

## 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

### 310 CMR 75.00: COLLECTION, RECYCLING, LABELING AND SALES BAN OF MERCURY-ADDED PRODUCTS

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#### 75.01: Purpose and Authority

(1) The purpose of 310 CMR 75.00 is to protect public health, safety, welfare and the environment by implementing the Mercury Management Act (Chapter 190 of the Acts of 2006). These regulations prohibit the sale or distribution of mercury-added products in Massachusetts unless the manufacturer of the product creates, files with the Department, and implements a convenient and accessible collection plan for mercury-added products at the end-of-life, including a system for the direct return of the mercury-added product to the manufacturer or a collection and recycling plan, in accordance with MGL c. 21C and 310 CMR 30.000, using new or existing collection systems. This section establishes performance standards and other requirements for collection and recycling plans, and requires a performance-based compliance certification in accordance with 310 CMR 70.00. These regulations also apply to bans on the sale or distribution of mercury-added products and the process for obtaining an exemption to such bans. They also apply to the labeling of mercury-added products.

(2) 310 CMR 75.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6, M.G.L. c. 21H, §§ 6D, 6E, 6F, 6J, 6K and 6N.

#### 75.02: Definitions

The definitions found in 310 CMR 75.02 apply to, and are limited to, 310 CMR 75.00.

Distributor means any person who imports, consigns, or offers for sale, sells, barter or otherwise supplies mercury-added products in the commonwealth.

IMERC means the Interstate Mercury Education and Reduction Clearinghouse, a regional, multi-state clearinghouse established to coordinate the administration of state laws on mercury-added products.

Irremovable means not intended by the manufacturer to be replaceable by the product user or consumer (e.g., an irremovable component is one for which the manufacturer does not sell a replacement component).

Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country. In the case of a mercury-added multi-component product where the only mercury is contained in a mercury-added component manufactured by a different manufacturer, which is intended to be readily removable and replaceable by the consumer or user, the manufacturer is the manufacturer who produced the mercury-added component. If the product or component is produced in a foreign country, the manufacturer is the importer or domestic distributor. However, if a company from whom an importer purchases the merchandise has a United States presence or assets, that company shall be considered to be the manufacturer. 310 CMR 75.02: Manufacturer shall not apply to a "distributor" of motor vehicles as defined in M.G.L. c.93B, §1.

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Massachusetts Environmental Monitor means a twice monthly publication of the Executive Office of Energy and Environmental Affairs that provides information on projects under review by the Massachusetts Environmental Policy Act (MEPA) office, recent MEPA decisions of the Secretary of Environmental Affairs, and public notices from environmental agencies.

Mercury-added Component means a component that contains mercury.

Mercury-added Formulated Product means a chemical product to which mercury has been added, intentionally or unintentionally, including, but not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating materials that are sold as consistent mixtures of chemicals.

Mercury-added Lamp means an electric lamp to which the manufacturer intentionally introduces mercury for the operation of the lamp, including, but not limited to, fluorescents, compact fluorescents, black lights, high intensity discharge lamps, ultraviolet lamps and neon lamps.

Mercury-added Product means a product to which the manufacturer intentionally introduces mercury, including, but not limited to, electric lamps, thermostats, automotive devices, electric switches, medical or scientific instruments, electric relays or other electrical devices, but not including products made with coal ash or other products that are incorporated into equipment used to manufacture semiconductor devices, elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities, or mercury-added formulated products. 310 CMR 75.02: Mercury-added Product includes mercury-added components that are incorporated into larger products.

Mercury Relay means a mercury-added product that opens or closes electrical contacts to affect the operation of other devices in the same or another electrical circuit.

Mercury Switch means a mercury-added product that opens or closes an electrical circuit or gas valve.

Mercury-added Thermostat means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilation or air conditioning equipment, including thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings, but shall not include a thermostat used to sense and control temperature as part of a manufacturing process.

Person means any natural or corporate person, whether public or private, including corporations, societies, associations and partnerships and bodies politic and corporate, public agencies, authorities, departments, offices and political subdivisions of the Commonwealth.

### 75.03 Applicability

- (1) 310 CMR 75.00 applies to any person who manufactures, sells, offers for sale or distributes mercury-added products in Massachusetts.
- (2) The following products are exempt from the requirements of 310 CMR 75.04:
  - (a) motor vehicles and mercury-added components in motor vehicles,
  - (b) refurbished medical equipment,
  - (c) mercury-added button cell batteries,
  - (d) products where the only mercury contained in the product comes from a removable mercury-added button cell battery,
  - (e) products where the only mercury contained in the product is contained in one or more mercury-added lamps,
  - (f) mercury-added formulated products intended to be totally consumed in use, such as reagents, cosmetics, cleaning products, pharmaceuticals and other laboratory chemicals,
  - (g) Products made with coal ash,
  - (h) Products that are incorporated into equipment used to manufacture semi-conductor devices, or

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- (i) elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities.
- (3) After December 28, 2007, once a mercury-added product is no longer sold, offered for sale, or distributed in Massachusetts, the product's manufacturer will no longer be subject to the requirements of 310 CMR 75.04.
- (4) Compliance with 310 CMR 75.00 does not release manufacturers, distributors, wholesalers, or retailers from the need to comply with other applicable state, federal and local requirements.
- (5) The Department shall deem manufacturers of mercury-added lamps to have satisfied the requirements of 310 CMR 75.04 if, individually or as a group, they develop and file with the Department an education plan in accordance with the requirements of 310 CMR 75.05 (2) and (3). If a manufacturer fails to comply with these provisions, such manufacturer shall comply with the full terms and conditions of 310 CMR 75.04.

### 75.04: Plans for Collecting and Recycling Mercury-added Products

- (1) No later than March 3, 2008, every manufacturer of a mercury-added product subject to 310 CMR 75.00 whose products are sold, offered for sale, or distributed in Massachusetts shall develop and file with the Department a plan for collection, storage (including containment of mercury-added products and/or components), transportation, and recycling of end-of-life mercury-added products in accordance with 310 CMR 30.000. Such plans shall provide methods of collection and recycling that are convenient and accessible to product purchasers and users.
- (2) No person shall sell, offer for sale or distribute a mercury-added product to which 310 CMR 75.00 applies after March 3, 2008, unless its manufacturer files with the Department a plan as specified in 310 CMR 75.04 for collecting its mercury-added product(s) at the end of the product's useful life and recycling its mercury content, and commences implementation of such plan.
- (3) Every manufacturer of mercury-added products sold or distributed in Massachusetts shall be financially responsible for developing and implementing a plan that meets the requirements of 310 CMR 75.04.
- (4) Where a mercury-added component is part of another product, the collection system shall provide for collection of the mercury-added component or collection of both the mercury-added component and the product containing it.
- (5) Plans for collection and recycling of mercury-added products may be submitted by a trade association or industry group on behalf of a specific group of manufacturers.
- (6) Plans for collection and recycling of mercury-added products shall include, at a minimum, the following information:
- (a) Applicant's name, telephone number, North American Industry Classification System, and web address. If a trade association is submitting a plan on behalf of a group of manufacturers, include trade association name, telephone number and web address, and list of participating manufacturers' names with respective contact information.
  - (b) Applicant's address, including the mailing address.
  - (c) The address, telephone number, and e-mail address of a contact person for the applicant.
  - (d) A description of how to advise purchasers of the mercury-added product(s) about the collection and recycling program, including the purpose of the collection and recycling program, and how they may participate. The description must identify the parties who will be responsible for implementing the purchaser education plan, and the date on which it will commence implementation. Such description shall also include, but shall not be limited to, notification to all persons who sell, distribute, or offer the mercury-added product(s) for sale in Massachusetts that the product(s) cannot be sold unless they are covered by the manufacturer's collection and recycling plan. Such notification shall be repeated on a specified basis that shall be no less frequent than annually.

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- (e) Location of all mercury-added components in each product covered by the Plan, and directions for removing them to aid collection (if appropriate).
- (f) If applicable, documentation regarding the intention of the applicant to phaseout use of mercury in the product or the sale of the mercury-added product in Massachusetts, and the schedule for the phase-out.
- (g) Identification of currently available collection and recycling methods for the mercury-added product(s) and information about the extent to which the mercury-added product(s) is currently collected and recycled at the end of its useful life.
- (h) Description of the system that will be employed for collection, storage, transportation, and recycling of the mercury-added product(s), including provision for managing collected mercury-added products in accordance with 310 CMR 30.000. Such system shall be convenient and accessible for the product user. It may employ:
  - 1. the direct return of an end-of-life product or component to the manufacturer, or its agents;
  - 2. a drop off program where a receiving facility is no farther than a 30 minute driving distance for any Massachusetts generator of the end-of-life mercury-added product; or
  - 3. another system that is as convenient to the product user as the original product purchase.
- (i) Schedule for implementing the plan, including the date on which collection will commence. Collection shall commence no later than 45 days after submittal of the plan to the Department.
- (j) Documentation of the commitment of all necessary parties to perform as intended in the planned collection and recycling program.
- (k) Documentation demonstrating how the manufacturer will finance the proposed collection and recycling program. The cost of the program shall not be borne by state or local government. Financing may include the recovery of a product that has an economic value to processors, such as silver oxide batteries.
- (l) The targeted recycling rate for the collection and recycling of mercury-added product(s), or components covered in the Plan, a description of the performance measures to be used to demonstrate that the collection and recycling program is meeting the target recycling rate and the recordkeeping protocol that will be implemented to demonstrate compliance with the Plan.
  - 1. Such target recycling rate shall be expressed as a percentage, where the numerator is the number of mercury-added product(s) (or mercury-added components) expected to be collected in Massachusetts and recycled in each year of the Plan's operation, and the denominator is an estimate of the number of mercury-added products (or mercury-added components) expected to be available for collection in Massachusetts and recycling each year. The estimated number of products expected to be available for collection in any year shall be based on a rolling average life expectancy of the product (assuming normal use by the user) and sales data, and other indications of the number of products that are likely to be retired (or reach the end of their useful life) in each year.
  - 2. For plans submitted by an individual manufacturer, the target recycling rate shall be based on that manufacturer's Massachusetts sales data and average product life expectancy. For plans submitted by a trade association or industry group on behalf of a group of manufacturers, the target recycling rate shall be based on the group's Massachusetts sales data and average product life expectancy.
  - 3. The target recycling rate shall not be less than the rates established in 310 CMR 75.04(6)(1)3.: Table 1:

TABLE 1

Target Recycling Rates for Mercury-added Products Generated in Massachusetts	
Calendar Year	Target Recycling Rate
2008	30%
2009	40%
2010	50%
2011	75%
Each subsequent year	75%

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4. The target recycling rate for mercury-added products first sold, offered for sale or distributed after March 3, 2008 shall be 75%, to be achieved by the end of the first full year of the product's sale or distribution in Massachusetts.

(m) Description of additional or alternative actions that will be implemented to improve the collection and recycling program and its operation in the event that the target recycling rate is not met, and

(n) Other special conditions or information related to the affected mercury-added product(s), such as special handling that will be required by product users to participate in the collection and recycling program.

(7) Submittal of Plans to the Department.

(a) Plans shall be filed with the Department in accordance with the schedule established in 310 CMR 75.04(1).

(b) Such plans shall be accompanied by the certification required by 310 CMR 75.04(9) and shall comply with the requirements of 310 CMR 70.03.

(8) Recordkeeping Requirements.

(a) Manufacturers subject to 310 CMR 75.00 shall keep records on-site that demonstrate compliance with 310 CMR 75.04, and the supporting information that the manufacturer relied upon to file the plan required by 310 CMR 75.04, and may be required to submit said records upon request of the Department.

(b) Records shall be maintained for at least five years.

(9) Annual Compliance Certification.

(a) Manufacturers subject to 310 CMR 75.04 shall submit a compliance certification annually to the Department. Such certification shall address compliance with the requirements of 310 CMR 75.04 on a form prescribed by the Department that shall include at least the following information:

1. The type and number of each mercury-added product collected in Massachusetts and recycled;

2. The estimated number of each mercury-added product expected to be available for collection in Massachusetts for recycling in the year covered by the certification, which shall be based on a rolling average life expectancy of the product (assuming normal use by the user);

3. The number of mercury-added products the manufacturer sold, offered for sale or distribution in Massachusetts in the year covered by the certification;

4. Calculation of the actual recycling rate;

5. Certification that documentation and records are being maintained as required by 310 CMR 75.04(8);

6. Certification that the plan will continue to be implemented (identifying any changes needed to address operating issues or to ensure that the target capture rate is met) during the coming year; and

7. The certification required by 310 CMR 70.03.

(b) Compliance certifications shall be submitted to the Department by March 31st of each year. The first compliance certification shall cover the period from the commencement of plan implementation through the first full calendar year of implementation.

75.05: Public Education Plans for Mercury-added Lamps

(1) Manufacturers of mercury-added lamps shall satisfy the requirements of 310 CMR 75.04 if, individually or as a group, they develop and file with the Department an education plan in accordance with 310 CMR 75.05(2) and (3).

(2) Education plans shall, at a minimum, include the following information:

(a) Economic and environmental benefits of mercury-added lamps;

(b) The ways in which mercury can harm the environment and human health;

(c) Proper disposal and recycling methods for mercury-added lamps;

(d) Where and how to return, recycle, or properly dispose of mercury added lamps; and

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- (e) The meaning of the chemical symbol "Hg" and other symbols and non-English terms used to present the information described in 310 CMR 75.05(2) to consumers and municipalities.
- (3) The information required in 310 CMR 75.05(2)(d) shall be provided to consumers through the use of a toll-free telephone number, internet web site(s), information labeled on the product, and either information included in the product's packaging or information otherwise accompanying the sale of mercury-added lamps.
- (4) On or before March 31, 2008, each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit a report to the Department that provides information concerning mercury-added lamps that are expected to be available for recycling on an annual basis. Such report shall contain:
  - (a) the total number of mercury-added lamps sold by that manufacturer in Massachusetts annually in calendar years 2002 through 2007;
  - (b) the total number of lamps sold by that manufacturer for use in the manufacture of semiconductor devices annually in calendar years 2002 through 2007, if available;
  - (c) the annual difference between 310 CMR 75.05(4)(a) and (b), if available;
  - (d) the average life expectancy of the mercury-added lamps sold into Massachusetts in each calendar year; and
  - (e) the certification required by 310 CMR 70.03.
- (5) Each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit an annual compliance certification to the Department on or before March 31st of each year. Such certification shall be made on a form prescribed by the Department that contains at a minimum the following information:
  - (a) Certification that the manufacturer is implementing and will continue to implement a public education plan in accordance with the requirements of 310 CMR 75.05;
  - (b) The total number of mercury-added lamps sold by that manufacturer in Massachusetts in the previous calendar year.
  - (c) The number of mercury-added lamps from Massachusetts recycled in the previous calendar year;
  - (d) Any significant changes in the average life expectancy of the manufacturer's mercury-added lamps since the submittal of the report required by 310 CMR 75.05(4); and
  - (e) The certification required by 310 CMR 70.03.
- (6) The certifications required by 310 CMR 75.05(4) and (5) may be filed by a trade association or other group on behalf of more than one manufacturer. If such a "group" certification is filed, it shall contain:
  - (a) the name of each manufacturer being represented;
  - (b) the information required by 310 CMR 75.05(4) and (5) for the manufacturers as a group;
  - (c) the annual Massachusetts sales figures for each manufacturer covered by the certification; and
  - (d) the certification required by 310 CMR 70.03, signed by a Responsible Official (as defined in 310 CMR 70.02) of both the group and each individual manufacturer covered by the certification.
- (7) Manufacturers may request that the Department keep the information described in 310 CMR 75.05(4) confidential, in accordance with the requirements and procedures established in 310 CMR 3.00.
- (8) Determining Success of Education Plans.
  - (a) The Department will calculate the recycling rate for mercury-added lamps for each calendar year, based on the reports and certifications submitted in compliance with 310 CMR 75.05(4) through (6). The Department may consider other available information (e.g., Department audits of reports).
  - (b) If actual recycling of mercury-added lamps generated in Massachusetts meets or exceeds the target recycling rates established in 310 CMR 75.05(8)(b): Table 2, then lamp manufacturers shall continue to implement the education plan(s) described in 310 CMR 75.05(2) and (3).

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TABLE 2

Target Recycling Rates for Mercury-added Lamps Generated in Massachusetts	
Calendar Year	Target Recycling Rate
2008	30%
2009	40%
2010	50%
2011	70%
Each subsequent year	70%

(c) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05(8)(b): Table 2, manufacturers shall make a payment into an expendable trust fund established in accordance with M.G.L. c. 6A, § 6. Such fund shall be maintained for the purpose of providing grants to municipalities and regional authorities to facilitate the achievement of the target recycling rates established in 310 CMR 75.05(8)(b): Table 2.

(d) Payments to the expendable trust fund shall be made in accordance with the following formula ("MMS" is the manufacturers' percentage of the total sale of mercury-added lamps in Massachusetts during the particular calendar year in which the target recycling rate was not achieved). At the end of 2008:

1. If the actual recycling rate is within 3% points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows:  $0.25 \times \%MMS \times \$1,000,000$ .
2. If the actual recycling rate is more than 3% points but less than or equal to 6% points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows:  $0.5 \times \%MMS \times \$1,000,000$ .
3. If the actual recycling rate is more than 6% points but less than or equal to 9% points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows:  $0.75 \times \%MMS \times \$1,000,000$ .
4. If the actual recycling rate is more than 9% points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows:  $\%MMS \times \$1,000,000$ .

(e) At the end of calendar year 2009, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be two percentage points. At the end of calendar year 2010 and in subsequent years, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be one percentage point.

(f) Aggregate funding commitments by manufacturers shall not exceed \$1,000,000 for any year of non-compliance with the target recycling rates established in 310 CMR 75.05(8).

(g) Manufacturers' individual contributions shall not exceed their respective market share of lamps sold in Massachusetts during the particular calendar year in which the target recycling rate was not achieved.

(h) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05(8)(b): Table 2, the Department shall notify manufacturers that payments pursuant to M.G.L. c. 21H, § 6J(e) are owed to the expendable trust fund described in 310 CMR 75.05(8)(c). Such notice shall:

1. Inform the manufacturers that recycling of mercury-added lamps failed to meet the target recycling rate for the specific calendar year;
2. Specify the total amount that manufacturers as a group shall pay into the expendable trust fund described in 310 CMR 75.05(8)(c); and
3. Specify the amount that the manufacturer shall pay into the expendable trust fund, as determined by 310 CMR 75.05(8)(d).

(i) Payments to the expendable trust fund shall be made within 45 days of receipt of the notice described in 310 CMR 75.05(8)(h).

(j) The Department will disburse funds from the expendable trust fund to municipalities and regional authorities through a competitive grant application process.

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(k) In the event that a specific manufacturer certifies and provides to the Department the number of that manufacturer's mercury-added lamps that were recycled in a given year, the Department will use such information to calculate an actual recycling rate for that specific manufacturer. If the Department determines that the manufacturer has achieved the target recycling rate for that year, that manufacturer will not be obligated to make the payment into the expendable trust fund required by 310 CMR 75.05(8)(c) through (e) for that year. If the Department determines that the manufacturer has not achieved the target recycling rate, then the requirements of 310 CMR 75.05(8)(c) through (i) shall apply.

### 75.06: Ban on Sales and Distribution of Mercury-Added Products

(1) No person shall sell, offer to sell, or distribute in Massachusetts the following mercury-added products on or after May 1, 2008:

- (a) thermostats
- (b) barometers;
- (c) flow meters;
- (d) hydrometers;
- (e) hygrometers or psychrometers;
- (f) manometers;
- (g) pyrometers;
- (h) sphygmomanometers;
- (i) basal thermometers; or
- (j) esophageal dilators, bourgie tubes or gastrointestinal tubes.

(2) The ban on sale or distribution established in 310 CMR 75.06(1) shall not apply to thermometers if they are determined to be medically necessary by a licensed physician or are ordered by prescription.

(3) No person shall sell, offer to sell, or distribute in Massachusetts a mercury switch or mercury relay, individually or as a product component, on or after May 1, 2009. 310 CMR 75.06(3) shall not apply if:

- (a) The mercury switch or mercury relay is a component in a larger product in use before May 1, 2009 and the Department determines that there is no mercury-free alternative available for the component, and:
  1. the larger product is used in manufacturing (equipment or machinery at a fixed location that is used in making a product from raw materials, e.g., a papermaking machine); or
  2. the switch or relay is integrated and not physically separate from other components of the larger product (i.e., embedded in the larger product such that the larger product would have to be replaced to accommodate a non-mercury replacement switch or relay); or
- (b) A mercury switch or a mercury relay is integrated as a component of a larger product that has been refurbished for resale and which was originally manufactured before October 26, 2006.

### 75.07: Exemptions from the Sales and Distribution Ban

(1) The manufacturer, importer, or distributor of a mercury switch, relay, instrument or device subject to the sales prohibitions in 310 CMR 75.06 may apply to the Department for an exemption from the prohibition on sale or distribution.

(2) The Department may grant an exemption, with or without conditions, upon determining that the conditions described in 310 CMR 75.07(2) (a) through (d) all apply, or that the condition described in 310 CMR 75.07(2) (e) applies:

- (a) Use of the mercury-added product is beneficial to the environment, or protective of public health or public safety, based on consideration of:
  1. The amount of mercury expected to be placed in commerce annually if the exemption is granted;

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2. The likelihood that the mercury in the product will be released to the environment, or that users of the product will be exposed to the mercury;
  3. The steps that will be taken through product design and other methods to ensure that mercury is not released during use and disposal of the product; and
  4. The nature of the claimed benefit, and whether it differs in kind or degree from the environment, public health and public safety benefits afforded by available non-mercury alternatives.
- (b) There is no technically feasible non-mercury alternative available, based on consideration of:
1. A description of past, current and planned efforts to identify or develop non-mercury alternatives;
  2. The individuals, companies and resources consulted during the search for non-mercury alternatives;
  3. A description of all potential non-mercury alternatives that have been identified and considered; and
  4. The specific basis (e.g., electrical performance, size, power consumption; product life) for concluding that each potential alternative was not technically feasible for the intended use.
- (c) There is no comparable non-mercury alternative available at a reasonable cost, based on consideration of:
1. The purchase price differential between the mercury-added product and any available non-mercury alternatives; and
  2. Costs other than purchase price associated with the substitution of a non-mercury alternative, if applicable.
- (d) An effective system for the collection, transportation and processing of the mercury-added product at the end of life, pursuant to 310 CMR 75.04, has been implemented at the time that the exemption application is submitted.
- (e) The use of the product is a federal requirement, as evidenced by
1. a statute or regulation;
  2. a contract specification; or
  3. another documented federal requirement.

(3) Contents of Applications for Exemption from Sales and Distribution Ban

- (a) An application for an exemption based on the conditions in 310 CMR 75.07(2)(a) through (d) shall contain the following information, as applicable:
1. Applicant's name, mailing address, telephone number, North American Industry Classification System, e-mail address, web address and relationship to the product manufacturer;
  2. The name, mailing address, telephone number, and e-mail address of a contact person for the applicant;
  3. Product manufacturer's name, mailing address, telephone number, North American Industry Classification System, e-mail address and web address (if different from applicant);
  4. The name, mailing address, telephone number, and e-mail address of a contact person for the product manufacturer;
  5. A description of the mercury-added product for which an exemption is requested, including the specific uses of the product and an explanation of the amount and purpose of the mercury in the product;
  6. An explanation of the environmental, public health or public safety benefits that the mercury-added product offers in comparison with available non-mercury alternatives;
  7. The amount of mercury expected to be placed in commerce annually if the exemption is granted;
  8. The likelihood that the mercury in the product will be released to the environment, or that users of the product will be exposed to the mercury;
  9. The steps that will be taken through product design and other methods to ensure that mercury is not released during use and disposal of the product;
  10. A description of past, current and planned efforts to identify or develop non-mercury alternatives;
  11. A list of the individuals, companies and resources consulted during the search for non-mercury alternatives;

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12. A description of all potential non-mercury alternatives that have been identified and considered;
13. The specific basis (e.g., electrical performance, size, power consumption; product life) for concluding that each potential alternative was not technically feasible for the intended use;
14. The purchase price differential between the mercury-added product and any available non-mercury alternatives;
15. Costs other than purchase price associated with the substitution of a non-mercury alternative, if applicable; and
16. A short description of the collection and recycling system that has been implemented for end-of-life mercury-added products pursuant to the requirements of 310 CMR 75.04.

(4) Submission of Applications for Exemption from Sales and Distribution Ban

- (a) Applications for exemptions from the sales and distribution ban shall be submitted to the Department or IMERC on a form prescribed by IMERC that shall include the information described in 310 CMR 75.07(3).
- (b) Such application shall be accompanied by a statement prescribed by 310 CMR 70.03 (2)(d), to certify the accuracy of the information in the application.
- (c) Manufacturers may request that the Department keep the information described in 310 CMR 75.07(3) confidential, in accordance with the requirements and procedures established in 310 CMR 3.00.
- (d) An exemption application filed with IMERC that complies with the requirements of 310 CMR 75.07(2) and (3) or requirements established by other IMERC states shall be deemed to have been submitted to the Department.

(5) The applicant applying directly to the Department or IMERC shall publish a legal notice in a Massachusetts newspaper of general circulation and the Massachusetts Environmental Monitor.

- (a) The legal notice shall include:
  1. A summary of the application for exemption;
  2. A statement that comments can be sent to the Mercury Program Manager at the Massachusetts Department of Environmental Protection up to 21 days after the date that the legal notice is published, and instructions for sending comments including the appropriate mailing address; and
  3. Instructions for obtaining a complete copy of the application for exemption.
- (b) Within five days following the publication of the legal notice, the applicant shall send a tear sheet of the legal notice to the Mercury Program Manager at the Massachusetts Department of Environmental Protection.

(6) Decisions on Applications for Exemption from Sales and Distribution Ban

- (a) The Department shall determine whether the application is complete based on the information required in 310 CMR 75.07, and may request additional information.
- (b) The Department shall consult with the Massachusetts Department of Public Health in reviewing applications for exemptions that pertain to mercury-added products used in medical settings and other items that may affect public health.
- (c) The Department shall consult with other states that regulate mercury-added products that are affected by the sales ban to ensure consistency in decisions among states to the extent practicable.
- (d) Exemptions shall be valid for a period of time not to exceed three years from the date of approval. An exemption may be renewed at the discretion of the Department, based on an application that meets the requirements of 310 CMR 75.07, submitted no later than 6 months prior to the end of the previously approved exemption period.
- (e) Exemptions that have been approved by IMERC states prior to the effective date of this section shall be deemed to be approved by the Department for the duration that the exemption has been granted.

(7) An application for an exemption based on 310 CMR 75.07(2)(e) shall contain the following information:

- (a) All information required in 310 CMR 75.07(3)(a) 1. through 5.;

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- (b) A copy of the relevant federal statute, regulation, contract specification, or other federal requirement, and contact information for the federal agency (including a staff contact) that established the requirement; and
- (c) A statement prescribed by 310 CMR 70.03 (2)(d).
- (d) An applicant requesting an exemption under 310 CMR 75.05(2)(e) is not required to publish a legal notice pursuant to 310 CMR 75.07(5).
- (e) If the Department determines that the product is not eligible for an exemption from the sales and distribution ban under 310 CMR 75.07(2)(e), the manufacturer shall either comply with the sales and distribution ban or apply for an exemption in accordance with 310 CMR 75.07(3).

### 75.08 Labeling of Mercury-Added Products and Notification to Purchasers

- (1) General Labeling Requirements. On or after May 1, 2008, no person shall sell, offer to sell, or distribute a mercury-added product in Massachusetts unless the manufacturer:
  - (a) Submits to the Department a labeling plan for such product that meets the requirements of 310 CMR 75.08(3) and (4) and implements the labeling plan in accordance with the requirements of 310 CMR 75.08(3) and (4), or
  - (b) Labels such product in compliance with a labeling plan approved by another state that is a member of IMERC, pursuant to 310 CMR 75.08(5).
- (2) The following mercury-added products are exempt from the requirements of 310 CMR 75.08:
  - (a) Refurbished medical equipment,
  - (b) Mercury-added products whose only mercury component is a removable mercury-added lamp,
  - (c) Mercury-added products whose only mercury component is a button cell battery.
- (3) Labeling Standards for Labeling Plans submitted to the Department. Prior to sale or distribution of a mercury-added product, the manufacturer of the product shall affix or cause to be affixed a label that conforms to the following requirements:
  - (a) Label Content. Product labels, and package labels if required, shall clearly inform the prospective purchasers and product users, using words or symbols, that the product contains mercury and shall clearly specify that the mercury-added product be reused, recycled or properly disposed of as hazardous waste at the end of the product's useful life.
  - (b) Product Label Standards
    - 1. The label must be affixed to the product so that the label is clearly visible (e.g., on an outer surface of the product) and legible. A label printed using 10-point font or larger is presumed to be legible.
    - 2. Labels affixed to products must be printed, mounted, molded, engraved or otherwise affixed using materials that are sufficiently durable to remain legible under the conditions of the product's intended use for the useful life of the product.
  - (c) Product Label Location
    - 1. Labels shall be placed on mercury-added products so they can be seen by prospective purchasers and product users, and in conformance with the labeling plan described in 310 CMR 75.08(4).
    - 2. Manufacturers of products that contain, as their only mercury-added component, one or more irremovable mercury-added lamps that are used for backlighting shall meet the requirements of 310 CMR 75.08(3)(b) and (c) by placing the label on the product or in its "care and use" manual (if such a manual is provided to purchasers).
    - 3. Manufacturers of button cell batteries are not required to place a label on the product but shall place a label on the product packaging in accordance with 310 CMR 75.08(3)(d)3.
    - 4. Mercury-added products that are components of larger products shall be labeled as required by 310 CMR 75.08(3)(a) and (b). In addition:
      - a. If the mercury-added component label is not clearly visible to prospective purchasers and product users, then the product shall be labeled. Such label shall identify the component in sufficient detail so that it can be readily located for removal and proper end-of-life management.

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b. Supplemental information about the location of the mercury-added component and instructions on its removal and proper end-of-life management may be provided in the care and use manual, if the product has one.

c. Each new motor vehicle sold on or after May 1, 2008 shall contain a label listing the mercury-added product(s) that may be components in the vehicle. The label shall be affixed in a visible location on the doorpost of the driver's compartment (and not on the door itself) unless, in accordance with 310 CMR 75.08(5), a different location has been proposed by the manufacturer and accepted by another state that is a member of IMERC.

(d) Product Package Label

1. In addition to the label on the product required by 310 CMR 75.08(3)(b) and (c), the packaging for a mercury-added product shall be labeled, except when the product label can easily be viewed through the packaging, in order to inform prospective purchasers and product users, prior to purchase, that the product contains mercury and will need to be managed properly at the end of its useful life.

2. Packaging of mercury-added components offered for sale or distribution as replacement parts shall be labeled in accordance with 310 CMR 75.08(3)(a).

3. Labels affixed to packaging of mercury-added products must be printed, mounted, molded, engraved or otherwise affixed using materials that are sufficiently durable to remain legible under the conditions of the packaging's intended use for the expected life of the packaging. A label printed using 10-point font or larger is presumed to be legible.

4. If a manufacturer purchases a mercury-added product from another manufacturer and repackages the product, the manufacturer repackaging the product shall label the package in accordance with 310 CMR 75.08(3)(a).

(e) Where labels on the product or product packaging are not clearly visible and legible to prospective purchasers and product users prior to purchase, (e.g., in catalog sales transactions that occur over the internet, telephone or postal service), the manufacturer or retailer shall:

1. Clearly inform the purchaser that the product contains mercury and shall clearly specify that the mercury-added product be reused, recycled or properly disposed of as hazardous waste at the end of the product's useful life.

2. Such notice shall be provided as part of the product's description either in the catalog or on the website used to place the online order.

(4) Labeling Plans. Manufacturers of mercury-added products for which an IMERC state has not approved a labeling plan, or who are revising a labeling plan previously filed with the Department, shall submit a labeling plan to the Department that includes, at a minimum, the following information:

(a) Applicant's name, mailing address, telephone number, North American Industry Classification System, e-mail address, and web address.

(b) The name, mailing address, telephone number, and e-mail address of a contact person for the applicant.

(c) A detailed description of:

1. the products covered by the plan, label size, font size, label material, wording, location, and attachment method for each product and for the product packaging in accordance with 310 CMR 75.08(3);

2. how prospective purchasers and product users shall be notified that the product contains mercury, and that the product must be reused, recycled or properly disposed of as hazardous waste at the end of the product's useful life in accordance with 310 CMR 75.08(3); and

3. the certification required by 310 CMR 70.03.

(5) Consistency With Other States. The manufacturer of a mercury-added product may satisfy the requirements of 310 CMR 75.08 by labeling all units of the product sold or distributed in Massachusetts by effectively implementing in Massachusetts a labeling plan that has been approved by and implemented in another state that is a member of IMERC. In order for the Department to determine whether a product labeling plan approved by another state is being effectively implemented in Massachusetts, the manufacturer shall provide the following, upon the Department's request:

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- (a) A copy of the label as it appears on products and product packaging sold in Massachusetts;
- (b) A copy of the application or labeling plan approved by another state that is a member of IMERC; and
- (c) A copy of the letter approving the use of the label in another state that is a member of IMERC.

(6) Notification to Purchasers of Mercury-Added Lamps.

(a) In addition to the requirements of 310 CMR 75.08 for labeling mercury-added products, any person who sells mercury-added lamps, either directly or through a service contract, to the owner or manager of an industrial, commercial or office building, or to any person who replaces or removes from service outdoor lamps that contain mercury, or to an agent or contractor of such parties, shall clearly inform the purchaser in writing on the invoice or in a separate document that:

- 1. the lamps contain mercury;
- 2. mercury is a hazardous substance that is regulated by federal and state law; and
- 3. end-of-life lamps must be managed in accordance with 310 CMR 76.05.

(b) Recordkeeping Requirements

- 1. A person subject to 310 CMR 75.08(6)(a) shall keep records on-site that demonstrate compliance with this section.
- 2. Records shall be maintained for at least three years.

(c) Retail establishments that incidentally sell mercury-added lamps (i.e., fewer than 50 lamps per transaction) to the purchasers specified in 310 CMR 75.08(6)(a) are exempt from 310 CMR 75.08(6).

REGULATORY AUTHORITY

310 CMR 75.00: M.G.L. c.21C, §§ 4 and 6, and c.21H, §§ 6J and 6N.