



Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

fact sheet

Manufacturer Collection & Recycling Plans for Mercury-Added Products

As of March 3, 2008, most mercury-added products cannot be sold, offered for sale or distributed in Massachusetts unless the manufacturer of that product has filed a Collection and Recycling Plan (Plan) with the Massachusetts Department of Environmental Protection (MassDEP). This requirement was established by the Massachusetts Mercury Management Act (Chapter 190 of the Acts of 2006) and 310 CMR 75.00 – Collection and Recycling of Mercury-Added Products.

Plans must be filed with MassDEP and implementation must start within 45 days of their submittal. Manufacturers must also certify annually that they are implementing the Plan and report on its success.

What is a Collection and Recycling Plan?

A Collection and Recycling Plan describes a comprehensive manufacturer-funded program for collecting mercury-added products at the end of their useful life and recycling the mercury. The plan needs to explain how the end of life mercury-added product(s) will be collected from consumers and transported to a facility that is licensed to recycle the mercury. Plans may use existing collection systems or implement new collection systems.

What are the goals of a Collection and Recycling Plan?

The Massachusetts Mercury Management Act is designed to keep mercury out of our trash where it may be released into the environment. Plans must provide the users of the end of life mercury-added product(s) with a means of complying with the statutory prohibition on the disposal of these products in trash. MassDEP regulations establish target recycling rates by which a Plan's success will be measured. These are described in Table 1 below.

Calendar Year	Target Recycling Rate
2008	30 percent
2009	40 percent
2010	50 percent
2011	75 percent
Each subsequent year	75 percent

PLEASE NOTE: For all mercury-added products first sold, offered for sale or distributed **AFTER** March 3, 2008, the targeted recycling rate is 75 percent, which must be achieved by the end of the first full calendar year of the product's sale or distribution in Massachusetts.

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What products need to have Plans?

The statute defines “mercury-added products” as products to which the manufacturer intentionally introduces mercury. These include but are not limited to: thermostats, electric switches, medical or scientific instruments, electric relays or other electrical devices. Two groups of “mercury-added products” are exempt from the collection and recycling plan requirement.

Specific mercury-added products (see M.G.L. c. 190, § 6J)

- Motor vehicles and mercury-added components in motor vehicles,
- Refurbished medical equipment,
- Button cell batteries that contain mercury,
- Products where the only mercury is in one or more removable button cell batteries, and
- Products where the only mercury is in one or more mercury-added lamps,

Products that contain mercury but are not classified as “mercury-added products” by the Massachusetts Mercury Management Act

- Formulated products where the mercury is intended to be totally consumed in use, such as reagents, cleaning products, cosmetics, pharmaceuticals and other laboratory chemicals,
- Products made with mercury that is solely from coal ash,
- Products incorporated into equipment used to manufacture semi-conductor devices, and
- Elemental mercury in pre-capsulated form used by dental practitioners in compliance with amalgam wastewater and recycling regulations for dental facilities

Mercury-added products that are no longer sold or distributed in Massachusetts do not need to have manufacturer supported Collection and Recycling Plans (even though the products may still be in use). The end user of these products is responsible for recycling the product at the end of its useful life or managing it as hazardous waste.

If the manufacturer stops selling or distributing a mercury-added product by September 30, 2008, or removes the mercury from the product by that date, then no Plan is required. If the manufacturer plans to either stop selling or distributing a mercury-added product, or to remove mercury from the product after this date, the manufacturer will need to establish and implement a Collection and Recycling Plan until the product is off the market.

Please note that Massachusetts’s statute prohibits the sale of the following products¹ after May 1, 2008:

Barometers	Hydrometers	Basal thermometers
Flow meters	Manometers	Pyrometers
Hygrometers	Sphygmomanometers	Psychrometers
Esophageal dilators, bourgie tubes or gastrointestinal tubes		

¹ Section 6D of Chapter 190 of the Acts of 2006 provides an exemption from the sales ban for mercury-added products that are federally or medically required.

In addition, as of May 1, 2009, mercury switches and relays may not be sold or distributed in Massachusetts.²

Who needs to submit a Collection and Recycling Plan?

Any manufacturer that sells, offers for sale or distributes a mercury-added product in Massachusetts that is not exempt (as described above) after March 3, 2008 is required to submit a Collection and Recycling Plan, including anyone who:

- Manufactures a mercury-added product in the United States, or
- Manufactures a mercury-added product in a foreign country and has a US presence or assets, or
- Imports any mercury-added product into the US or is the first US distributor of a mercury-added product that is manufactured in a foreign country.

A Plan may be submitted and implemented by a trade association or industry group on behalf of a specific group of manufacturers. If a manufacturer is a member of a group or association of manufacturers that has already submitted a Collection and Recycling Plan for their mercury-added product, and the manufacturer wishes to use this option, that manufacturer must certify to MassDEP that a Plan is being implemented for its product, and identify the group or association that submitted the Plan.

If you stop selling or distributing a mercury-added product in Massachusetts after September 30, 2008, then your plan will need to describe how the phase out of that product or its sales in Massachusetts will be implemented (see “Guidance and Instructions for Preparing a Manufacturer’s Collection and Recycling Plan for Mercury-Added Products”) and how those end-of-life products will be collected and recycled up until the point when the phase out is complete.

When do I need to submit a Collection and Recycling Plan?

Plans must be filed with the Department by September 30, 2008. If you are going to sell or distribute a new mercury-added product in Massachusetts (one that is not currently on the market), your Collection and Recycling Plan must first be filed with the Department and implemented with the start of your sale or distribution of that product.

What information needs to be in the Plan?

See “Guidance and Instructions for Preparing a Manufacturer’s Collection and Recycling Plan for Mercury-Added Products” at:

<http://www.mass.gov/dep/service/online/erpforms.htm#products>

How long must my Collection & Recycling Program be in place?

A program must be in place as long as the mercury-added product is sold, offered for sale or distributed in Massachusetts.

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² Section 6E of Chapter 190 of the Acts of 2006 allows MassDEP to establish a process for obtaining an exemption from the sales ban for any of the specific mercury products covered. MassDEP has proposed a process in draft regulations issued for public comment in 2008, and expects to promulgate final rules in Spring 2009.

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What do I need to do after I've filed my Plan with MassDEP?

- Start implementation of the Plan within 45 days of filing it with MassDEP;
- Certify annually that the Plan was implemented during the previous calendar year and report on the success of collection and recycling efforts;
- Certifications are due by March 31 each year and must be submitted on the form available from MassDEP's web site at <http://www.mass.gov/dep/service/online/erpforms.htm> and
- File an Update to the Plan if the original one did not meet the target recycling rate in the previous calendar year, or if you want to improve the program.

What information is required in the annual certifications?

The annual certifications will require reporting on collection and recycling of your mercury-added products during the previous calendar year. If you submitted your Plan during the middle of the year, your annual certification will cover the period in which you operated the program. Information required in the annual certifications includes:

- The number of each of your mercury-added product(s) sold, offered for sale, or distributed in Massachusetts during the year covered by the certification,
- The rolling average life expectancy of each mercury-added product (i.e. the average life expectancy of each product across all years of manufacture updated for each year the product is collected and recycled),
- The estimated number of each mercury-added product in Massachusetts expected to reach the end of its useful life during the certification year ("NumHgProd_{expire}") and thereby become available for collection,
- The number of each mercury-added product collected in Massachusetts and recycled during the certification year ("NumHgProd_{collected&recycled}"), and
- The actual recycling rate of each mercury-added product for the certification year: $\text{Actual Recycling Rate} = (\text{NumHgProd}_{\text{collected\&recycled}}) / (\text{NumHgProd}_{\text{expire}})$
- The difference between the actual recycling rate and the applicable target recycling rate, and
- Where the actual recycling rate fell short of its target, identify measures that you will take to improve your recycling program in the coming year.

Please Note: For Plans submitted by an individual manufacturer, the target recycling rate is based on that manufacturer's Massachusetts sales data and the average life expectancy of the product. For Plans submitted by a trade association or industry group on behalf of a group of manufacturers, the target recycling rate is based on the group's Massachusetts sales data and the average life expectancy of the product across all participating manufacturers. Please note that the annual certification will require reporting of sales data from each participating manufacturer.

The certification will also ask you to state that you maintain records necessary to document the performance of your Plan (see Collection and Recycling Program Design in "Guidance and Instructions for Preparing a Manufacturer's Collection and Recycling Plan for Mercury-Added Products") for at least five years or from the date of your first certification.

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What will MassDEP do with your Plan to ensure compliance?

MassDEP will not approve Plans prior to their implementation. However, the Department will periodically audit a number of Plans to determine whether the programs are achieving the performance standards. When the Department finds that a Collection and Recycling Plan is not being implemented or does not comply with the regulations, the Department may take enforcement action that can include financial penalties or restricting the sales of the product in the state.

What information will MassDEP share about my Collection and Recycling Plan?

To inform the public about opportunities to recycle specific types of mercury products, MassDEP is posting information from each manufacturer's Collection and Recycling Plan on its website. The information that is posted includes: the name of each manufacturer that has submitted a Plan, the name and/or type of products that are covered under the Plan, and the name of the contact person for each manufacturer. MassDEP will not post information that manufacturers ask the agency to hold "confidential" in accordance with the procedures established in its regulations (310 CMR 3.00). If you want to file a request that MassDEP hold some or all of the information contained in your Plan, please contact Jordan Macy to obtain the form that you need to file to make a formal request.

When will I need to file an Update to a Collection and Recycling Plan?

Two conditions exist which require a Collection and Recycling Plan Update to be submitted to MassDEP:

1. Your company changed one or more provisions of the Collection and Recycling Plan on file with MassDEP, or
2. Your company began manufacturing, selling, offering for sale, or distributing one or more types of mercury-added products not already covered by the Collection and Recycling Plan on file with MassDEP

To submit an Update to your Collection and Recycling Plan on file with MassDEP, provide a detailed description of the provision(s) you are updating, the reason(s) for the update, and the date on which the update will be fully implemented and submit it to the Department at the address on the certification form.

Are there other Massachusetts requirements for manufacturers of mercury-added products?

The Massachusetts Mercury Management Act requires that manufacturers of each mercury-added product sold or distributed in the Commonwealth notify MassDEP. The Department implements this requirement through an Interstate Mercury Education and Recycling Clearinghouse (IMERC), which was established by a number of states that have adopted similar laws.

IMERC is a non-profit organization created by the Northeast Waste Management Officials' Association. It serves as a single point of contact for industry and the public for information on mercury-added products and member states' mercury education and reduction programs.

How do I notify IMERC for my mercury-added product?

IMERC notifications must be filed every three years (2001, 2004, 2007, 2010, etc). Visit the IMERC website to learn how to notify and download a notification form:

<http://www.newmoa.org/prevention/mercury/imerc/plnotification.cfm>

For More Information:

MassDEP

- <http://www.mass.gov/dep/service/online/erpforms.htm>
- Contact Jordan Macy at 617-292-5805 or email Jordan.Macy@state.ma.us

IMERC

- <http://www.newmoa.org/prevention/mercury/imerc.cfm>
- Contact Adam Wienert at 617-367-8558 x307 or email awienert@newmoa.org

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