



North American Metals Council

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January 11, 2018

Via Docket Submission

Office of Pollution Prevention and Toxics (OPPT)
Document Control Office
Mail Code 7407M
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Mercury; Reporting Requirements for Toxic Substances Control Act
Mercury Inventory; Docket Number EPA-HQ-OPPT-2017-0421

Dear Sir or Madam:

The North American Metals Council (NAMC)¹ is pleased to submit these comments in response to the U.S. Environmental Protection Agency's (EPA) proposed rulemaking on mercury reporting requirements for the Toxic Substances Control Act (TSCA) Mercury Inventory (82 Fed. Reg. 49564 (Oct. 26, 2017)). In general, NAMC supports the proposed reporting approaches outlined in the EPA proposal and appreciates the efforts to avoid duplicative reporting obligations between this reporting scheme and reporting under the Chemical Data Reporting (CDR) rule and the Interstate Mercury Education and Reduction Clearinghouse (IMERC). We offer below specific thoughts regarding exemptions, definitions, and clarification needed on manufacturing activities.

Activities Exempt from Reporting

NAMC strongly supports EPA's decision to apply the proposed reporting requirements only to the intentional generation and/or use of mercury for commercial purposes. As EPA acknowledged in the preamble to the proposed rule, amended TSCA mandates that EPA promulgate a rule to support the development of an inventory of mercury supply, use, and trade in the U.S. to identify manufacturing processes or products that intentionally add mercury. We believe, therefore, that requiring reporting on activities that involve the unintentional use of mercury, such as trace mercury present in ores, concentrates, waste rock, and tailings from non-primary mercury mining products, would exceed the statutory mandate. NAMC commends EPA for specifying that the incidental manufacture of mercury and the generation of mercury byproducts and mercury-containing waste would be exempt under the proposed rule.

¹ NAMC is an unincorporated, not-for-profit organization serving as a collective voice for the North American metals producers and users. NAMC is a leader for the metals industry on science- and policy-based issues affecting metals.

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Mercury Compound Definition

NAMC notes that EPA defines “mercury compound” in the proposed rulemaking as:

[I]nclusive of all instances where elemental mercury or a mercury compound is reacted with another chemical substance;

while the definition for “mercury compound” in the Minamata Convention on Mercury is:

[A]ny substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions.

NAMC recommends that EPA explain why it proposes to adopt a different definition for “mercury compound.” NAMC believes that, given that the information collected under the proposed rule will be used to assist the U.S. to implement its obligations under the Minamata Convention, EPA should strive to align the rulemaking with the text from the Minamata Convention as much as possible. If EPA determined that the alternative definition was more suitable, it should clearly state in the final rule the reasoning behind this decision and the impact on the implementation of the rulemaking.

Clarification of Manufacturing Activities Subject to Reporting

When describing the activities for which reporting is required, the proposed rule states that imported mercury or mercury-added products generated as a byproduct not used for commercial purposes or as an impurity would be exempt from reporting. Similarly, reporting would not be required for the intentional use of mercury generated as a byproduct not used for commercial purposes. The proposed rule, however, does not stipulate the same byproduct/impurity exemption in the description of the manufacture of mercury. Despite EPA’s indication in the preamble that such an exemption would apply to manufacturing activities, the proposed rule states that the only reporting exemption applicable to entities that manufacture mercury or mercury-added products is the manufacture of a product that contains a component that is a mercury-added product. NAMC recommends that the final rulemaking clearly specify that activities related to the manufacture of mercury generated as a byproduct not used for commercial purposes or as an impurity are not subject to the reporting requirements.

Thank you for the opportunity to submit these views.

Sincerely,

Kathleen M. Roberts
Executive Director