

May 31, 2016

Document Control Office (7407M)
Environmental Protection Agency
Office of Pollution Prevention & Toxics
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001
Attention: Docket ID No. EPA-HQ-OPPT-2016-0125

Subject: Comments on EPA information collection request (ICR), EPA ICR No. 2532.01, OMB Control No. 2070-NEW. "Use of Mercury and Mercury Compounds in Products and Processes."

Dear Sir or Madam,

The Interstate Mercury Education and Reduction Clearinghouse (IMERC) appreciates the opportunity to comment on the EPA's Information Collection Request (ICR) No. 2532.01, OMB Control No. 2070-NEW, "Use of Mercury and Mercury Compounds in Products and Processes", as published in the *Federal Register* on March 30, 2016. IMERC is submitting these comments in response to the points upon which EPA solicited commentary (noted below).

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.

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

Overall, IMERC supports EPA's data collection proposal because we believe it will add to the available knowledge about mercury use in products and support state efforts to address key sources of mercury pollution and thereby protect and enhance public and environmental health. The information collected by EPA through this ICR should provide a more complete picture of mercury use in products in the U.S. than is currently available and is necessary for U.S. compliance with the Minamata Convention.

IMERC maintains an online, searchable, public database of information on mercury-added products sold in the U.S. This database contains mercury use data on thousands of mercury-added products from more than 600 companies. IMERC administers the program to collect information every three years from manufacturers of mercury-added

products to support their compliance with notification laws that have been enacted in eight states. Currently IMERC's database is limited in the following ways:

- The information may not represent the entire universe of mercury-added products sold in the U.S. because only manufacturers and distributors of mercury-added products who sell them in CT, LA, ME, MA, NH, NY, RI, VT (i.e., states that have notification authority) are required to report.
- The database does not include data from products that are exported outside of the U.S., or products sold only in-between triennial reporting years.
- There may be some manufacturers and distributors that have not complied with the state notification requirements in spite of ongoing efforts to identify and track down non-compliers.
- Mercury-added products that are subject to phase-out requirements in the notification states are restricted from sale and are, therefore, not subject to the states' notification requirements. While these products may be sold elsewhere in the U.S., they are no longer covered in IMERC's database. They may be covered during the reporting periods prior to the effective date of the phase-out restriction. These restrictions particularly impact mercury-added switches and relays as none of the notification states currently allow the sale of these products without an approved exemption. Measuring devices have similar limitations, with the exception of Massachusetts, which allows the sale of mercury-added laboratory thermometers.
- IMERC continuously receives submissions for new products and from newly-identified manufacturers.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

IMERC is unable to comment directly on the estimated burden and cost to respondents because these vary greatly for individual companies. Some manufacturers make and sell a few types of mercury-added products spanning multiple categories, while others have several hundred models or SKUs within a category. Manufacturers that have never reported through IMERC would likely spend additional time searching for and organizing their data because they are not used to reporting this information. Based on our experience talking to companies about compliance with reporting requirements, we estimate on average that it would likely take them longer than one hour to collect and organize the necessary information.

**3. Enhance the quality, utility, and clarity of the information to be collected. In particular, EPA seeks comment on these aspects of the questionnaire:
Are there additional products or product categories that should be included in the questionnaire?**

Some of the product categories could include more detail/clarification:

- Formulated Products – According to the formulated product category that IMERC developed in consultation with reporters over more than 15 years, formulated products include chemical reagents (e.g., mercuric chloride, mercuric nitrate), preservatives (e.g., thimerosal), fixatives, and laboratory test kits. IMERC does

not specify catalysts in its formulated products category. We suggest that EPA include a separate product category for catalysts. An example of a mercury-added catalyst that has not been captured in IMERC's database is phenylmercuric acetate, used in the manufacture of mercury-catalyzed polyurethanes. As a result, finished products made with mercury-catalyzed polyurethanes are also not included in any of IMERC's reporting categories. IMERC recommends that mercury-catalyzed polyurethane be added to EPA's formulated products category.

IMERC recommends that EPA include mercury and mercury compounds intentionally used in the manufacture of human and veterinary vaccines, biologics, and diagnostics in the formulated product category. This could include disclosure of concentrations and annual total mercury present in these finished products. Current state laws exempt products regulated by the Federal Drug Administration (FDA) from notification. In addition, the states with notification requirements have not pursued notification of U.S. Department of Agriculture (USDA)-regulated veterinary products. However, there are intentional uses of mercury in these products with potentially significant quantities, and we recommend that EPA pursue reporting on them.

- Cosmetics – IMERC recommends that EPA cite additional examples of products to be included in this reporting category, such as mascara and tattoo ink. EPA should include a definition of cosmetic product in this section. The Federal Food, Drug, and Cosmetic Act provides a definition, available at: www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm2005209.htm#U.S._Law.
- Miscellaneous Products – IMERC suggests that EPA identify the following mercury-added products as examples to include in this category: pressure transducers, wheel weights, rotational balancers, slip ring devices, and other products used for weight/counterweight, balancing, or dampening purposes, as these products may not fit into the other product categories.

IMERC recommends that EPA consistently use the term “mercury-added product” in place of “mercury-containing product” in its survey and instructions and include a definition of a “mercury-added product” that is consistent with IMERC's and the Minamata Convention. IMERC applies the term “mercury-added product” for products that intentionally contain mercury. IMERC's definition of a mercury-added product is available: www.newmoa.org/prevention/mercury/imerc/faq.cfm#2. In our experience the term, “mercury-containing product” is broader and could apply to products that contain mercury as a contaminant (because there may be trace amounts of mercury in the raw materials used to make the product, or because mercury was present or used in the manufacturing process and contaminated the final product, usually with trace amounts). We recommend that EPA focus on reporting for products that contain mercury as an intentional ingredient and not as a contaminant. The Minamata Convention refers to mercury-added products and provides a definition: www.mercuryconvention.org/Portals/11/documents/conventionText/Minamata%20Conv

ention%20on%20Mercury_e.pdf. Finally, the companies that have been reporting through IMERC's system are familiar with term mercury-added product and will be confused and uncertain if EPA starts to use "mercury- containing products" to apply to the same universe.

Are there additional products or product categories that should be eliminated from the questionnaire?

The product category, "pumps" needs clarification. The mercury-added component found in the pumps that have been reported on through IMERC is either a float switch or a control switch; and these items are included in the "switches and relays" product category.

However, IMERC has found that there are large industrial-scale pumps that could contain another mercury component. There is at least one manufacturer that makes or has made and sold deep-well submersible pumps that contain an optional mercury bearing and seal (www.flowserve.com/files/Files/Literature/ProductLiterature/Pumps/fpd-1144-e.pdf). According to the available information, this component contains a significant amount of mercury, and there is a potential for mercury spills from these components into the deep drinking water aquifers in which these pumps are used. Because these components are optional, non-mercury alternatives are available. None of these have been sold in the Notification states as far as we know, in part because there is little or no demand for them, and they are, therefore, not subject to the IMERC Notification requirements. Because the component is a "mercury bearing and seal", it does not easily fit into any of the product categories that are proposed in the ICR. If EPA decides to keep the "pumps" category, we recommend clarifying that it covers pumps with a mercury bearing or seal only and not pumps with switches. We believe this would help make the presentation of the data clearer and less redundant for users. The other option is for EPA to explicitly include this product/component under the "miscellaneous products" category.

Should the questionnaire ask respondents to identify which products are intended solely as replacement parts?

Yes. This is valuable information because it can enhance knowledge about why some mercury-added products are still being manufactured. In addition, many states allow exemptions to their phase-out requirements for mercury-added products that are sold only as replacement parts.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

We believe that many manufacturers would welcome electronic data submission. Our experience has shown that most prefer this to paper submissions, but they will need training and assistance. The IMERC e-filing system was implemented prior to its 2013 reporting cycle, and since then, more than 450 companies have successfully submitted their required notifications electronically. IMERC conducted numerous webinars with the notifiers when we launched the system to demonstrate how to submit their data. We have

posted a copy of the webinar on the IMERC website (www.newmoa.org/prevention/mercury/imerc/efiling.cfm). IMERC staff provides ongoing technical assistance to system users. We believe these webinars and technical assistance services have enhanced compliance with the Notification requirements. We welcomes the opportunity to coordinate with EPA on electronic reporting and encourage the Agency to make any data it collects electronically accessible to IMERC for independent analysis.

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

Sincerely,



Robert Kaliszewski
Connecticut Department of Energy and Environmental Protection (CT DEEP)
NEWMOA Chairperson

cc: Tanya Hodge Mottley, EPA
Sue Slotnick, EPA
Tom Groeneveld, EPA