

# US EPA Issues Final TSCA Mercury Reporting Rule

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# **US EPA Issues Final TSCA Mercury Reporting Rule**

*Written by Steve Owens - 7/2/18*

On June 27, 2018 US EPA formally published its final rule under the amended Toxic Substances Control Act (TSCA) to require reporting by persons who manufacture, import or intentionally use mercury and certain “mercury-added products.” 83 Fed. Reg. 30054 (June 27, 2018). The final rule is effective on August 27, 2018.

US EPA was required to promulgate the rule by TSCA Section 8(b)(10), which was added by the 2016 amendments to TSCA. Among other things, that section requires that “any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process shall make periodic reports to [US EPA] ... including such information as [US EPA] shall determine by rule promulgated not later than 2 years after June 22, 2016.” The information collected by the rule is to be used in the preparation of “an inventory of mercury supply, use and trade” in the US. US EPA was required by TSCA to prepare the first such mercury inventory by April 1, 2017 (which it formally announced on March 29, 2017). The Agency must prepare subsequent inventories by April 1 every three years thereafter beginning in 2020.

US EPA’s final mercury reporting rule requires persons “who manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process” to

report amounts of mercury above certain amounts that are used in these activities during a designated reporting year. The reporting requirements apply to any person who manufactures or imports 2,500 pounds or more of elemental mercury or 25,000 pounds or more of certain mercury compounds in a specific reporting year, subject to certain exemptions. The final rule also requires such persons to “identify specific mercury compounds, mercury-added products, manufacturing processes, and how mercury is used in manufacturing processes, as applicable” as specified in the rule, along with other data outlined in the rule.

The submission deadline for the 2018 reporting year is July 1, 2019. The 2018 reporting period covers January, 2018 to December 31, 2018. The final rule states that subsequent reporting years are from January 1 to December 31 at a 3-year interval beginning in 2021, with the submission deadlines being July 1 in 3-year intervals beginning July 1, 2022. As such, any covered person who meets the reporting volume threshold during calendar year 2018 must report the required information to US EPA by July 1, 2019. Thereafter, any covered person who meets the thresholds during any calendar year during the next three years (2019, 2020 and 2021) must report the information to EPA by July 1, 2022, and so on.

Consistent with TSCA Section 8(b)(10), the final rule contains some exemptions to the reporting requirements. In general, the final rule provides that the reporting requirements do not apply to: persons who (i) do not first manufacture, import, or otherwise intentionally use mercury; (ii) who only generate, handle, or manage mercury-containing waste; (iii) who only manufacture mercury as an impurity; and (iv) who are engaged in activities involving mercury not with the

purpose of obtaining an immediate or eventual commercial advantage. The final rule also provides exemptions from certain specific data elements in the rule for persons who already report comparable information under the TSCA Chemical Data Reporting rule and to the Interstate Mercury Education and Reduction Clearinghouse Mercury-added Products Database.

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