

“(i) the infringer pays reasonable compensation in a reasonably timely manner after the amount of such compensation has been agreed upon with the owner of the infringed copyright or determined by the court; and

“(ii) the court also requires that the infringer provide attribution, in a manner that is reasonable under the circumstances, to the legal owner of the infringed copyright, if requested by such owner.

“(C) LIMITATIONS.—The limitations on injunctive relief under subparagraphs (A) and (B) shall not be available to an infringer or a representative of the infringer acting in an official capacity if the infringer asserts that neither the infringer nor any representative of the infringer acting in an official capacity is subject to suit in the courts of the United States for an award of damages for the infringement, unless the court finds that the infringer—

“(i) has complied with the requirements of subsection (b); and

“(ii) pays reasonable compensation to the owner of the exclusive right under the infringed copyright in a reasonably timely manner after the amount of reasonable compensation has been agreed upon with the owner or determined by the court.

“(D) RULE OF CONSTRUCTION.—Nothing in subparagraph (C) shall be construed to authorize or require, and no action taken under such subparagraph shall be deemed to constitute, either an award of damages by the court against the infringer or an authorization to sue a State.

“(E) RIGHTS AND PRIVILEGES NOT WAIVED.—No action taken by an infringer under subparagraph (C) shall be deemed to waive any right or privilege that, as a matter of law, protects the infringer from being subject to suit in the courts of the United States for an award of damages.

“(d) PRESERVATION OF OTHER RIGHTS, LIMITATIONS, AND DEFENSES.—This section does not affect any right, or any limitation or defense to copyright infringement, including fair use, under this title. If another provision of this title provides for a statutory license that would permit the use contemplated by the infringer, that provision applies instead of this section.

“(e) COPYRIGHT FOR DERIVATIVE WORKS AND COMPILATIONS.—Notwithstanding section 103(a), an infringer who qualifies for the limitation on remedies afforded by this section shall not be denied copyright protection in a compilation or derivative work on the basis that such compilation or derivative work employs preexisting material that has been used unlawfully under this section.

“(f) EXCLUSION FOR FIXATIONS IN OR ON USEFUL ARTICLES.—The limitations on remedies under this section shall not be available to an infringer for infringements resulting from fixation of a pictorial, graphic, or sculptural work in or on a useful article that is offered for sale or other commercial distribution to the public.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

“514. Limitation on remedies in cases involving orphan works.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall—

(A) take effect on the later of—

(i) January 1, 2009; or

(ii) the date which is the earlier of—

(I) 30 days after the date on which the Copyright Office publishes notice in the Federal Register that it has certified under section 3 that there exist and are available at least 2 separate and independent searchable,

electronic databases, that allow for searches of copyrighted works that are pictorial, graphic, and sculptural works, and are available to the public; or

(II) January 1, 2013; and

(B) apply to infringing uses that commence on or after that effective date.

(2) DEFINITION.—In this subsection, the term “pictorial, graphic, and sculptural works” has the meaning given that term in section 101 of title 17, United States Code.

### SEC. 3. DATABASES OF PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS.

The Register of Copyrights shall undertake a process to certify that there exist and are available databases that facilitate a user's search for pictorial, graphic, and sculptural works that are subject to copyright protection under title 17, United States Code. The Register shall only certify that databases are available under this section if such databases are determined to be effective and not prohibitively expensive and include the capability to be searched using 1 or more mechanisms that allow for the search and identification of a work by both text and image and have sufficient information regarding the works to enable a potential user of a work to identify or locate the copyright owner or authorized agent. Prior to certifying that databases are available under this section, the Register shall determine, to the extent practicable, their impact on copyright owners that are small businesses and consult with the Small Business Administration Office of Advocacy regarding those impacts. The Register shall consider the Office of Advocacy's comments and respond to any concerns.

### SEC. 4. REPORT TO CONGRESS.

Not later than December 12, 2014, the Register of Copyrights shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the implementation and effects of the amendments made by section 2, including any recommendations for legislative changes that the Register considers appropriate.

### SEC. 5. STUDY ON REMEDIES FOR SMALL COPYRIGHT CLAIMS.

(a) IN GENERAL.—The Register of Copyrights shall conduct a study with respect to remedies for copyright infringement claims by an individual copyright owner or a related group of copyright owners seeking small amounts of monetary relief, including consideration of alternative means of resolving disputes currently heard in the United States district courts. The study shall cover the infringement claims to which section 514 of title 17, United States Code, apply, and other infringement claims under that title.

(b) PROCEDURES.—The Register of Copyrights shall publish notice of the study required under subsection (a), providing a period during which interested persons may submit comments on the study, and an opportunity for interested persons to participate in public roundtables on the study. The Register shall hold any such public roundtables at such times as the Register considers appropriate.

(c) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the study conducted under this section, including such administrative, regulatory, or legislative recommendations that the Register considers appropriate.

### SEC. 6. STUDY ON COPYRIGHT DEPOSITS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study examining the function of the deposit re-

quirement in the copyright registration system under section 408 of title 17, United States Code, including—

(1) the historical purpose of the deposit requirement;

(2) the degree to which deposits are made available to the public currently;

(3) the feasibility of making deposits, particularly visual arts deposits, electronically searchable by the public for the purpose of locating copyright owners; and

(4) the impact any change in the deposit requirement would have on the collection of the Library of Congress.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the study conducted under this section, including such administrative, regulatory, or legislative recommendations that the Comptroller General considers appropriate.

### OLD POST OFFICE BUILDING REDEVELOPMENT ACT OF 2008

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1079, H.R. 5001.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5001) to authorize the Administrator of General Services to provide for the redevelopment of the Old Post Office Building located in the District of Columbia.

There being no objection, the Senate proceeded to consider the bill.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5001) was ordered to a third reading, was read the third time, and passed.

### APPALACHIAN REGIONAL DEVELOPMENT ACT AMENDMENTS OF 2008

Mr. WHITEHOUSE. Mr. President, I ask that the Chair lay before the Senate a message from the House with respect to S. 496.

The Presiding Officer laid before the Senate a message from the House as follows:

S. 496

*Resolved*, That the bill from the Senate (S. 496) entitled “An Act to reauthorize and improve the program authorized by the Appalachian Regional Development Act of 1965”, do pass with the following amendment:

Strike out all after the enacting clause and insert:

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the “Appalachian Regional Development Act Amendments of 2008”.*

#### SEC. 2. LIMITATION ON AVAILABLE AMOUNTS; MAXIMUM COMMISSION CONTRIBUTION.

*(a) GRANTS AND OTHER ASSISTANCE.—Section 14321(a) of title 40, United States Code, is amended—*

(1) in paragraph (1)(A) by striking clause (i) and inserting the following:

“(i) the amount of the grant shall not exceed—

“(I) 50 percent of administrative expenses;

“(II) at the discretion of the Commission, if the grant is to a local development district that has a charter or authority that includes the economic development of a county or a part of a county for which a distressed county designation is in effect under section 14526, 75 percent of administrative expenses; or

“(III) at the discretion of the Commission, if the grant is to a local development district that has a charter or authority that includes the economic development of a county or a part of a county for which an at-risk county designation is in effect under section 14526, 70 percent of administrative expenses;”;

(2) in paragraph (2) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), of the cost of any activity eligible for financial assistance under this section, not more than—

“(i) 50 percent may be provided from amounts appropriated to carry out this subtitle;

“(ii) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent may be provided from amounts appropriated to carry out this subtitle; or

“(iii) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent may be provided from amounts appropriated to carry out this subtitle.”.

(b) DEMONSTRATION HEALTH PROJECTS.—Section 14502 of title 40, United States Code, is amended—

(1) in subsection (d) by striking paragraph (2) and inserting the following:

“(2) LIMITATION ON AVAILABLE AMOUNTS.—Grants under this section for the operation (including initial operating amounts and operating deficits, which include the cost of attracting, training, and retaining qualified personnel) of a demonstration health project, whether or not constructed with amounts authorized to be appropriated by this section, may be made for up to—

“(A) 50 percent of the cost of that operation;

“(B) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent of the cost of that operation; or

“(C) in the case of a project to be carried out for a county for which an at-risk county designation is in effect under section 14526, 70 percent of the cost of that operation.”; and

(2) in subsection (f)—

(A) in paragraph (1) by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”;

and

(B) by adding at the end the following:

“(3) AT-RISK COUNTIES.—The maximum Commission contribution for a project to be carried out in a county for which an at-risk county designation is in effect under section 14526 may be increased to the lesser of—

“(A) 70 percent; or

“(B) the maximum Federal contribution percentage authorized by this section.”.

(c) ASSISTANCE FOR PROPOSED LOW- AND MIDDLE-INCOME HOUSING PROJECTS.—Section 14503 of title 40, United States Code, is amended—

(1) in subsection (d) by striking paragraph (1) and inserting the following:

“(1) LIMITATION ON AVAILABLE AMOUNTS.—A loan under subsection (b) for the cost of planning and obtaining financing (including the cost of preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site options, application and mortgage commitment fees, legal fees, and construction loan fees and discounts) of a project described in that subsection may be made for up to—

“(A) 50 percent of that cost;

“(B) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent of that cost; or

“(C) in the case of a project to be carried out for a county for which an at-risk county designation is in effect under section 14526, 70 percent of that cost.”; and

(2) in subsection (e) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—A grant under this section for expenses incidental to planning and obtaining financing for a project under this section that the Secretary considers to be unrecoverable from the proceeds of a permanent loan made to finance the project shall—

“(A) not be made to an organization established for profit; and

“(B) except as provided in paragraph (2), not exceed—

“(i) 50 percent of those expenses;

“(ii) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent of those expenses; or

“(iii) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent of those expenses.”.

(d) TELECOMMUNICATIONS AND TECHNOLOGY INITIATIVE.—Section 14504 of title 40, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) LIMITATION ON AVAILABLE AMOUNTS.—Of the cost of any activity eligible for a grant under this section, not more than—

“(1) 50 percent may be provided from amounts appropriated to carry out this section;

“(2) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent may be provided from amounts appropriated to carry out this section; or

“(3) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent may be provided from amounts appropriated to carry out this section.”.

(e) ENTREPRENEURSHIP INITIATIVE.—Section 14505 of title 40, United States Code, is amended by striking subsection (c) and inserting the following:

“(c) LIMITATION ON AVAILABLE AMOUNTS.—Of the cost of any activity eligible for a grant under this section, not more than—

“(1) 50 percent may be provided from amounts appropriated to carry out this section;

“(2) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent may be provided from amounts appropriated to carry out this section; or

“(3) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent may be provided from amounts appropriated to carry out this section.”.

(f) REGIONAL SKILLS PARTNERSHIPS.—Section 14506 of title 40, United States Code, is amended by striking subsection (d) and inserting the following:

“(d) LIMITATION ON AVAILABLE AMOUNTS.—Of the cost of any activity eligible for a grant under this section, not more than—

“(1) 50 percent may be provided from amounts appropriated to carry out this section;

“(2) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent may be provided from amounts appropriated to carry out this section; or

“(3) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent may be provided from amounts appropriated to carry out this section.”.

(g) SUPPLEMENTS TO FEDERAL GRANT PROGRAMS.—Section 14507(g) of title 40, United States Code, is amended—

(1) in paragraph (1) by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”;

and

(2) by adding at the end the following:

“(3) AT-RISK COUNTIES.—The maximum Commission contribution for a project to be carried out in a county for which an at-risk county designation is in effect under section 14526 may be increased to 70 percent.”.

### SEC. 3. ECONOMIC AND ENERGY DEVELOPMENT INITIATIVE.

(a) IN GENERAL.—Subchapter I of chapter 145 of subtitle IV of title 40, United States Code, is amended by adding at the end the following:

#### “§14508. Economic and energy development initiative

“(a) PROJECTS TO BE ASSISTED.—The Appalachian Regional Commission may provide technical assistance, make grants, enter into contracts, or otherwise provide amounts to persons or entities in the Appalachian region for projects and activities—

“(1) to promote energy efficiency in the Appalachian region to enhance the economic competitiveness of the Appalachian region;

“(2) to increase the use of renewable energy resources, particularly biomass, in the Appalachian region to produce alternative transportation fuels, electricity, and heat; and

“(3) to support the development of regional, conventional energy resources to produce electricity and heat through advanced technologies that achieve a substantial reduction in emissions, including greenhouse gases, over the current baseline.

“(b) LIMITATION ON AVAILABLE AMOUNTS.—Of the cost of any activity eligible for a grant under this section, not more than—

“(1) 50 percent may be provided from amounts appropriated to carry out this section;

“(2) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, 80 percent may be provided from amounts appropriated to carry out this section; or

“(3) in the case of a project to be carried out in a county for which an at-risk county designation is in effect under section 14526, 70 percent may be provided from amounts appropriated to carry out this section.

“(c) SOURCES OF ASSISTANCE.—Subject to subsection (b), grants provided under this section may be provided from amounts made available to carry out this section in combination with amounts made available under other Federal programs or from any other source.

“(d) FEDERAL SHARE.—Notwithstanding any provision of law limiting the Federal share under any other Federal program, amounts made available to carry out this section may be used to increase that Federal share, as the Commission decides is appropriate.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 145 of title 40, United States Code, is amended by inserting after the item relating to section 14507 the following:

“14508. Economic and energy development initiative.”.

### SEC. 4. DISTRESSED, AT-RISK, AND ECONOMICALLY STRONG COUNTIES.

(a) DESIGNATION OF AT-RISK COUNTIES.—Section 14526 of title 40, United States Code, is amended—

(1) in the section heading by inserting “, at-risk,” after “Distressed”; and

(2) in subsection (a)(1)—

(A) by redesignating subparagraph (B) as subparagraph (C);

(B) in subparagraph (A) by striking “and” at the end; and

(C) by inserting after subparagraph (A) the following:

“(B) designate as ‘at-risk counties’ those counties in the Appalachian region that are most at risk of becoming economically distressed; and”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 145 of such title is amended by striking the item relating to section 14526 and inserting the following:

“14526. Distressed, at-risk, and economically strong counties.”.

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 14703(a) of title 40, United States Code, is amended to read as follows:

“(a) IN GENERAL.—In addition to amounts made available under section 14501, there is authorized to be appropriated to the Appalachian Regional Commission to carry out this subtitle—

- “(1) \$87,000,000 for fiscal year 2008;
- “(2) \$100,000,000 for fiscal year 2009;
- “(3) \$105,000,000 for fiscal year 2010;
- “(4) \$108,000,000 for fiscal year 2011; and
- “(5) \$110,000,000 for fiscal year 2012.”.

(b) ECONOMIC AND ENERGY DEVELOPMENT INITIATIVE.—Section 14703(b) of such title is amended to read as follows:

“(b) ECONOMIC AND ENERGY DEVELOPMENT INITIATIVE.—Of the amounts made available under subsection (a), the following amounts may be used to carry out section 14508—

- “(1) \$12,000,000 for fiscal year 2008;
- “(2) \$12,500,000 for fiscal year 2009;
- “(3) \$13,000,000 for fiscal year 2010;
- “(4) \$13,500,000 for fiscal year 2011; and
- “(5) \$14,000,000 for fiscal year 2012.”.

(c) ALLOCATION OF FUNDS.—Section 14703 of such title is amended by adding at the end the following:

“(d) ALLOCATION OF FUNDS.—Funds approved by the Appalachian Regional Commission for a project in a State in the Appalachian region pursuant to a congressional directive shall be derived from the total amount allocated to the State by the Appalachian Regional Commission from amounts appropriated to carry out this subtitle.”.

#### SEC. 6. TERMINATION.

Section 14704 of title 40, United States Code, is amended by striking “2007” and inserting “2012”.

#### SEC. 7. ADDITIONS TO APPALACHIAN REGION.

(a) KENTUCKY.—Section 14102(a)(1)(C) of title 40, United States Code, is amended—

- (1) by inserting “Metcalfe,” after “Menifee,”;
- (2) by inserting “Nicholas,” after “Morgan,”;
- and
- (3) by inserting “Robertson,” after “Pulaski,”.

(b) OHIO.—Section 14102(a)(1)(H) of such title is amended—

- (1) by inserting “Ashtabula,” after “Adams,”;
- (2) by inserting “Mahoning,” after “Lawrence,”;
- and
- (3) by inserting “Trumbull,” after “Scioto,”.

(c) TENNESSEE.—Section 14102(a)(1)(K) of such title is amended by inserting “Lawrence, Lewis,” after “Knox,”.

(d) VIRGINIA.—Section 14102(a)(1)(L) of such title is amended—

- (1) by inserting “Henry,” after “Grayson,”;
- and
- (2) by inserting “Patrick,” after “Montgomery,”.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### HAZARDOUS WASTE ELECTRONIC MANIFEST ESTABLISHMENT ACT

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1039, S. 3109.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3109) to amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

There being no objection, the Senate proceeded to consider the bill.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Thune amendment, which is at the desk, be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5672) was agreed to.

(The amendment is printed in today's RECORD under “Text of Amendments.”)

The bill (S. 3109), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

#### MERCURY MARKET MINIMIZATION ACT OF 2007

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1038, S. 906.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 906) to prohibit the sale, distribution, transfer, and export of elemental mercury, and other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Mercury Export Ban Act of 2008”.

#### SEC. 2. FINDINGS.

Congress finds that—

- (1) mercury is highly toxic to humans, ecosystems, and wildlife;
- (2) as many as 10 percent of women in the United States of childbearing age have mercury in the blood at a level that could put a baby at risk;
- (3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;
- (4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;
- (5) the Environmental Protection Agency reports that, as of 2004—

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

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

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

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

(7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);

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

(9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;

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

(11) the European Commission has proposed to the European Parliament and to the Council of the European Union a regulation to ban exports of elemental mercury from the European Union by 2011;

(12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and

(13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world.

#### SEC. 3. PROHIBITION ON SALE, DISTRIBUTION, OR TRANSFER OF ELEMENTAL MERCURY.

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

“(f) MERCURY.—

“(1) PROHIBITION ON SALE, DISTRIBUTION, OR TRANSFER OF ELEMENTAL MERCURY BY FEDERAL AGENCIES.—Except as provided in paragraph (2), effective beginning on the date of enactment of this subsection, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this Act; or

“(B) a conveyance, sale, distribution, or transfer of coal.

“(3) LEASES OF FEDERAL COAL.—Nothing in this subsection prohibits the leasing of coal.”.

#### SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.

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

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

and

(2) by adding at the end the following:

“(c) PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.—

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

“(2) INAPPLICABILITY OF SUBSECTION (a).—Subsection (a) shall not apply to this subsection.

“(3) REPORT TO CONGRESS ON MERCURY COMPOUNDS.—

“(A) REPORT.—Not later than one year after the date of enactment of the Mercury Export Ban Act of 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if