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310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Section

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74.01: Purpose and Authority

The purpose of 310 CMR 74.00 is to protect public health, safety, welfare and the environment by implementing the Mercury Management Act (St. 2006, c. 190). 310 CMR 74.00 prohibit the sale of mercury-added vehicle switches, establishes requirements for the removal of mercury-added vehicle switches and other components that contain mercury before a vehicle is crushed or shredded and requires a performance-based compliance certification in compliance with 310 CMR 70.00.

310 CMR 74.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6, and M.G.L. c. 21H, §§ 6C and 6N.

74.02: Definitions

The definitions found in 310 CMR 74.02 apply and are limited to 310 CMR 74.00.

Automobile Dealer or Vehicle Dealer means any person who, in the ordinary course of his business, is engaged in the business of selling motor vehicles to consumers or other end users pursuant to a franchise agreement and who is required to obtain a Class 1 or Class 2 license pursuant to the provisions of M.G.L. c. 140, §§ 58 and 59.

Automobile Manufacturer or Vehicle Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which is last in the production or assembly process of a new vehicle that uses mercury-added components, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle; however, if a company from whom an importer or domestic distributor purchases the merchandise has a U.S. presence or assets, that company shall be considered to be the manufacturer and the distributor as defined in M.G.L. c. 93B shall not be considered to be the manufacturer.

Department means the Massachusetts Department of Environmental Protection.

End-of-life Vehicle means any vehicle, which is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of dismantling, recycling or disposal.

Mercury-added Component means a component that contains mercury, including but not limited to a mercury-added vehicle switch, mercury high intensity discharge (HID) headlamp, or fluorescent lamps.

Mercury-added Vehicle Switch means a mercury-added component installed in a motor vehicle that opens or closes an electrical circuit or gas valve, including, but not limited to, those used in light switches and antilock braking systems.

Motor Vehicle (See "Vehicle").

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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 of Massachusetts.

Scrap Recycling Facility means a facility, location, device or unit, including, but not limited to, scrap recyclers and vehicle shredders, 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.

Vehicle or Motor Vehicle means a vehicle propelled by an internal combustion engine or an electric motor, such as an automobile, van, truck, motorized construction equipment, motorized recreational vehicle, motorcycle or forklift.

Vehicle in Commerce means any vehicle offered for sale by a vehicle dealer, or duly registered in Massachusetts or in the United States to be operated on public roads and highways.

Vehicle Recycler means any individual or entity engaged in the business of acquiring, dismantling, crushing (including partial crushing) or destroying six or more vehicles in a calendar year for the primary purpose of reselling their parts. For the purposes of 310 CMR 74.00, an individual or entity owning or operating a mobile or stationary crushing unit is considered a vehicle recycler.

74.03: Applicability

- (1) 310 CMR 74.00 is applicable to automobile dealers, automobile manufacturers, scrap recycling facilities that accept end-of-life vehicles, and vehicle recyclers.
- (2) Compliance with 310 CMR 74.00 does not release an automobile dealer, automobile manufacturer, scrap recycling facility, or vehicle recycler from the need to comply with other applicable state, federal and local requirements.
- (3) Certification Form. Each certification required by 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with the standards established by 310 CMR 70.00 and 74.00. The certification form may also address compliance with other applicable standards promulgated by the Department.

74.04: Requirements for the Removal of Mercury-added Components Before Crushing

- (1) No person shall crush, cause to be crushed or otherwise arrange for an end-of-life vehicle to be crushed without first having removed any mercury-added components, including but not limited to, mercury-added vehicle switches.
- (2) 310 CMR 74.04(1) shall not apply to:
 - (a) mercury-added components made inaccessible due to significant damage to the vehicle in the area surrounding the component's location, or
 - (b) mercury-added lamps used to backlight the vehicle's dashboard and other electronic devices (due to the inaccessibility of these lamps and the resulting potential for mercury to be released to the environment if a lamp is broken while it is being removed).
- (3) A vehicle recycler shall, before delivering or selling vehicle bodies to scrap recycling facilities, certify in writing to the scrap recycling facility, in a form approved by the department, that all mercury-added vehicle switches have been removed from the vehicle bodies in the shipment.
 - (a) Such certification shall be provided on a bill of lading, on stickers affixed to the vehicle bodies, or in another manner approved by the Department.
 - (b) Certifications provided on a bill of lading shall contain:
 1. A statement that: "I certify that mercury-added switches have been removed from the vehicles in this shipment in compliance with 310 CMR 74.04.;" and

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2. The signature of the corporate official making the certification (which may be preprinted or signed for each bill of lading) and the typed or printed name of such corporate official and his or her title.
 - (c) Certification provided on stickers affixed to the vehicle bodies shall contain:
 1. A statement that: "Mercury-added switches have been removed from this vehicle in compliance with 310 CMR 74.04."; and
 2. The signature of the corporate official making the certification (which may be preprinted or signed in "permanent" ink) and the typed or printed name of such corporate official and his or her title.
 - (d) Written certification may be provided in another manner, if a proposal is submitted to the Department and approved prior to use.
- (4) A scrap recycling facility may agree to accept an end-of-life vehicle containing mercury-added components that has not been flattened, crushed or baled provided that the scrap recycling facility removes the mercury added components.
- (5) Any person removing a mercury-added component from a vehicle shall manage the component in accordance with the provisions of 310 CMR 30.000, either as a hazardous waste or a universal waste, except for mercury-added components that are not switches (*e.g.* high intensity discharge (HID) lamps) and that are still in commerce.

74.05: Prohibition on the Sale of Mercury-added Switches in Vehicles

- (1) No person shall sell, offer to sell or distribute a vehicle manufactured on or after January 1, 2007, containing mercury-added vehicle switches;
- (2) No person shall sell or offer to sell or distribute a mercury-added vehicle switch for new installation in a vehicle;
- (3) If a mercury-added switch in a vehicle in commerce requires replacement, it shall be replaced with a non-mercury alternative, if such an alternative is commercially available. If the mercury-added vehicle switch requiring replacement is a component of an anti-lock braking system or an airbag, replacement with a non-mercury alternative shall not be required. The commercial availability of a non-mercury vehicle switch for a particular vehicle may be determined by consulting information published (electronically on internet web pages and on paper) by the Department, vehicle manufacturers and/or their trade associations, and the automotive industry trade press.

74.06: Plans for Proper Removal, Recovery, and Recycling of Mercury-added Switches from End-of-life Vehicles

- (1) No later than April 30, 2008, every vehicle manufacturer shall, individually or as a group, or through a trade association, develop, file with the department, and commence implementing the plan required by M.G.L. c. 21H, § 6C(f) and (g) for the removal, recycling, transportation, storage, and containment of mercury-added switches from end-of-life vehicles in accordance with the regulations at 310 CMR 30.000 as either a hazardous waste or universal waste. Such plans shall, to the extent practicable, use the existing end-of-life vehicle recycling infrastructure, and shall:
 - (a) include a method for collecting and transporting switches after they are removed from vehicles;
 - (b) identify or establish and use facilities where switches may be received and accepted;
 - (c) ensure that the mercury from all recovered switches is recycled in accordance with 310 CMR 30.000;
 - (d) provide information, training, technical assistance to vehicle recyclers, scrap recyclers and all other persons involved in removing mercury-added vehicle switches from motor vehicles;
 - (e) include a program which is designed to achieve a mercury-added vehicle switch capture rate of at least 90%, based on the capture rate described in 310 CMR 74.07;

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- (f) describe the financing system through which the total cost of removal, collection, record keeping and recovery of mercury-added vehicle switches shall be borne by the vehicle manufacturer. Such financing system shall include, but not be limited to, a payment of \$3 for every mercury-added vehicle switch removed by a vehicle recycler or scrap recycling facility; and
 - (g) describe any reasons for not using the existing end-of-life vehicle recycling infrastructure.
- (2) The plan described in 310 CMR 74.06(1) shall not be required from:
- (a) a vehicle manufacturer that is participating in a plan being implemented in accordance with the requirements of M.G.L. c. 21H, § 6C(n), where such plan is demonstrated to achieve a capture rate that complies with the requirements of 310 CMR 74.07. In the event that a plan fails to achieve the specified capture rate in any year, as determined by the Department, the vehicle manufacturer shall submit to the Department within 30 days of such determination a plan that meets the requirements of 310 CMR 74.06(1); or
 - (b) a vehicle manufacturer that never installed mercury-added vehicle switches in its vehicles. To qualify for this exemption, such manufacturer shall submit a one-time certification of non-applicability in compliance with the requirements of 310 CMR 74.09(1)(c) to the Department by April 30, 2008.
- (3) Nothing in 310 CMR 74.06 shall prohibit a vehicle manufacturer from substituting a new plan in accordance with, and subject to, the requirements of 310 CMR 74.06(4).
- (4) If a vehicle manufacturer's plan under 310 CMR 74.06(1) has been in effect for at least one year, the manufacturer may submit an alternate plan to the Department for approval. The alternate plan shall meet the following criteria:
- (a) The alternate plan has been in effect for at least one year in another state and can be implemented statewide;
 - (b) The alternate plan has achieved at least a 90% capture rate in that state; and
 - (c) The alternate plan, to the extent practicable, uses the existing end-of-life vehicle recycling infrastructure in Massachusetts.
- (5) When considering whether to approve an alternate plan pursuant to 310 CMR 74.06(4), the Department shall take into consideration the environmental impact in Massachusetts and the economic impact on Massachusetts businesses. To do so, the Department shall seek public comment on any plan submitted pursuant to 310 CMR 74.06(4).
- (a) The Department shall publish a legal notice in Massachusetts newspapers of general circulation which includes a summary of the plan and contact information on how and where to submit comments;
 - (b) The Department shall notify Massachusetts vehicle recyclers and scrap recycling facilities in writing of the plan and public comment opportunity;
 - (c) The public comment period shall be no less than 21 calendar days.
- (6) Approval of the alternate plan pursuant to 310 CMR 74.06(4) by the Department shall release the vehicle manufacturer from the obligations of its original plan, pursuant to 310 CMR 74.06(1), starting on the effective date of the alternate plan. Upon receipt of approval of an alternate plan, the vehicle manufacturer must notify all vehicle recyclers and scrap recycling facilities of the approval, the plan's provisions and its effective date.
- (7) An alternate plan may include an agreement between automobile manufacturers and automobile dealers to remove switches before the vehicle reaches its end-of-life.

74.07: Measuring Recycling of Mercury-added Vehicle Switches

- (1) The success of any plan designed to remove, collect, and recover mercury-added switches from end-of-life vehicles that is implemented in compliance with M.G.L. c. 21H, § 6C shall be measured by a capture rate that compares the actual number of mercury vehicle switches recovered and transported to authorized recycling facilities in each calendar year to the total number of mercury-added vehicle switches estimated to be available for removal from end-of-life vehicles in Massachusetts in that calendar year.

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(2) The vehicle manufacturer shall calculate the capture rate for each calendar year in which a plan established pursuant to 310 CMR 74.06 is implemented, and shall report that rate to the Department in compliance with the requirements of 310 CMR 74.09(1)(b).

(3) Determining Compliance with the 2007 Target Capture Rate for Alternative Plans Submitted Pursuant to M.G.L. c. 21H, § 6C(n):

(a) For calendar year 2007, the target capture rate shall be 50% of 92,500 mercury-added vehicle switches estimated to be available for collection (or 46,250 switches).

(b) Plans that achieve the target capture rate of 50% by December 31, 2007, as determined by the Department, shall be deemed to be in compliance. Plans that do not achieve this target capture rate by December 31, 2007 shall be deemed to be not in compliance, and their proponents shall comply with the provisions of 310 CMR 74.06 as applicable.

(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 310 CMR 74.07(4)(b): *Table 1*.

(b) Programs that achieve a capture rate of 90% by December 31st 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 31st 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

74.08: Recordkeeping

Parties subject to 310 CMR 74.00 shall keep records on-site for five years that demonstrate compliance with 310 CMR 74.00, and the supporting information that the facility relied upon to file the certification(s) required by 310 CMR 74.00, and may be required to submit said records upon request of the Department.

74.09: Submittal of Compliance Certifications and Reports to the Department

(1) The following certifications shall be submitted to the Department pursuant to 310 CMR 70.03(1)(g)9.:

(a) Scrap recycling facilities and vehicle recyclers subject to 310 CMR 74.00 shall submit to the Department a compliance certification by March 1st of each year. The certification shall be on a form prescribed by the Department, and shall address compliance with the requirements of 310 CMR 74.00 during the previous calendar year (ending December 31st). The certification shall contain the following information, at a minimum:

1. Certification that all mercury-added components required to be removed pursuant to 310 CMR 74.00 were removed from vehicles during the calendar year covered and will continue to be removed during the coming year;

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2. Certification that removed mercury-added components have been managed in accordance with the requirements of 310 CMR 74.00;
 3. The number of mercury switches removed and shipped off-site for recycling.
 - (b) (for vehicle recyclers) Certification that the vehicle recycler has provided the certification required by 310 CMR 74.04(3) to the scrap recycling facility(ies) to which it shipped vehicle bodies during the period covered by the certification.
- (2) No later than March 1, 2008, and March 1st of each subsequent year, each automobile manufacturer shall certify to the Department, in writing on a form prescribed by the Department, that it is implementing the collection and recycling plan in accordance with 310 CMR 74.06. Such certification shall meet the requirements of 310 CMR 70.03, and shall include but not be limited to the following:
- (a) the number of mercury-added vehicle switches collected and recycled during the previous calendar year;
 - (b) the actual capture rate achieved during the calendar year covered by the certification, pursuant to 310 CMR 74.07(2); and
 - (c) where and how the switches were stored, recycled or otherwise disposed of.
- (3) By April 30, 2008, any vehicle manufacturer that never installed mercury-added vehicle switches shall submit a non-applicability certification to the Department, pursuant to 310 CMR 74.06(2)(b), on a form prescribed by the Department.

REGULATORY AUTHORITY

310 CMR 74.00: M.G.L. c. 21C, §§ 4 and 6 and c. 21H, §§ 6C and 6N.