

December 22, 2017

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Environmental Protection Agency
Office of Pollution Prevention & Toxics
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001
Attention: Docket ID No. EPA-HQ-OPPT-2017-0421

Subject: Comments on “Mercury; Reporting Requirements for the TSCA Mercury Inventory,” Docket ID No. EPA-HQ-OPPT-2017-0421

Dear Sir or Madam,

The Interstate Mercury Education and Reduction Clearinghouse (IMERC) appreciates the opportunity to comment on the U.S. Environmental Protection Agency (EPA)’s proposed mercury reporting requirements as published in the *Federal Register Vol. 82, No. 206* on October 26, 2017; “Mercury; Reporting Requirements for the TSCA Mercury Inventory”. The comments outlined below represent a consensus of IMERC’s members.

IMERC is an interstate clearinghouse focused on reducing mercury in products and waste. It is a program of the Northeast Waste Management Officials’ Association (NEWMOA), and its members include Connecticut, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Vermont, and Washington. For more information visit: www.newmoa.org/prevention/mercury/imerc/about.cfm.

IMERC manages an interstate reporting system that enables companies that manufacture, sell, distribute, or import a mercury-added product that they wish to sell in the states of Connecticut, Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina (automobiles only), Rhode Island, and Vermont to file their required Mercury-Added Product Notification Form through a single portal. These "Product Notification" requirements are intended to inform consumers, recyclers, policy makers, and others about:

- Products that contain intentionally-added mercury
- The amount of mercury in a specific product
- The total amount of mercury in the specific products that were sold in the U.S. in a given year

The IMERC notification process is completed by manufacturers through an online e-filing system (<https://imerc.newmoa.org/Public>). Once the submission is submitted to IMERC, it is reviewed by a multi-state group that is appointed by the Commissioners or Directors of the states' environmental agencies. The submission and approval of the Mercury-added Product

Notification Forms through IMERC enables manufacturers, distributors, and their trade representatives to comply with all of the states that have the Notification requirement in their state laws. All aspects of the Notification process, including Form submission, attachment submission, submission review, and post submission communications, are handled through the e-filing system.

Following approval of the submission in the e-filing system, the information from the Forms is entered into the Public Mercury-Added Products Database (https://imerc.newmoa.org/publicsearch/NEWMOA_IMERC.aspx#/CustomizedSearch). The Database is intended to inform consumers, recyclers, policy makers, and others about:

- Manufacturers of mercury-added products
- Products that contain intentionally-added mercury
- Mercury content in products
- Total mercury used in product lines sold in the U.S. every three years starting in calendar year 2001

The proposed federal reporting requirements are intended to facilitate the gathering of data on the supply and use of mercury in the U.S. economy. In general, IMERC is supportive of the intent of the proposed rule and offers the following comments.

Schedule and Timeline for Reporting (page 49578 and 49579)

In EPA's proposal, mercury-added product data for calendar year 2018 will be due on July 1, 2019. In contrast, data reported to IMERC's members is based on a 3-year schedule that started in 2001 – so data for calendar year 2016 was required to be reported by April 1, 2017 and data for calendar year 2019 will be due by April 1, 2020. EPA's proposed Rule states that companies may be exempt from reporting to EPA if they have already reported to IMERC. So, a company that submitted its 2016 report to IMERC, will be able to claim an exemption to the EPA 2018 reporting requirement. Thus, the data will be based on different years, preventing the U.S. from having an accurate national mercury inventory. To avoid this discrepancy, the IMERC Steering Committee has identified the following options for EPA to consider:

- EPA's proposal does not pre-empt the States' laws. Therefore, EPA could remove the exemption for companies already reporting to IMERC. This way, an accurate inventory for a given year could still be achieved because companies that notify through IMERC would still report through the e-filing system for calendar year 2016 and 2019 (and every three years thereafter) if they sell a mercury-added product into one of the Notification states. These same companies, (as well as others that do not currently report to IMERC but are now covered under the EPA rule), would need to report to EPA for calendar year 2018 using EPA's reporting system. The companies that reported to IMERC in 2016 would not be able to claim exemption for the EPA 2018 requirement because the two systems do not cover the same timeframe. Therefore, EPA could still obtain an accurate national inventory for 2018, and the state programs and EPA would ultimately have access to more data which would allow them to make comparisons and observe trends over subsequent years. However, under this option, some companies would be reporting in calendar years 2016, 2018, 2019, 2021, 2022, 2024, and so on. It is likely to be a less

preferable option for the manufacturers/distributors/importers, because of the increase in reporting.

- The IMERC Notification States could consider changing their reporting cycle to follow EPA's proposal, which would mean that the next round of triennial reports will be for calendar year 2018 and due in 2019. However, this change would have significant financial implications for both the States and IMERC. In order to support this change, IMERC would require dedicated funding to implement the necessary changes to the current e-filing system, update outreach materials, and account for additional staff time needed to provide guidance to manufacturers and review all of the forms that would be submitted in a compressed timeframe.
- Finally, EPA could alter their reporting schedule to coincide with IMERC's triennial reporting year. In this instance, their first report will be based on the 2019 calendar year and published in late 2020. However, this option could leave EPA vulnerable to potential litigation for not following their own timeline specified in the statute.

IMERC urges EPA to address the schedule discrepancies between their proposal and the IMERC reporting system in order to gather an accurate set of data for the same reporting period that enables the Agency to compare supply and use data and quantify any potential data gaps and trends. The proposed reporting schedule and exemption process compromises EPA's ability to accurately determine the amount of mercury in products distributed in commerce for a consistent calendar year, which is the intent of conducting a national mercury inventory.

Exemption for Mercury-added Components (page 49575)

EPA's proposal would exempt manufacturers and importers of mercury-added products where the only source of mercury is a component within a larger product. This is in opposition to several State laws that require reporting for all mercury-added products and components. This information is valuable since it helps State and local agencies and others understand which consumer products have mercury in them, track where the mercury is going, and how it is ultimately recovered/recycled.

The IMERC States' intent in requiring reporting of this information was to provide a full picture of the supply chain and to support end of life management of mercury-added products. For example, mercury-added flame sensors were once used widely in gas ovens in recreational vehicles (RV), and without the reporting information from RV companies, states may not have otherwise been aware of this. Without this detail, there would be a significant information gap on the ultimate uses of mercury. In addition, the information about the end-product in which the mercury-added component is located is valuable to the public. For example, it can be as meaningful for them to understand the types of electronic equipment that contain a fluorescent lamp as it is to know the details of the lamp itself.

EPA's justification for this exemption is two-fold. The first reason cited is to avoid the potential for double-counting. IMERC has been addressing this issue for many years by conducting extensive QA/QC of the data that is submitted and limiting published data analysis to original equipment manufacturers (OEM). This process has not been a significant burden to IMERC.

Ultimately, having information on the components and their uses provides much more information about the full use of mercury in products than would otherwise be available. In contrast, EPA could address the double-counting issue by including in their data collection a requirement that companies identify where their products' component parts come from. For example, this kind of requirement is managed through EPA's Toxic Release Inventory (TRI) data system.

The second reason that EPA is proposing to exempt this data is that the Agency believes that importers may not know if the component they purchase from another supplier contains mercury. While this may be slightly inconvenient, it is certainly not an "undue burden". If the company does not know what is in their product, how would anyone else know, and how would they know how to inform their customers and waste handlers about the proper management of the product? The states of Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and Washington (lamps only) have mercury-added product labeling laws. The labeling laws apply to any product that contains mercury, a mercury compound, or a mercury component. A company that adds another manufacturer's mercury-added component to their own product needs to know whether that component contains mercury, because they need to indicate as such in order to be in compliance with the labeling requirements. For example, if the product incorporates a mercury-added component within it, the label on the larger product must clearly identify the internal component (e.g., "the lamp in this product contains mercury").

IMERC strongly urges EPA not to exempt the reporting of mercury-added components within larger products. The information gained from requiring mercury reporting from importers and others that incorporate a mercury-added component into their product outweighs the perceived additional effort by companies to gather the information from their own suppliers. This is information that all companies should know or be able to find out.

Zero Threshold for Mercury (page 49574)

The proposal of a zero standard for mercury reporting is consistent with the States' mercury-added product requirements, and IMERC supports this proposed requirement. IMERC believes that this is key to development and maintenance of an accurate and complete inventory of mercury use in the U.S.

Compliance Guides (page 49576)

IMERC recommends that EPA include several examples in their compliance guides as well as detailed step-by-step instructions, with accompanying screen shots of the electronic reporting system. IMERC has found that live demonstrations via webinar are helpful to reporting companies.

Qualitative Information for Reporting Categories (page 49577)

IMERC requires companies to report the amount of mercury in one product in either milligrams (mg) or parts per million (ppm), and the amount of mercury represented in all units in that product line sold in the U.S. in grams (g). EPA's proposal would require reporting in pounds (lbs.). For consistency, IMERC recommends that EPA adopt the same units as IMERC.

The product categories proposed by EPA are consistent with IMERC's pre-set categories and subcategories, with additional detail. IMERC supports this proposed list of categories and subcategories, which appears to be comprehensive.

Electronic Reporting (page 49579)

IMERC does receive Notifications from a small number of companies that continue to submit hard-copy forms. IMERC staff uploads the data to the e-filing system for them. It probably makes up less than five percent of all companies that are required to report. Overall, IMERC supports EPA's proposal to require electronic reporting but notes that EPA should be prepared to provide additional assistance to a small number of companies that may be challenged by an electronic reporting system.

Thank you for the opportunity to comment on the proposal. Please contact Rachel Smith, NEWMOA at (617) 367-8558 x304, rsmith@newmoa.org if you have any questions about these comments.

Sincerely,



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Conservation (VT DEC)
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