only in the identified country;
11 and

12 “(IV) the export of the mercury-
13 added product is consistent with inter-
14 national obligations of the United
15 States intended to reduce global mer-
16 cury supply, use, and pollution.

17 “(ii) TERMS.—

18 “(I) IN GENERAL.—An exemp-
19 tion granted by the Administrator
20 under this paragraph shall contain
21 such terms and conditions as the Ad-
22 ministrator may prescribe, but shall,
23 at a minimum, include such terms
24 and conditions as the Administrator
25 determines necessary—

1 “(aa) to minimize the export
2 of restricted mercury-added prod-
3 ucts; and

4 “(bb) to ensure that the
5 conditions for granting the ex-
6 emption will be fully met.

7 “(II) DURATION.—An exemption
8 under this paragraph shall not exceed
9 3 years in duration.

10 “(III) QUANTITY.—An exemption
11 under this paragraph shall not exceed
12 5 metric tons of the mercury-added
13 product.

14 “(iii) VIOLATIONS.—The Adminis-
15 trator may, by order, suspend or void an
16 exemption under this paragraph in the
17 event of a violation of this subsection.”.

18 (b) VIOLATIONS; PETITIONS.—

19 (1) VIOLATIONS.—Section 15 of the Toxic Sub-
20 stances Control Act (15 U.S.C. 2614) is amended—

21 (A) in paragraph (3), by striking “or”
22 after the semicolon at the end;

23 (B) in paragraph (4), by striking the pe-
24 riod at the end and inserting “; or”; and

25 (C) by adding at the end the following:

1 “(5) violate any provision of section 12(c), in-
2 cluding any rule issued under that section, the terms
3 and conditions under section 12(c)(5)(C)(ii), or the
4 submission of false information in connection with
5 that section.”.

6 (2) PETITIONS.—Section 21 of the Toxic Sub-
7 stances Control Act (15 U.S.C. 2620) is amended—

8 (A) in subsection (a), by inserting “or to
9 add to or remove from the list of mercury com-
10 pounds prohibited from export under section
11 12(c)(3)” before the period at the end; and

12 (B) in subsection (b)—

13 (i) in paragraph (1), by inserting “or
14 to add to or remove from the list of mer-
15 cury compounds prohibited from export
16 under section 12(c)(3)” before the period
17 at the end;

18 (ii) in paragraph (3), in the first sen-
19 tence, by striking “or 8” and inserting “8,
20 or 12”; and

21 (iii) in paragraph (4)(B)—

22 (I) in the first sentence, by in-
23 serting “or to add to the list of mer-
24 cury compounds prohibited from ex-

1 port under section 12(c)(3)” after “or
2 6(b)(2)”;

3 (II) in clause (ii) of the second
4 sentence—

5 (aa) by inserting “or add to
6 or remove from the list under
7 section 12(c)(3)” after “section
8 6(b)(2)”;

9 (bb) by striking the period
10 at the end of the clause and in-
11 serting a semicolon.

12 **SEC. 5. STATE PROGRAMS LIMITING MERCURY USE IN**
13 **PRODUCTS.**

14 Section 18 of the Toxic Substances Control Act (15
15 U.S.C. 2617) is amended by adding at the end the fol-
16 lowing:

17 “(c) MERCURY.—Nothing in this Act prohibits or af-
18 fects the authority of a State or political subdivision to
19 establish or continue in effect any requirements that are
20 more restrictive than those established by paragraphs (5)
21 through (11) of section 6(f).”.

22 **SEC. 6. JUDICIAL REVIEW.**

23 Section 19 of the Toxic Substances Control Act (15
24 U.S.C. 2618) is amended—

1 (1) in subsection (a)(1), by inserting “6(f),”
2 after “6(e),”; and

3 (2) in subsection (c)(1)(B)(i), by striking “or
4 6(e)” and inserting “6(e), or 6(f)”.

5 **SEC. 7. ELEMENTAL MERCURY STORAGE AT PRIVATE FA-**
6 **CILITIES.**

7 Section 5(g)(2) of the Mercury Export Ban Act of
8 2008 (Public Law 110–414; 122 Stat. 4347) is amend-
9 ed—

10 (1) in subparagraph (B), by striking “Ele-
11 mental mercury” and inserting the following:

12 “(B) TEMPORARY STORAGE.—Elemental
13 mercury”; and

14 (2) by adding at the end the following:

15 “(C) LONG-TERM STORAGE.—Elemental
16 mercury may be stored on a long-term basis at
17 a facility for which a permit has been issued for
18 that purpose under section 3005(c) of the Solid
19 Waste Disposal Act (42 U.S.C. 6925(c)), and
20 shall not be subject to the storage prohibition
21 of section 3004(j) of the Solid Waste Disposal
22 Act (42 U.S.C. 6924(j)), if—

23 “(i) the owner or operator of the per-
24 mitted facility certifies in writing to the
25 Administrator (and authorized State) that

1 the owner or operator will not sell, or oth-
2 erwise place into commerce at any future
3 time, the mercury;

4 “(ii) the permit includes terms and
5 conditions for elemental mercury storage
6 that—

7 “(I) appropriately reflect proce-
8 dures and standards developed pursu-
9 ant to subsection (d); and

10 “(II) the Administrator (or au-
11 thorized State) determines are nec-
12 essary to protect human health and
13 the environment; and

14 “(iii) the owner or operator of the
15 permitted facility meets any qualifications
16 for elemental mercury storage determined
17 to be necessary by the Administrator (or
18 the authorized State) to protect human
19 health and the environment, including
20 qualifications relating to—

21 “(I) training;

22 “(II) continuity of operation; and

23 “(III) financial responsibility (in-
24 cluding financial responsibility for clo-
25 sure and corrective action).

1 “(D) APPLICABILITY.—Subparagraph (C)
2 shall not apply to mercury with respect to
3 which the owner or operator of the permitted
4 facility fails to comply with a certification under
5 that subparagraph.”.

○