

COMPLIANCE GUIDE

Reporting Requirements for the Mercury Inventory of the Toxic Substances Control Act



March 2019
EPA-740-B-19-002



EPA

United States
Environmental Protection
Agency

Who Should Use This Guide?

This guide is intended for companies, organizations, and individuals who are required to submit information to EPA for the national inventory of mercury supply, use, and trade. The requirements apply to those who manufacture or import mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process. The purpose of the guide is to help potential submitters, including small businesses, determine whether or not they are subject to EPA's mercury inventory reporting requirements.

The term "mercury" means elemental mercury and mercury compounds. For those that must comply, the guide generally explains what information to report, how to submit information in the Mercury Electronic Reporting (MER) application and when information is due to be reported.

About This Guide

THIS DOCUMENT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE UNITED STATES.

The statements in this document are intended solely as guidance to aid in complying with the mercury reporting requirements in Section 8(b)(10)(D) of the Toxic Substances Control Act (TSCA) and the implementing rule in 40 CFR part 713. EPA may decide to revise this guide without public notice to reflect changes in EPA's approach to implementing TSCA or to clarify and update text.

To determine whether EPA has revised this guide, consult the EPA's mercury website at www.epa.gov/mercury. The full texts of TSCA Section 8(b)(10)(D) and the implementing regulations are also available on this website.

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Background

What Does This Guide Cover?

This guide explains the requirements for manufacturers and importers to report information about the supply, use, and trade of mercury to EPA. The guide provides an overview of the legal requirements and an explanation of how the Agency intends to use the information it collects. Diagrams and examples are provided to help companies in determining whether they must report information about mercury to EPA. Based on business activities, companies that must report will find the applicable list of reporting requirements, as well as reporting and recordkeeping timelines, explanations of key terms, and links to additional resources to support reporting under the rule.

Important Note

Throughout this guide, the term **mercury** when used alone means both elemental mercury and mercury compounds.

For the purposes of this guide, to **manufacture mercury** means to produce or recover it from industrial wastes, air pollution control residuals, scrap products, mining byproduct, or other materials. A mercury compound can be manufactured as a commercial chemical product for sale. See 40 CFR part 704.3.

This guide explains compliance with respect to mercury inventory reporting requirements by the federal government. State and/or local mercury reporting requirements that are different from the federal requirements may also apply. If you manufacture, import, or distribute mercury-added products in certain states, you may be required to notify the state and fulfill other state requirements. For assistance in this area, contact your state environmental agency or visit www.newmoa.org/prevention/mercury/imerc.cfm.

What is the Mercury Inventory Reporting Regulation?

The legal requirements for the mercury inventory are in a federal law and an EPA rule (also called a "regulation"). In 2016, Congress directed EPA by law to produce an inventory of the supply, use, and trade of mercury in the United States every three years beginning in 2017. The mercury provision is one of several recent amendments to the Toxic Substances Control Act (TSCA). The law requires EPA to write a rule to collect information for the inventory from "any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process." The law defines "mercury" for purposes of the inventory as both elemental mercury and mercury compounds. Visit [15 U.S.C. § 2607\(b\)\(10\)\(D\)](https://www.ecfr.gov/current/title-15/chapter-I/subchapter-D/part-2607/subpart-2607.10) to see the TSCA text.

EPA published its initial inventory report (available online at www.federalregister.gov/documents/2017/03/29/2017-06205/mercury-initial-inventory-report-of-supply-use-and-trade) in March 2017 and proposed reporting requirements for the TSCA mercury inventory in October 2017 (available online at www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0421-0001). The public submitted comments on the proposal, which EPA considered when finalizing the regulation in June 2018.

EPA's final rule is called "Mercury; Reporting Requirements for TSCA Mercury Inventory" which this guide refers to as "the rule." It is available online at www.epa.gov/mercury/mercury-reporting-requirements-tsca-mercury-inventory-final-rule. It requires companies to submit their mercury information using the online Mercury Electronic Reporting (MER) application, which is organized as a simple, fill-in-the-blanks form, with drop-down menus and lists of check-box options.

Not all submitters will be required to report the same kinds or amounts of data. Data required to be reported include:

- Amount of mercury produced, imported, stored, used, sold, or exported (no matter how small the amount);
- Types of products made;
- Types of manufacturing processes and how mercury is used;
- Business sectors to which mercury or mercury-added products are sold;
- Country of origin of imported mercury or mercury-added products; and
- Destination country for exported mercury or mercury products.

The rule also requires that companies keep records of the information they submit for three years.

Reporting is **not required** for mercury waste management (unless mercury is recovered for re-use or sale), for assembled products where mercury is present in a component that is a mercury-added product, or if the mercury is only present as an impurity. Companies do not need to submit information on mercury activities unless they are undertaken for the purpose of obtaining an immediate or eventual commercial advantage (for example, intended for sale or to reduce costs during a manufacturing process).

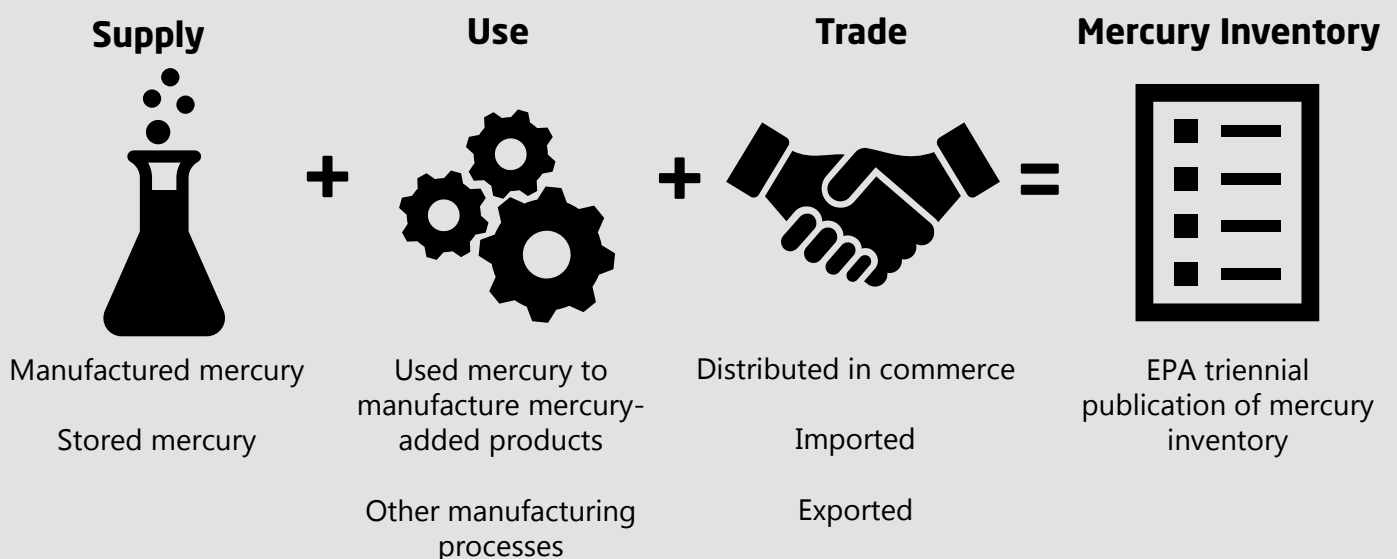
In this guide, EPA uses the terms **company** and **business** as shorthand for those who are required to submit information in the MER application because most submitters are expected to be private sector firms. However, other organizations and individuals may also need to report in the MER application. The requirement in TSCA directs EPA to require reporting from: "Any person who manufactures (including imports) mercury or mercury-added products or otherwise uses mercury in a manufacturing process." See explanation of the word **person** in the glossary at Appendix A.

How Will EPA Use My Information?

EPA will compile the information it receives from submitters to estimate total quantities of mercury in **supply**, **use**, and **trade** in the United States. These totals are expected to assist EPA in producing the triennial inventories of mercury supply, use, and trade in the United States.

Figure 1 shows how EPA intends to categorize and use various types of information.

Figure 1: How Information from Submitters Will Support EPA's Mercury Inventory



Who Must Report and What Information Is Required?

Possibly Affected Business Sectors

This guide is designed to help companies, including small businesses, that may be required to submit information to EPA under the mercury inventory rule (see 40 CFR part 713). Below is a list of business categories that may be involved with mercury and subject to reporting.*

- Mining
- Mineral processing
- Mercury retorting, recycling, or recovery of mercury
- Importation of mercury
- Manufacturing that uses mercury in a process (other than making mercury-added products), such as:
 - Plastics and resins manufacturing and compounding, including polyurethane elastomers
 - Chlor-alkali production
- Manufacturing or importation of mercury-added products, such as:
 - Measuring and scientific instruments or devices
 - Organic and inorganic chemicals, including commodity, specialty, and laboratory chemicals
 - Plastics, resins and compounds, including polyurethane elastomers
 - Health and fitness products
 - Pesticides, pigments, paints, coatings, and adhesives
 - Pharmaceuticals including veterinary medicines
 - Cosmetics
 - Switches, relays, industrial controls and current-carrying wiring devices
 - Semiconductors, HVAC systems, pumps, and environmental control devices
 - Fluorescent light bulbs, watches, and batteries
 - Analytical laboratory equipment and supplies
 - Automobile and aircraft parts
 - Vehicle stabilization equipment
 - Games, toys, shoes, and other children's products
 - Accessories for small firearms and ordnance
 - Products for national security

*For a more comprehensive list of official industry classifications, see the rule at www.federalregister.gov/documents/2018/06/27/2018-13834/mercury-reporting-requirements-for-the-tsca-mercury-inventory.

STOP! This is a list of examples only, so you may have to report to EPA even though your company does not fit into any of these general categories. Also, note that not all companies in these categories have to report. For more help determining if your company needs to report, see [Types of Companies](#) on the next page.

Types of Submitters

In general, you must report mercury information to EPA if your company did any of the following with any amount of mercury for the purpose of obtaining an immediate or eventual commercial advantage:

1. Manufactured (recovered) or imported mercury;
2. Manufactured or imported a mercury-added product; and/or
3. Otherwise intentionally used mercury in a manufacturing process.

[For an explanation of terms, see Appendix A.](#)

You **do not** need to report if:

- Mercury was present during your manufacturing process, but you did not intentionally add mercury to your product or process;
- You manufacture mercury only as an impurity in your manufacturing process;
- All of the mercury you manufactured was handled as a waste;
- Your manufacturing activity was not undertaken for the purpose of obtaining an immediate or eventual commercial advantage;
- You used, sold, conveyed, transferred, distributed, stored, or exported mercury or a mercury-added product**, but you did not first manufacture or import it or use it in a manufacturing process;
- You imported an assembled product where mercury is present in a component that is a mercury-added product; or
- You manufactured an assembled product where mercury is present in a component that is a mercury-added product, but you did not first manufacture or import the component (e.g., you purchased the component domestically).

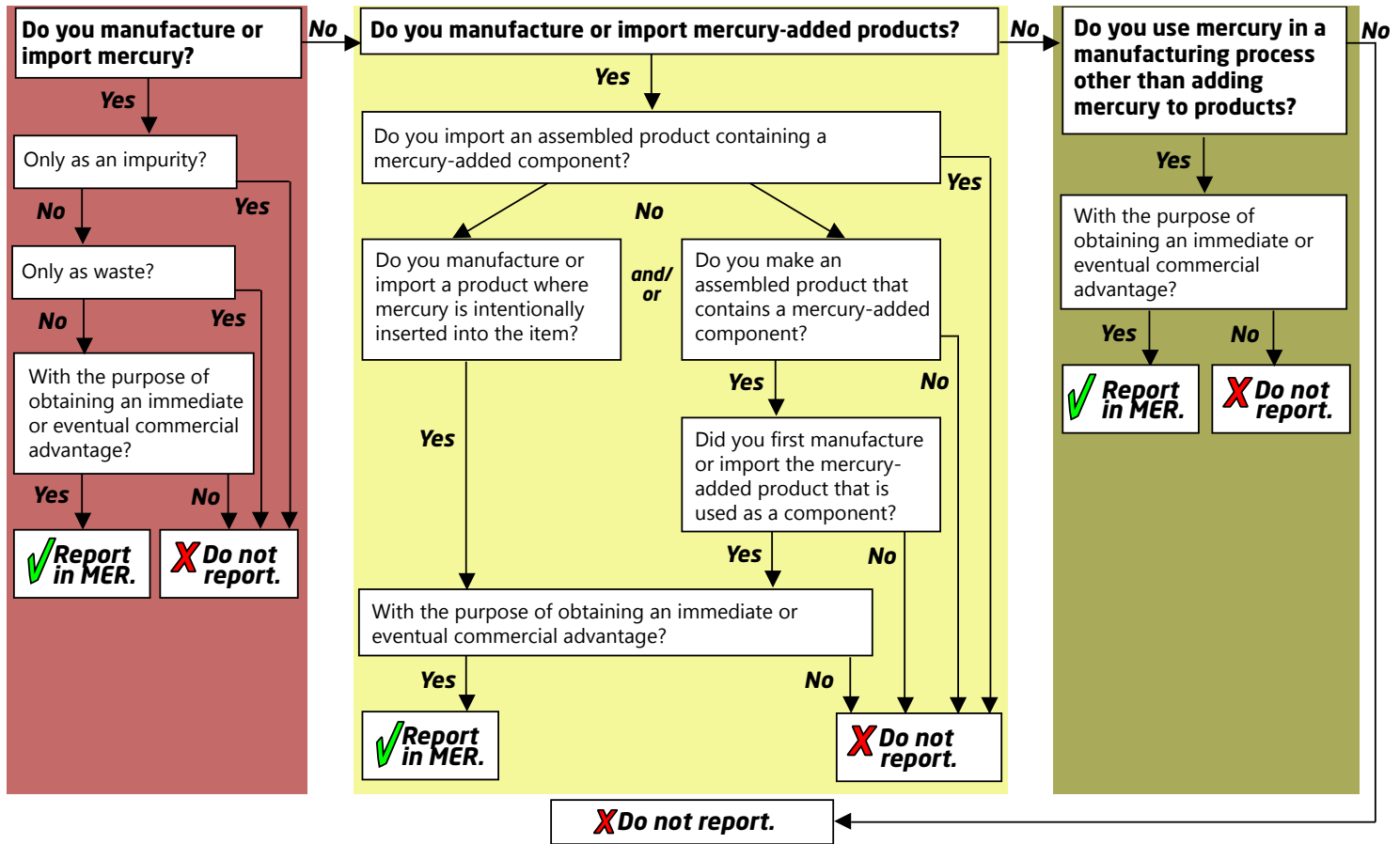
Reporting requirements are different for submitters that report under the Interstate Mercury Education and Reduction Clearinghouse (IMERC) or EPA's Chemical Data Reporting (CDR). The legal requirements for persons who must report can be viewed at 40 CFR part 713 (see www.govinfo.gov/help/cfr).

** It is illegal to export elemental mercury from the United States. For more information, see www.epa.gov/mercury/environmental-laws-apply-mercury#ExportBan.

STOP! For more help determining if your company needs to report, [see Figure 2](#) on the next page.

There are three broad categories of companies required to submit their mercury information using EPA's MER application, shown in three different colors in Figure 2. The same colors continue to represent the three categories in the following pages to help guide you further.

Figure 2: Do I Need to Report?



STOP! For more help determining if your company needs to report, see examples on the following pages: [Manufacturers and Importers of Mercury](#), [Manufacturers and Importers of Mercury-Added Products](#), and [Other Manufacturers Using Mercury](#).

Manufacturers and Importers of Mercury

Examples of mercury manufacturers and importers who **must** report in EPA's MER application:

1. A gold mine that recovers elemental mercury from its refining operation (unless the mercury is waste).
2. A waste treatment company that recovers elemental mercury from waste and sells or stores it for more than 90 days.
3. A commodities broker that imports elemental mercury and sells it in the United States.
4. A chemical manufacturing company that produces mercury nitrate in bulk for export.*
5. A chemicals broker located inside or outside the United States that imports mercury (II) iodide into the United States and sells it to chemicals distributors.
6. A chemical manufacturer that manufactures mercury chloride and uses it to make another chemical compound.

* Certain mercury compounds, including mercury nitrate, will be banned for export after January 1, 2020. View the public notice Mercury Compounds; Prohibition of Export in the Federal Register at www.federalregister.gov/documents/2016/08/26/2016-20534/mercury-compounds-prohibition-of-export.

Find more examples online in EPA's Frequent Questions at www.epa.gov/mercury/frequent-questions-about-epas-mercury-inventory-reporting-rule.

Examples of mercury manufacturers and importers who **do not** report in EPA's MER application:

1. A company that recovers elemental mercury in the process of clearing natural gas pipelines then manages the elemental mercury as a waste (i.e., the mercury is not sold).
2. A waste management facility that imports and treats (i.e., stabilizes) low-concentration mercury waste.
3. A company that imports elemental mercury waste for waste management only.
4. A producer of industrial inputs that include trace amounts of elemental mercury.

What Information Do I Report as a Manufacturer or Importer?

For mercury manufacturers and importers who do not report to CDR:	For mercury manufacturers and importers who report to CDR:
Amount of mercury manufactured (lbs.)	N/A
Amount of mercury imported (lbs.)	N/A
Countries of origin for imported mercury	
Amount of mercury exported (lbs.)	N/A
Countries of destination for exported mercury	
Amount of mercury stored (lbs.)	
Amount of mercury distributed in commerce (lbs.)	
North American Industry Classification System (NAICS) codes for mercury distributed in commerce	
As applicable, identify mercury compound(s)	N/A

STOP! If you have determined that you must report in EPA's MER application, please see the [How Do I Comply?](#) section on page 12.

Manufacturers and Importers of Mercury-Added Products

Examples of mercury manufacturers and importers who **must** report in EPA's MER application:

1. A manufacturer of electrical components, such as switches or relays, that contain added mercury.
2. A company that imports mercury-containing thermometers into the United States.
3. A company that places a mercury compound into hearing aid batteries.
4. A vehicle manufacturer who imports mercury-added light bulbs to install in cars.

Examples of mercury manufacturers and importers who **do not** report in EPA's MER application:

1. A vehicle manufacturer who purchases and installs mercury-added light bulbs that are manufactured in the United States.
2. A company that imports consumer electronics devices with displays lit by fluorescent bulbs (i.e., electronic devices are assembled products and the bulbs are components that are mercury-added products).
3. A consumer who purchases mercury-added products for personal use from a company outside the United States.

Find more examples online in EPA's Frequent Questions at www.epa.gov/mercury/frequent-questions-about-epas-mercury-inventory-reporting-rule.

What Information Do I Report as a Manufacturer or Importer of Mercury-Added Products?

For product manufacturers and importers who do not submit mercury information to IMERC:	For product manufacturers and importers who submit mercury information to IMERC:
Amount of mercury in manufactured products (lbs.)	
Amount of mercury in imported products (lbs.)	
Countries of origin for imported products	
Amount of mercury in exported products (lbs.)	
Countries of destination for exported products	
Amount of mercury in products distributed in commerce (lbs.)	N/A
NAICS codes for products distributed in commerce	
As applicable, identify product categories and subcategories	

STOP! If you have determined that you must report in EPA's MER application, please see the [How Do I Comply?](#) section on page 12.

Other Manufacturers

Examples of mercury manufacturers (other than makers of mercury-added products) who **must** report in EPA's MER application:

1. A producer of chlorine and caustic soda that uses elemental mercury as a cathode in a mercury cell electrolyzer although the final products contain mercury only as an impurity.
2. A chemical manufacturer that buys a mercury compound to make another mercury compound.
3. A company that uses mercury during the polyurethane elastomer manufacturing process.

Examples of mercury manufacturers who **do not** report in EPA's MER application:

1. A power plant that uses mercury thermometers.
2. A facility that uses mercury in a closed-loop system without the purpose of immediate or eventual commercial advantage.

Find more examples online in EPA's Frequent Questions at www.epa.gov/mercury/frequent-questions-about-epas-mercury-inventory-reporting-rule.

What Information Do I Report as a Manufacturer that Uses Mercury?

For manufacturers who use mercury other than to make mercury-added products:

Identify manufacturing process

Identify use of mercury in manufacturing process

Amount of mercury intentionally used (lbs.)

Amount of mercury stored (lbs.)

Countries of destination for exported final products

NAICS codes for mercury in final products distributed in commerce

STOP! If you have determined that you must report in EPA's MER application, please see the [How Do I Comply?](#) section on page 12.

How Do I Comply?

1. Submit Information to EPA

Each company who is subject to the reporting requirements must report to EPA via the Mercury Electronic Reporting (MER) application, which is accessed through EPA's Chemical Data Exchange (CDX) at cdx.epa.gov. Information must be submitted during the appropriate reporting cycle and can be reported as confidential business information.

2. Keep Records

Each company who is subject to the reporting requirements must retain records that document any information reported to EPA. Records relevant to a reporting year must be retained for a period of 3 years beginning on the last day of the reporting year. Submitters are encouraged to retain their records longer than 3 years.

How Is My Compliance Determined, and What Happens if the Agency Discovers a Violation?

To maximize compliance, EPA implements a balanced program of compliance assistance, compliance incentives, and traditional enforcement. As part of the compliance assistance, EPA encourages businesses to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations. For more information, visit EPA's Audit Policy page at www.epa.gov/compliance/epas-audit-policy.

EPA has compliance and enforcement resources specifically designed to meet the needs of small businesses (see www.epa.gov/enforcement/small-businesses-and-enforcement). EPA's Small Business Compliance Policy encourages environmental compliance among small businesses by providing incentives for voluntary

discovery, prompt disclosure, and prompt correction of violations. Included are guidelines for the Agency to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations (see www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8955.pdf).

EPA's enforcement program is aimed at protecting the public by targeting persons or entities who neither comply nor cooperate to address their legal obligations. EPA uses a variety of methods to determine whether businesses are complying, including facility inspections, subpoenas, review of records submitted to the agency, coordination with U.S. Customs and Border Protection on import compliance, and responding to citizen tips and complaints. Under TSCA, EPA may file an enforcement action against violators, seeking penalties of up to \$37,500 per violation, per day, adjusted for inflation (see www.epa.gov/enforcement/enforcement-policy-guidance-publications#penalty). The proposed penalty in a given case will depend on many factors, including the number, length, and severity of the violations, the economic benefit obtained by the violator, and violator's ability to pay. EPA has policies in place to ensure penalties are calculated fairly. In addition, any company charged with a violation has the right to contest EPA's allegations and proposed penalty before an impartial judge or jury.

When Do I Need to Submit Information to EPA?

The following table provides a summary of the regulatory requirements and deadlines for manufacturers and importers of mercury and mercury-added products and those who otherwise use mercury in a manufacturing process. For more details, see [How Do I Comply?](#)

Reporting	Deadline
Submit mercury information for calendar year 2018	July 1, 2019
Submit mercury information for calendar year 2021	July 1, 2022
Submit mercury information for calendar year 2024 and every three years thereafter	July 1, 2025 and every three years thereafter
Recordkeeping	Deadline
Retain records that document information reported in EPA's MER application for reporting year 2018	At least three years following the end of reporting year (2021)
Retain records that document information reported in EPA's MER application for reporting year 2021	At least three years following the end of reporting year (2024)
Retain records that document information reported in EPA's MER application for reporting year 2024 and every three years thereafter	At least three years following the end of reporting year (2027), and every three years thereafter

Where Can I Find More Information?

General Information on Mercury

- EPA's Mercury Homepage: www.epa.gov/mercury
- Export Ban on Elemental Mercury: www.epa.gov/mercury/environmental-laws-apply-mercury#ExportBan
- Export Ban on Mercury Compounds: www.federalregister.gov/documents/2016/08/26/2016-20534/mercury-compounds-prohibition-of-export

Information on the Mercury Inventory Reporting Requirements

- Frequent Questions on the Rule: www.epa.gov/mercury/frequent-questions-about-epas-mercury-inventory-reporting-rule
- Toxic Substances Control Act Amendments Requiring the EPA Mercury Inventory and Reporting by Manufacturers and Importers: www.epa.gov/mercury/mercury-reporting-requirements-tsca-mercury-inventory-final-rule
- EPA Mercury Inventory Reporting Rule ("Mercury; Reporting Requirements for the TSCA Mercury Inventory"): www.federalregister.gov/documents/2018/06/27/2018-13834/mercury-reporting-requirements-for-the-tsca-mercury-inventory
- Codified Regulation (40 CFR part 713): www.ecfr.gov/cgi-bin/text-idx?SID=b355ec0c51d02feac07ffe946bcb18a6&mc=true&node=pt40.3.713&rgn=div5.

Information on How to Report under the Rule

- CDX User Guide: cdx.epa.gov/about/userguide
- MER Application User Guide: www.epa.gov/mercury/resources-reporting-requirements-epas-mercury-inventory
- EPA's CDX Application: cdx.epa.gov

Where Can I Go If I Have Questions or Need Further Assistance for Reporting?

For questions concerning the rule, please contact EPA's TSCA Hotline by telephone at (202) 554-1404, by fax at (585) 232-3111, or by email at tsca-hotline@epa.gov.

For questions concerning CDX or the MER application, please contact the CDX Help Desk at helpdesk@epacdx.net or call 1 (888) 890-1995.

Appendix: Explanation of Key Terms

Acronym List

CDX	Central Data Exchange
CDR	Chemical Data Reporting
CFR	Code of Federal Regulations
FR	Federal Register
IMERC	Interstate Mercury Education and Reduction Clearinghouse
MER	Mercury Electronic Reporting
TSCA	Toxic Substances Control Act

Important Note

EPA is providing explanations of terms in informal language to make it easier for the public to understand and comply with the mercury inventory rule. These explanations are not legally-binding on EPA. To see the formal, legal usage of the terms in this appendix, EPA recommends consulting the mercury amendments to TSCA, the final mercury inventory rule, and the citations provided for some of the terms below.

In addition, the explanations in this appendix apply to EPA's mercury inventory reporting rule and may vary from definitions for the same terms used elsewhere by EPA. Examples of such terms are: "component," "import," "manufacture," and "mercury-added product."

Assembled product is a product that was manufactured with the inclusion of a component that is a mercury-added product. An example is a vehicle containing a mercury-added fluorescent light bulb.

Commercial advantage refers to activities undertaken intentionally to create an immediate or eventual benefit (e.g., sale of goods, generation of profits, reduction of costs, etc.). If a company manufactures mercury or a mercury-added product, then uses it rather than placing it in commerce, it may be considered to result in a commercial advantage. See 40 CFR 704.3 for definition in the context of manufacturing, importing, and processing "for commercial purposes."

Component refers to a mercury-added product that is installed as part of the manufacture of an assembled product. See 40 CFR part 704.3 and 83 FR 30061 (June 27, 2018).

Distribute in commerce means selling or transferring mercury or mercury-added products within the United States. Sales or transfers to another country are considered exports. See 15 U.S.C. 2602(5).

Elemental mercury is a shiny, silver-white metal that is liquid at room temperature; its Chemical Abstracts Service Registry Number (CASRN) is 7439-97-6.

Export means to determine and control the sending of mercury, mercury-added products, and assembled products for a destination outside of the customs territory of the United States. See 40 CFR 707.63(b).

Import means to bring mercury, mercury-added products, and assembled products into the customs territory of the United States. In TSCA and the rule, import is a subset of the term manufacture. For practical purposes, the two terms are treated as separate activities in the context of the MER application. For a more complete definition, see 15 U.S.C. 2602(9).

Impurity refers to mercury that is present unintentionally in a final product of a manufacturing process.

Manufacture means to produce. The manufacture of elemental mercury means secondary production (recovery). Materials from which elemental mercury is recovered include byproducts from mining or mineral processing, residuals from air pollution control, industrial waste, contaminated media, discarded products, and other materials. Other terms for recovery of elemental mercury include reclamation, retorting, distillation, separation, and purification. Recovered elemental mercury may be a commodity or a waste. If it is a waste, elemental mercury is not reported in the MER application. A mercury

compound is generally produced as a commercial chemical product. See also mercury-added product.

Mercury means elemental mercury and mercury compounds. The term “mercury” also includes mixtures that include mercury and/or mercury compounds. An example of a mercury compound mixture is a vaccine containing Thimerosal. See definition at 15 U.S.C. 2607(b)(10)(A).

Mercury-added product is an item to which mercury is intentionally added when a product is manufactured. The mercury remains present in the final product for a particular purpose. Examples are fluorescent light bulbs, thermostats, medicines, and dental amalgam capsules.*

Mercury compound is formed when elemental mercury reacts with another substance, either in nature or intentionally by humans. A table of mercury compounds subject to the reporting requirements can be found at 40 CFR part 713.5.

Otherwise intentionally use mercury in a manufacturing process means to use mercury to manufacture anything other than a mercury-added product or a mercury compound. Examples are use of mercury as a catalyst, cathode, reactant, or reagent. It does not include the use of tools or equipment that contain mercury or the installation of a component that contains mercury as part of the manufacture of an assembled product.**

Person refers to a number of entities defined by EPA reporting regulations as “any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government” (see 40 CFR part 704.3).

* Use of the term “manufacture” when referring to a mercury added product is similar, but not identical, to the TSCA definition for “process,” which means “preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce . . . in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or . . . as part of an article containing the chemical substance or mixture” (see 15 U.S.C. 2602(13)).

**To otherwise intentionally use mercury in a manufacturing process is similar, but not identical to the TSCA definition for “process,” which means “preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce . . . in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or . . . as part of an article containing the chemical substance or mixture” (see 15 U.S.C. 2602(13)).