

## United States of America

### Notification of Application of Article 3, Paragraph 9

The United States hereby notifies the Secretariat that, pursuant to Article 3, paragraph 9, of the Minamata Convention on Mercury, it elects not to apply Article 3, paragraph 8, of that Convention. The United States has comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. Information describing the export restrictions, the domestic regulatory measures, and the quantities and countries of origin of mercury imported follows below. In addition, the United States has separately submitted a general notification of consent under Article 3, paragraph 7.

#### Information on U.S. Comprehensive Restrictions on the Export of Mercury

The United States has comprehensive restrictions on the export of mercury through the Mercury Export Ban Act, codified at 15 U.S.C. § 2611(c). Under the Mercury Export Ban Act, export of mercury from the United States, including when contained in a mixture, is generally prohibited. See 15 U.S.C. § 2611(c)(1) (“Effective January 1, 2013, the export of elemental mercury from the United States is prohibited”). The statute allows persons in the United States to petition for an exemption to allow export under very limited circumstances, but those circumstances are such that any exemption would necessarily be consistent with the provisions of Article 3. For example:

- The country where the elemental mercury will be used would have to certify its support for the export;
- The exported mercury would have to be reserved for use at an identified facility and not otherwise diverted for other uses;
- The mercury would have to be handled and managed in a manner that protects human health and the environment; and
- Any exemption would have to be consistent with U.S. international obligations intended to reduce global mercury supply, use, and pollution.

Moreover, the Administrator of the U.S. Environmental Protection Agency may prescribe other terms and conditions in the granting of any exemption. All of these provisions regarding exemptions can be found at 15 U.S.C. § 2611(c)(4). To date, the United States has not granted any exemptions. More information can be also found at <http://www.epa.gov/hg/regs.htm>.

#### Information on U.S. Measures to Ensure Imported Mercury is Managed in an Environmentally Sound Manner

Mercury in the United States must be managed in a manner that protects human health and the environment. The U.S. domestic approach to ensuring that mercury is managed in an environmentally sound manner – during its use, storage, and disposal – involves a range of statutes, including the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act, the Pollution Prevention Act, and the Emergency Planning and Community Right-to-Know Act. A number of domestic agencies, including the Environmental Protection Agency, are involved in public education and outreach or are otherwise available to assist with understanding requirements for compliance with U.S. regulatory and other measures.

Several statutes provide authority to take measures to deter, control, or reduce releases of mercury during use. For example, the Clean Water Act prohibits the discharge of pollutants from any point source to waters of the United States except in compliance with that statute. Permits for point sources seeking to discharge pollutants must include effluent limitations reflecting technology-based requirements as well as more stringent limitations necessary to meet state and/or tribal water quality standards. Under section 307(a) of the Clean Water Act, the Environmental Protection Agency has promulgated technology-based effluent limitations for mercury discharges from different industries. There are also circumstances in which U.S. states may require effluent limits or monitoring requirements more stringent than technology-based standards. These standards are based on best available technology, either nationally or site-specific. States may also set water quality standards for pollutants including mercury. Facilities are assigned a specific mercury discharge limit and/or are required to monitor their discharge for mercury. Facilities that discharge "indirectly" – that is, to a publicly-owned wastewater treatment plant rather than directly to a water body – are also subject to guidelines and standards set under the statute. The Environmental Protection Agency has authority to take response measures to address releases of hazardous substances such as mercury.

With respect to releases to land, the Environmental Protection Agency has broad authority under CERCLA to respond to spills or mishandling that creates a substantial threat of release of mercury and mercury compounds. Mercury and mercury compounds are both designated as hazardous substances under CERCLA. The federal government may take a response action with respect to release or a substantial threat of a release of a hazardous substance into the environment. The government may also issue an order to abate a danger or threat upon determining that an actual or threatened release of a hazardous substance creates an imminent and substantial endangerment to the public health or welfare or the environment. Liability for cleanup costs of a release of a hazardous substance is strict, joint and several, and retroactive, on four broad classes of responsible parties, including the owner or operator of a facility from which the release occurred.

The Emergency Planning and Community Right-to-Know Act, the Pollution Prevention Act, the Clean Water Act, and CERCLA all require or authorize the Environmental Protection Agency to require reporting of releases of mercury, including mercury compounds, to the environment, above certain thresholds. The CERCLA definition of release, for example, is broad and includes "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment." Section 103 of CERCLA requires owners and operators to report on the amounts and types of hazardous substances to be found at their facilities and on any known, suspected, or likely releases of such substances from those sites. Elemental mercury and mercury compounds are both designated as hazardous substances for this purpose.

With respect to storage, the United States has authority under CERCLA and the Resource Conservation and Recovery Act to ensure that the interim storage of mercury and mercury compounds that are intended for a use allowed under the Convention takes place in an environmentally sound manner. See 42 U.S.C. §§ 9604, 9606, 9607(a); 42 U.S.C. §§ 6903(27), 7003.

As to disposal, imported mercury becomes a solid waste or hazardous waste if it is discarded (intentionally or as a result of mishandling, for example) under the statutory definition. In the United States, mercury wastes are required to be managed in a manner that protects human health and the environment against adverse effects. The Resource Conservation and Recovery Act establishes

requirements for storage, transport, treatment, and disposal or recycling of hazardous wastes and includes a graduated management program that requires different levels of management for waste depending on the hazards it poses. Under applicable regulations, waste containing mercury may be regulated as hazardous because it has been specifically listed as hazardous waste or based on the concentration of leachable mercury in the waste, or if it exhibits another hazardous "characteristic." 40 C.F.R. Part 261.

High concentration mercury wastes generally must be roasted or retorted and the mercury recovered for reuse before the wastes may be land-disposed. Low concentration mercury wastes may undergo stabilization treatment (to reduce mercury leaching) and can then be land disposed, although recycling to recover the mercury is allowed as an option. See 40 C.F.R. Part 268. There are additional waste treatment categories for radiologically-contaminated mercury wastes, including contaminated elemental mercury, because this mercury cannot be reclaimed for reuse. See 40 C.F.R. § 268.40.

Industrial or commercial mercury-containing wastes that are not regulated as hazardous waste may be disposed of in non-hazardous waste landfills, which are regulated by the 50 U.S. states and subject to federal minimum criteria. See 40 C.F.R. Parts 257-58. Household wastes, including those that may contain mercury (e.g., spent mercury lamps), must be disposed of in municipal solid waste landfills. See 40 C.F.R. Part 258.

The Universal Waste Program provides an alternative set of management standards for certain hazardous wastes that are widely generated and that may be difficult to collect into the hazardous waste management system when they are discarded. The universal waste regulations provide a streamlined framework for collection and management of specified wastes, including certain mercury-containing equipment and lamps. See 40 C.F.R. Part 273.

Releases of mercury inconsistent with any of these regulations would constitute unlawful disposal. The United States may issue an order or file a judicial action against any person contributing to the treatment, storage, disposal or handling of solid or hazardous waste to abate an imminent and substantial endangerment to human health or the environment resulting from mishandling of the waste.

Information on Quantities and Countries of Origin of Mercury Imported to the United States from Countries Not Party to the Minamata Convention on Mercury

Quantities of mercury imported to the United States in 2012 and their countries of origin are illustrated in the following table.

**Table. U.S. Imports of Mercury and Amalgams<sup>1</sup> of Precious Metals in 2012**

Country of Origin	Imported Quantity in 2012, gross weight (kilograms)
<u>Mercury:</u>	
Argentina	130,360
Canada	46,401
Chile	51,730
France	32
Germany	11,034
Mexico	6,251
Switzerland	79

Ukraine	2,988
<b>Subtotal</b>	<b>248,875</b>
<b>Amalgams:</b>	
Argentina	1,646
Australia	280
Brazil	1,009
Canada	198
China	700
Czech Republic	1
France	20
Germany	6,163
Hungary	8
India	293
Italy	744
Japan	3,253
Korea	1
Mexico	2,595
Russia	785
South Africa	1,073
Switzerland	187
Taiwan	3
United Kingdom	1,914
<b>Subtotal</b>	<b>20,873</b>
<b>Total</b>	<b>269,748</b>

<sup>1</sup>An alloy of mercury with one or more other metals.

Source: U.S. Census Bureau.