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**REGULATIONS IMPLEMENTING THE  
MASSACHUSETTS MERCURY MANAGEMENT ACT  
(Chapter 190 of the Acts of 2006)**

**PHASE 2: MERCURY-ADDED PRODUCTS: SALE BANS, LABELING AND  
DISPOSAL PROHIBITION**

**Prepared by:  
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## **Regulations: Mercury in Products**

### **1. Amendments to 310 CMR 19.000**

#### **310 CMR 19.000: SOLID WASTE MANAGEMENT**

##### **19.006: Definitions**

Add a new definition after MEPA Process:

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. This term includes mercury-added components that are incorporated into larger products.

##### **19.130: Operation and Maintenance Requirements**

Add a new provision after 310 CMR 19.130(36):

(37) End-of-Life Mercury-Added Products. Mercury-added products that are hazardous waste pursuant to 310 CMR 30.000 shall be handled in accordance with 310 CMR 30.000. Mercury-added products that are not hazardous waste shall be handled in accordance with 310 CMR 76.05(2).

##### **19.207: Handling Facility Operation and Maintenance Requirements**

Add a new provision after 310 CMR 19.207(25):

(26) End-of-Life Mercury-Added Products. Mercury-added products that are hazardous waste pursuant to 310 CMR 30.000 shall be handled in accordance with 310 CMR 30.000. Mercury-added products that are not hazardous waste shall be handled in accordance with 310 CMR 76.05(2).

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### 2. Amendments to 310 CMR 74.00

#### 310 CMR 74.00 REMOVAL AND RECYCLING OF MERCURY-ADDED COMPONENTS IN VEHICLES

74.07(4) Determining Compliance with the Target Capture Rate for all Plans in 2008 and Subsequent Years.

- (a) For calendar years 2008 through 2017, the target capture rate shall be 90% of the mercury switches estimated to be available for recovery in each calendar year, as described in Table 1.
- (b) Programs that achieve a capture rate of 90% by December 31<sup>st</sup> of each calendar year, as determined by the Department, shall be deemed to be in compliance. Programs that do not achieve the 90% capture rate by December 31<sup>st</sup> of each calendar year shall be deemed to be not in compliance, and their proponents shall comply with the provisions of 310 CMR 74.06 as applicable.

Table 1: Estimate of Number of Mercury-added Vehicle Switches Available for Capture in Massachusetts by Year

Year	Estimate of the number of switches available	Number of switches needed to meet 90% capture rate
2008	74,000	66,600
2009	71,000	63,900
2010	67,000	60,300
2011	63,000	56,700
2012	59,000	53,100
2013	54,000	48,600
2014	50,000	45,000
2015	45,000	40,500
2016	41,000	36,900
2017	36,000	32,400

## Regulations: Mercury in Products

### 3. Amendments to 310 CMR 75.00

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

75.01: Purpose and Authority

75.02: Definitions

75.03: Applicability

75.04: Plans for Collecting and Recycling Mercury-Added Products

75.05: Public Education Plans for Mercury-Added Lamps

75.06: Ban on Sales of Mercury-Added Products

75.07: Exemptions from the Sales Ban

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

#### 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).

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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. This definition shall not apply to a “distributor” of motor vehicles as defined in section 1 of chapter 93B.

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 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. This term includes mercury-added components that are incorporated into larger products.

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 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 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.

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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
  - (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.

### **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;

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- (f) manometers;
- (g) pyrometers;
- (h) sphygmomanometers;
- (i) basal thermometers; or
- (j) esophageal dilators, bougie 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. This prohibition 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 (a) - (d) all apply, or that the condition described in (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;
  - 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.

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(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)–(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;

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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;
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.

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### **(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) 1-5;
- (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 this subsection 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,

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- (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.
  - 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

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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.

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(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:

- (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).

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### 4. New section 310 CMR 76.00

#### **310 CMR 76.00: DISPOSAL PROHIBITION OF MERCURY-ADDED PRODUCTS IN SOLID WASTE**

76.01: Purpose and Authority

76.02: Definitions

76.03: Applicability

76.04: Disposal Requirements

76.05: Management of End-of-Life Mercury-Added Products

#### **76.01: Purpose and Authority**

(1) The purpose of 310 CMR 76.00 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 disposal of mercury-added products in any manner other than by recycling, disposing as hazardous waste in accordance with M.G.L. c. 21C and 310 CMR 30.000, or using an alternative method approved by the Department.

(2) 310 CMR 76.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6, M.G.L. c. 21H, §§ 6I, 6L and 6N.

#### **76.02: Definitions**

The definitions found in 310 CMR 76.02 apply to, and are limited to, 310 CMR 76.00.

End of life mercury-added product means any mercury-added product that is no longer being used for its intended purpose and meets the definition of solid waste or hazardous waste.

Hazardous waste means Hazardous Waste, as defined in 310 CMR 30.010.

Mercury-added component means a component that contains mercury.

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. This term includes mercury-added components that are incorporated into larger products.

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.

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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.

Reclaimed or Reclamation means processing to recover a usable product, but does not include burning (*e.g.*, for energy recovery) or use constituting disposal.

Scrap Recycling Facility means a facility, location, device or unit where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting purposes.

Solid Waste means Solid Waste as defined in 310 CMR 16.02 and 310 CMR 19.006.

Solid Waste Collector means any person who collects solid waste from residential, business, commercial, industrial or other establishments.

### **76.03 Applicability**

(1) 310 CMR 76.00 applies, on or after May 1, 2008, to any person who generates (including the original consumer), collects or processes a mercury-added product for disposal and to any solid waste collector in Massachusetts.

(2) Compliance with 310 CMR 76.00 does not release any person from the need to comply with other applicable federal, state and local requirements.

### **76.04 Disposal Requirements**

(1) No person, household, school, healthcare facility, state or municipal government or business (including solid waste landfills, municipal waste combustors, and solid waste handling facilities) shall knowingly dispose of a mercury-added product in any manner other than by recycling, disposing as hazardous waste or using an alternate method approved by the Department.

(2) Alternative methods of disposal for mercury-added products and mercury-added components.

(a) Alternative methods of disposal for categories or types of mercury-added products and mercury-added components.

1. The department in its sole discretion may approve alternative methods of disposal for categories or types of mercury-added products and components. Such approvals may be made in response to requests in writing that describe:

- a. why an alternative to mercury reclamation or disposal as hazardous waste is necessary;
- b. the alternative method proposed;
- c. the environmental impacts of the proposed method; and
- d. a description of the measures that will be implemented to minimize exposure of people and the environment to mercury.

2. In approving an alternative method of disposal, the department will consider the following:

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- a. the ability to reclaim the mercury from the product or component in a cost efficient manner;
  - b. the ability to safely contain and transport the product or component; and
  - c. the existence of a manufacturer's plan for collecting the product or component, in accordance with 310 CMR 75.04, and reclaiming its mercury content or otherwise preventing the mercury from entering the waste stream.
3. List of Approved Alternative Methods of Disposal for Categories of Mercury-added Products and Mercury-added Components
- a. Accidentally broken mercury lamps that are excluded from the hazardous waste regulations pursuant to 310 CMR 30.104(2)(g) [household waste exclusion] may be disposed of as solid waste.

(b) Alternative methods of disposal for individual mercury-added products and mercury-added components on a case-by-case basis.

1. The Department may also issue approvals of alternative methods for disposal of individual mercury-added products or mercury-added components on a case-by-case basis, in response to requests submitted in writing. Any such requests shall include at a minimum:
  - a. why an alternative to mercury reclamation or disposal as hazardous waste is necessary;
  - b. the alternative method proposed;
  - c. an implementation schedule;
  - d. the environmental impacts of the proposed method; and
  - e. a description of the measures that will be implemented to minimize exposure of people and the environment to mercury.
2. The person requesting an alternative method for disposal of individual mercury-added products or mercury-added components shall publish a legal notice in a Massachusetts newspaper of general circulation and the Massachusetts Environmental Monitor. The legal notice shall include:
  - a. A summary of the request;
  - b. 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
  - c. Instructions for obtaining a complete copy of the written request for an alternative method of disposal.
3. 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.

(3) A solid waste collector shall refuse to collect the contents of a solid waste container that the solid waste collector knows or reasonably should know contains one or more mercury-added products unless such solid waste is collected for the purpose of being reused, reclaimed or properly disposed of as hazardous waste or otherwise managed to ensure that the mercury does not become mixed with other solid waste or wastewater.

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(4) Mercury from mercury-added products shall not knowingly be discharged into water, wastewater treatment or wastewater disposal systems unless it is done in compliance with applicable federal, state and local requirements.

### **76.05: Management of End-of-Life Mercury-Added Products**

(1) End of life mercury-added products that are hazardous waste pursuant to 310 CMR 30.000 shall be handled in accordance with 310 CMR 30.000.

(a) End of life mercury-added products that are universal wastes pursuant to 310 CMR 30.1000 may be handled in accordance with 310 CMR 30.1000.

(b) Mercury-added components that are removed from larger products and that are classified as universal waste may be handled in accordance with 310 CMR 30.1000.

(2) End of life mercury-added products that are not hazardous waste shall be managed in accordance with an alternative method approved by the Department pursuant to 310 CMR 76.04(2) or in accordance with the following requirements:

(a) separated from solid waste;

(b) handled and stored in a manner that minimizes breakage, prevents an unpermitted discharge of mercury to air, land, water or other natural resources of Massachusetts and results in no public nuisance;

(c) transported by either a licensed hazardous waste transporter or by common carrier with a bill of lading; and

(d) transferred to a permitted hazardous waste recycling facility, licensed hazardous waste facility, a facility that consolidates shipments of mercury-added products or mercury-added components before being shipped off-site for reclamation, or if shipped out of state, a facility that is authorized to reclaim mercury from mercury-added products.

(3) No person shall knowingly send a multi-component product that contains mercury to a scrap recycling facility or a facility for further processing or recycling without first removing and managing, or arranging for the removal and appropriate management, of the mercury-added product or products prior to crushing, unless such facility agrees, in writing, to be responsible for removing such product or products and recycling them or disposing of them as hazardous waste.