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04/12/01---1118-B Thomasville Road, Tallahassee, Florida 32303*

Mercury-Safe Seafood Act of 2001 (Introduced in the Senate)

107th CONGRESS

1st Session

S. 555

To amend the Federal Food, Drug, and Cosmetic Act to require the Secretary of Health and Human Services to establish a tolerance for the presence of methylmercury in seafood, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 15, 2001

Mr. LEAHY (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to require the Secretary of Health and Human Services to establish a tolerance for the presence of methylmercury in seafood, 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. SHORT TITLE.

This Act may be cited as the `Mercury-Safe Seafood Act of 2001'.

SEC. 2. FINDINGS.

Congress finds that--

(1) mercury pollution from coal-fired power plants, waste incinerators, and other anthropogenic sources continues to contaminate inland waterways and territorial waters of the United States;

(2) mercury accumulates in fish as methylmercury and is passed on to humans that eat those fish;

(3) methylmercury is a potent neurotoxin that, even in small quantities--

(A) can cause serious damage to the human central nervous system and adverse effects on many other systems in the human body;

(B) is especially harmful to pregnant women and young children; and

(C) puts an estimated 60,000 newborns at risk for adverse neurodevelopmental effects each year in the United States from in utero exposure;

(4) certain commercial seafood species can have dangerously high levels of methylmercury, as evidenced by Food and Drug Administration data acquired in the 1990's, up to the time that the agency discontinued domestic sampling in 1998;

(5) the Food and Drug Administration's long-standing action level of 1.0 parts per million for methylmercury in fish--

(A) is out of date; and

(B) according to scientific evidence, does not adequately protect pregnant women and young children;

(6) the comprehensive Mercury Study Report to Congress issued by the Environmental Protection Agency in December 1997 recommended a methylmercury consumption limit of 0.1 micrograms per kilogram of body weight per day, which is 5 times lower than the Food and Drug Administration's current action level;

(7) the report entitled 'Toxicological Effects of Methylmercury', issued by the National Academy of Sciences in July 2000, confirmed that the Environmental Protection Agency's limit is 'scientifically justifiable for the protection of public health';

(8) the report entitled 'Food Safety: Federal Oversight of Seafood Does Not Sufficiently Protect Consumers', issued by the General Accounting Office in February 2001, highlights the inadequacies of Food and Drug Administration guidance regarding methylmercury in commercial seafood;

(9) many States have been forced to issue mercury advisories for inland waterways and health warnings regarding the fish that may be caught in those waterways; and

(10) some States have also issued mercury advisories for commercial seafood.

SEC. 3. TOLERANCE FOR METHYLMERCURY IN SEAFOOD.

Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended--

(1) in section 402(a)(2), by inserting after 'section 512; or' the following: '(D) if it is seafood that bears or contains methylmercury that is unsafe within the meaning of section 406A(a); or'; and

(2) by inserting after section 406 the following:

SEC. 406A. TOLERANCE FOR METHYLMERCURY IN SEAFOOD.

`(a) IN GENERAL- Not later than 1 year after the date of enactment of this section, the Secretary shall by regulation establish a tolerance for the presence of methylmercury in seafood.

`(b) REQUIREMENTS- The tolerance established under subsection (a) shall--

`(1) be based on a scientific analysis of the health risks attributable to methylmercury; and

`(2) be set at a level for which the Secretary determines that there is a reasonable certainty that no harm will result from aggregate exposure to methylmercury in seafood, including all anticipated dietary exposures for which there is reliable information.

`(c) SEAFOOD DEEMED UNSAFE- Any seafood bearing or containing methylmercury shall be deemed to be unsafe for purposes of section 402(a)(2)(D) unless the quantity of methylmercury is within the limits of the tolerance.

`(d) PREGNANT WOMEN, INFANTS, AND CHILDREN- In establishing or modifying the tolerance under subsection (a), the Secretary shall ensure that there is a reasonable certainty that no harm will result to pregnant women, infants, and children from aggregate exposure to methylmercury.

`(e) SAMPLING SYSTEM-

`(1) IN GENERAL- Not later than 18 months after the date of enactment of this section, the Secretary, after consultation with the Secretary of Agriculture, shall establish a system for the collection and analysis of samples of seafood to determine the extent of compliance with the tolerance under subsection (a).

`(2) MONITORING- The sampling system shall provide statistically valid monitoring (including market-basket studies) with respect to compliance with the tolerance.

`(3) AVOIDANCE OF DUPLICATION OF EFFORT- To the extent practicable, the sampling system shall be consistent with, and shall be coordinated with, other seafood sampling systems that are in use, so as to avoid duplication of effort.

`(f) PUBLIC EDUCATION AND ADVISORY SYSTEM-

`(1) PUBLIC EDUCATION- The Secretary, in cooperation with private and public organizations (including cooperative extension services and appropriate State entities) shall design and implement a national public education program regarding the presence of methylmercury in seafood.

`(2) FEATURES- The program shall provide--

`(A) information to the public regarding--

- `(i) Federal standards and good practice requirements; and
- `(ii) promotion of public awareness, understanding, and acceptance of the standards and requirements;
- `(B) information to health professionals so that health professionals may improve diagnosis and treatment of mercury-related illness and advise individuals whose health conditions place those individuals at particular risk; and
- `(C) such other information or advice to consumers and other persons as the Secretary determines will promote the purposes of this section.

`(3) HEALTH ADVISORIES- The Secretary, in consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, shall work with the States and other appropriate entities to--

- `(A) develop and distribute regional and national advisories concerning the presence of methylmercury in seafood;
- `(B) develop standardized formats for written and broadcast advisories regarding methylmercury in seafood; and
- `(C) incorporate State and local advisories into the national public education program under paragraph (1).'

SEC. 4. CONSIDERATION OF REPORT OF NATIONAL ACADEMY OF SCIENCES.

In carrying out section 406A(a) of the Federal Food, Drug, and Cosmetic Act (as added by section 3), the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall consider the findings of the National Academy of Sciences regarding the Environmental Protection Agency's recommended level for methylmercury exposure and the presence of methylmercury in seafood, as such findings are described in the report issued by the National Academy of Sciences in July 2000.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

- (a) SAMPLING- There is authorized to be appropriated to carry out sampling under section 406A(e) of the Federal Food, Drug, and Cosmetic Act (as added by section 3) \$500,000 for each of fiscal years 2002 through 2011.
- (b) PUBLIC EDUCATION AND ADVISORY SYSTEM- There is authorized to be appropriated to develop and implement the public education and advisory system under section 406A(f) of the Federal Food, Drug, and Cosmetic Act (as added by section 3) \$500,000 for each of fiscal years 2002 through 2011.
- (c) STATE SUPPORT-

(1) IN GENERAL- There is authorized to be appropriated to support efforts of the States to sample noncommercial fish and inland waterways for mercury and to produce State-specific health advisories related to mercury \$2,000,000 for each of fiscal years 2002

through 2011.

(2) **EQUITABLE DISTRIBUTION-** The Administrator of the Environmental Protection Agency shall distribute amounts made available under paragraph (1) equitably among the States through programs in existence on the date of enactment of this Act.

SEC. 6. REPORT

(a) **IN GENERAL-** Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall submit to Congress a report on the progress of the Secretary in establishing the tolerance required by section 406A of the Federal Food, Drug, and Cosmetic Act (as added by section 3).

(b) **CONTENTS-** The report shall include a description of the research that has been conducted or reviewed with respect to the tolerance.