

January 11, 2018

Mr. Thomas Groeneveld  
National Program Chemicals Division  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**ATTN: Docket ID No. EPA-HQ-OPPT-2017-0421**

Dear Mr. Groeneveld:

The Association of Global Automakers, Inc.<sup>1</sup> (Global Automakers) and the Alliance of Automobile Manufacturers<sup>2</sup> (Auto Alliance) (together, “Associations”) appreciate the opportunity to submit comments in response to the U.S. Environmental Protection Agency’s (EPA) proposed rule, “Mercury Reporting Requirements for the TSCA Mercury Inventory.”<sup>3</sup> Global Automakers, the Auto Alliance, and our respective members have consistently supported the long-term goals of reducing the use of mercury wherever possible. Our members have taken a leadership role, first in aggressively supporting recycling programs, and ultimately in developing alternative technologies that do not rely on mercury use. At this point, we believe that the only remaining automotive uses of mercury beyond replacement parts are in a small subset of lamps (for example: xenon high intensity display (HID) headlights that are in the process of phase out), and navigation and entertainment displays.

Our general understanding of the proposed rule is that persons who manufacture (including import and export) or sell mercury or mercury-added products, except those that contain a component that is a mercury-added product, or otherwise intentionally use mercury in a manufacturing process, would be required to report amounts of mercury in pounds (lbs.) used in such activities during a designated reporting year. Reporters also would identify specific mercury compounds, mercury-added products, manufacturing processes, and how mercury is used in manufacturing processes. For certain activities, reporters would be required to provide additional, contextual data (e.g., country(ies) of origin/destination for imports/exports and North

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<sup>1</sup> The Association of Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Global Automakers’ companies have invested \$47 billion in U.S.-based production facilities, have a combined domestic production capacity of 4.5 million vehicles, and directly employ more than 92,000 Americans. Global Automakers works with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policies that improve motor vehicle safety, encourage technological innovation and address environmental needs. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans’ quality of life. For more information, visit [www.globalautomakers.org](http://www.globalautomakers.org).

<sup>2</sup> Auto Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

<sup>3</sup> 82 FR 49564 (proposed October 26, 2017).

American Industry Classification System (NAICS) codes for mercury or mercury-added products distributed in commerce).

After review of the proposal, Global Automakers and the Auto Alliance would like to comment on four specific areas of the proposal:

1. Increased Clarity Regarding “Who Must Report” Language
2. Elimination of all Duplication with the Interstate Mercury Education and Reduction Clearinghouse (IMERC)
3. Exemption for Replacement Parts based on the Negligible Value of Reporting
4. Clarity on the Exemption for Mercury-containing Waste and By-products Sent to Recyclers

## **1. EPA Should Provide Increased Clarity Regarding “Who Must Report” Language**

### **Products that Contain Mercury-added Components**

Based on the proposed regulatory language in Section 713.15(b) - (c) and the proposed rule’s preamble (“preamble”) discussion,<sup>4</sup> it is our understanding that assembled products such as automobiles (and many automobile parts) containing mercury-added components would not have to report under this regulation. However, EPA should provide increased clarity regarding this exemption in the regulation.

Section 713.15(c)<sup>5</sup> mandates that “[p]ersons who sell mercury-added products, *except a product that contains a component that is a mercury-added product, in IMERC Notification states [emphasis added]* shall report as applicable...” Similarly, in section 713.15(b),<sup>6</sup> EPA indicates that “Any person who manufactures (including imports) a mercury-added product, *except a product that contains a component that is a mercury-added product... [emphasis added]*” is required to report.

In addition, the preamble EPA makes clearer statements that an importer of finished product or complex durable good with a mercury-containing component would not trigger any reporting requirements:

The Agency proposes that a person who imports a product that contains a component that is a mercury-added product (e.g., toy or novelty item containing a mercury-added battery) would not be required to report under the proposed rule. EPA determined that this distinction was appropriate after reviewing the data reported to the IMERC Mercury-Added Products Database and comparing the companies that reported national sales data for individual mercury-added products (including components), as well as

<sup>4</sup> 82 FR 49564 at 49574-49576 (proposed October 26, 2017).

<sup>5</sup> *Id.* at 49564.

<sup>6</sup> *Id.*

items that would be considered to contain a component that is a mercury-added product...

Based on its review of the companies who report to IMERC and the types of mercury-added products reported, the Agency is concerned that requiring reporting for products where mercury is present solely within a previously manufactured component poses risks of double-counting and thereby could negatively affect the reliability of future mercury inventory updates.<sup>7</sup>

Our associations agree with EPA that this reporting would be redundant and could lead to double-counting which could affect the accuracy of the mercury inventory negatively and skew trend analyses.

The preamble goes on to say,

EPA also is concerned that requiring reporting for a product that contains a mercury-added component could create undue burden for certain importers.<sup>8</sup>

Again, our associations agree that requiring reporting from importers of products containing mercury-added components would be an undue burden with minimal corresponding benefit. As mentioned above, in the automotive industry, most remaining uses of mercury are in mercury-containing bulbs in a small subset of components. It can be very difficult to ascertain whether these bulbs are mercury-added or not, as many of our suppliers are in varying stages of phasing out mercury use.

Finally, EPA should clarify the scope of the exemption from reporting for “a product that contains a component that is a mercury-added product.” For example, if a bulb contains mercury, and the bulb is sometimes sold as a product and is sometimes sold as a component of a display screen or lamp, which in turn is sometimes sold as a product and sometimes is sold as a component of a larger assembly, the import or domestic manufacture of the bulb is reportable, but it is unclear whether the import or domestic manufacture of any product (even a lamp or a display that is also sometimes a component of another product) would be considered to be exempt from reporting.

Therefore, we urge EPA to provide increased clarity that manufacturers (including importers), distributors and sellers of products whose only mercury content is in mercury-added components are exempt from reporting under this rule by specifically listing them under “Sec. 713.17, Persons not subject to this part.”

### **Streamline Preamble for Clarity**

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<sup>7</sup> *Id.* at 49574-49575.

<sup>8</sup> *Id.* at 49575.

While we agree with EPA that a product containing a mercury-added component would not trigger reporting requirements, we still urge EPA to streamline its preamble discussion to remove any ambiguity regarding what types of components would need to be reported and who in the supply chain would be required to file a report. In its current form, the preamble and proposed rule appear confusing and sometimes contradictory in terms of the details of exactly who needs to report and what is subject to the reporting requirements. For example, in the preamble and opening sections of the proposal, EPA states:

The requirements would be applicable to any person who manufactures (including imports) mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process.<sup>9</sup>

There are, however, numerous other sections of the proposed rule where EPA is ambiguous about who is covered and perhaps more importantly, why they are covered. For example:

EPA considers the following examples of persons and waste types to be exempt from reporting to the proposed rule:

- A person who uses a mercury-added product but does not manufacture mercury or mercury-added products and does not intentionally use mercury in a manufacturing process.<sup>10</sup>

It is our understanding that importers of mercury-added products that are “using” the product in the assembly of an end-product, such as an automobile, are not manufacturing the mercury-containing product itself. Requiring reporting from importers of articles, or mercury-added products, will add little value to a mercury inventory. Consistent with many of EPA’s statements in the proposal, we believe that reporting from downstream purchasers of component parts would add no value to understanding the amount of mercury in commerce or inventory supplies.

### **Definitions Needed for Mercury-added Products and Mercury-added Components**

In addition, EPA should provide definitions for mercury-added products and mercury-added components. These definitions should make clear EPA’s intent that only products with intentionally-added mercury are required to be reported. This is in line with Interstate Mercury Education & Reduction Clearinghouse (IMERC) reporting requirements. The International Material Data System (IMDS), the global automotive system for international reporting, only tracks to 0.1% of any chemical. Further requiring reporting of trace mercury impurities would require analysis for mercury in all components. As automobiles have thousands of parts, this would be a monumental task.

## **2. EPA Should Eliminate all Duplication with the Interstate Mercury Education & Reduction Clearinghouse (IMERC)**

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<sup>10</sup> *Id.* at 49573.

The automotive industry reports to the IMERC.<sup>11</sup> While our Associations appreciate that EPA has made a good effort to reduce duplicative and unnecessary reporting for this regulation, it appears that some redundancy may still exist.

In addition to our efforts to phase out mercury over the past several years, our members track and report our minimal mercury usage to the IMERC,<sup>12</sup> providing a meaningful level detail of information that is consistent with the information received from suppliers.

Under the IMERC e-filing system companies must provide a complete update of their Notification Form, including product information and total mercury use based on U.S. sales of mercury-added products at least once every three years. The first year for notification reporting was calendar year 2001. The Notification Forms must be submitted by April 1<sup>st</sup> of the following year; therefore, the 2001 Notification Form was due by April 1, 2002.

In between triennial notifications mercury-added product manufacturers and their representatives must submit an updated Mercury-added Product Notification if:

- There is a change in any of the information previously submitted (e.g., an increase or decrease in the amount of mercury in the product);
- Mercury is no longer used in the product;
- The mercury-added product or product category is no longer manufactured;
- The mercury-added product or product category is no longer sold in the states requiring notification; and/or
- New mercury-added products are being manufactured and offered for sale.

To avoid numerous updates in a single year, IMERC has created a special annual update for automobile manufacturers that are filed by September 1<sup>st</sup> of each year. Additional information can be found on the IMERC website.<sup>13</sup>

Any request by EPA to provide information would require a duplicative and burdensome process of entering the same information into a different form. This information is publicly available online.<sup>14</sup>

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<sup>11</sup> The Interstate Mercury Education and Reduction Clearinghouse (IMERC) began in 1999 when the states in the Northeast and other parts of the country actively began to pursue enactment of legislation focused on reducing mercury in products and waste. In the Northeast, these efforts focused on enactment of provisions of the Mercury Education and Reduction Model Legislation. In 2001 the Northeast Waste Management Officials' Association launched to provide:

- Ongoing technical and programmatic assistance to states that have enacted mercury education and reduction legislation
- A single point of contact for industry and the public for information on mercury-added products and member states' mercury education and reduction programs

IMERC states include Connecticut, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Vermont, and Washington. For more information please visit: <http://www.newmoa.org/prevention/mercury/imerc/IMERCfactSheet.pdf>.

<sup>12</sup> <http://www.newmoa.org/prevention/mercury/imerc.cfm> (accessed 2018-01-10).

<sup>13</sup> <http://www.newmoa.org/prevention/mercury/imerc/faq.cfm#9> (accessed 2018-01-10).

<sup>14</sup> <http://www.newmoa.org/prevention/mercury/imerc/notification/>(accessed 2018-01-10).

We urge EPA to codify a full exemption for manufacturers, including importers, that already report to IMERC, consistent with EPA's thinking in the proposed rule:

After reviewing these reporting programs, EPA has sought to design the proposed reporting requirements to be least burdensome for reporters already familiar with IMERC, CDR, TRI, and USITC DataWeb protocol. Therefore, the Agency is proposing to incorporate comparable reporting concepts and tools from each program, as well as propose some exemptions, in an attempt to increase the efficacy while decreasing the burden to the greatest extent practicable for reporting to a national mercury inventory.<sup>15</sup>

The proposed regulation appears to require affected parties to provide information to the EPA Central Data Exchange (CDX) System<sup>16</sup> before being directed not to report further if they have already reported under IMERC. A full exemption from the EPA requirements should be granted for IMERC reporters, since EPA can readily access the IMERC information at: <http://www.newmoa.org/prevention/mercury/imerc/notification/>.

### **3. EPA Should Recognize the Negligible Value of Reporting Replacement Parts**

Our Associations agree with EPA's determination that reporting on mercury-containing products that are kept in inventory for future use would add no significant value to the accuracy of data on mercury movement through commerce. EPA states:

Moreover, the Agency is not proposing to require reporting for quantities of mercury within mercury- added products that are stored after manufacture and prior to distribution in commerce. EPA assumes the quantity of mercury that manufacturers of mercury- added products store for later use or keep within product inventories is likely to be too small to help explain the information gap between sold and used mercury.<sup>17</sup>

Replacement parts for automobiles are stored within product inventories for the sole purpose of supplying consumers with parts necessary to repair their vehicles as originally produced. Any mercury in these replacement parts would be negligible in the overall mercury mass balance that EPA is trying to achieve. We request that in its final rule, EPA make clear that replacement parts for the automotive sector are exempt from any final reporting requirements

### **4. EPA Should Clarify Exemption for Mercury-containing Waste and By-products Sent to Recyclers**

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<sup>15</sup> 82 FR 49564 at 49572 (proposed October 26, 2017).

<sup>16</sup> <https://cdx.epa.gov/> (accessed 2018-01-10).

<sup>17</sup> 82 FR 49564 at 49571 (proposed October 26, 2017).

EPA should clarify under Section 40 C.F.R. § 713.17(a) that generators that ship mercury-containing waste (or by-products) for recycling are exempt from reporting.

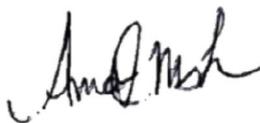
The discussion of who and what type of mercury waste is exempt from reporting in the preamble does not make it clear that mercury and mercury-added products (like fluorescent bulbs) that are sent to recycling facilities are exempt from reporting by the generators. EPA should provide language to ensure this clarification is included, since this source of mercury will have already been accounted for by manufacturers.

### **Conclusion**

In conclusion, Global Automakers and the Auto Alliance believe that assembled and imported products, such as automobiles (and certain components), containing mercury-added components would not have to report under this regulation, and we request that EPA clarify our understanding. In the event that reporting may be required for certain uses, it is our belief that current reporting under the IMERC requirements will meet all of EPA's stated needs and that EPA should access that existing data rather than request duplicative reporting. If EPA does determine that it needs to require reporting separate and apart from IMERC, we request that EPA limit any reporting requirements to data not submitted to the IMERC, exempt replacement parts (which is consistent with EPA's thinking on products in inventories).

We look forward to working with EPA throughout this process. Please do not hesitate to contact us with questions or if we may provide additional information.

Best Regards,



Amandine Muskus  
Manager, Environment & Energy  
Association of Global Automakers, Inc.  
202.650.5555  
[amuskus@globalautomakers.org](mailto:amuskus@globalautomakers.org)



Stacy Tatman  
Director of Environmental Affairs  
Alliance of Automobile Manufacturers  
202.326.5551  
[statman@autoalliance.org](mailto:statman@autoalliance.org)