

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 77.00: COLLECTION AND RECYCLING OF MERCURY-ADDED THERMOSTATS

Section

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77.01: Purpose and Authority

(1) The purpose of 310 CMR 77.00 is to protect public health, safety, welfare and the environment by implementing M.G.L. Chapter 21H, § 6J1/2 and St. 2014, c. 196 § 5. 310 CMR 77.00 requires manufacturers that distributed, offered for final sale, or sold at final sale mercury-added thermostats, to establish a system to collect, transport, and properly manage out-of-service mercury-added thermostats, including recycling of such thermostats, in accordance with M.G.L. c. 21C and 310 CMR 30.000. 310 CMR 77.00 establishes requirements for collection and proper management of mercury-added thermostats.

(2) 310 CMR 77.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6 and M.G.L. c. 21H, § 6J1/2 and 6N; and St. 2014, c. 196, § 5.

77.02: Definitions

The definitions found in 310 CMR 77.02 apply to, and are limited to, 310 CMR 77.00.

Collection Site means a location for the collection of out-of-service mercury-added thermostats which is either part of a manufacturer sponsored collection program established pursuant to 310 CMR 77.04 or a location where mercury-added thermostats are collected and managed in accordance with applicable federal and state laws governing hazardous waste and universal waste, including 310 CMR 30.000.

Contractor means a person engaged in the business of installation, service or removal of heating, ventilation, and air conditioning components.

Department means the Massachusetts Department of Environmental Protection.

Local governmental authority means a household hazardous waste facility, a solid waste management agency, an environmental management agency, or a department of public health.

Manufacturer means an organization or entity that sells or sold a mercury-added thermostat under a brand or label it owns or is or was licensed to use a brand or label for a mercury-added thermostat produced by other suppliers.

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, or other buildings, but excluding thermostats used to sense and control temperature as part of a manufacturing process.

Person means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the federal government or any agency or subdivision thereof, a state, municipality, commission, political subdivision of a state or any interstate body.

Properly Manage Out-of-Service Mercury-Added Thermostats means to recycle or manage as a hazardous waste or universal waste in compliance with 310 CMR 30.000.

Qualified contractor means a person engaged in the business of installation, service, or removal of heating, ventilation, and air conditioning components who employs seven or more service technicians or installers or who is located in an area outside an urban area, as defined by the United States Bureau of Census.

Solid Waste Facility means a site or works, and other appurtenances thereto, which is, has been, or will be used for the handling, storage, transfer, processing, treatment or disposal of solid waste, as defined in 310 CMR 19.006, including all land, structures and improvements which are directly related to solid waste activities.

Thermostat retailer means a person that sells thermostats of any kind directly to homeowners, other non-professionals, or contractors through any selling or distribution mechanism, including, but not limited to, sales using the internet or catalogs.

Thermostat wholesaler means a person engaged in the distribution and wholesale sale of thermostats and other heating, ventilation, and air conditioning components to contractors who install heating, ventilation, and air conditioning components.

77.03: Applicability

(1) 310 CMR 77.00 applies to:

- (a) Manufacturers that distributed, offered for final sale, or sold at final sale any mercury-added thermostat within the Commonwealth of Massachusetts;
- (b) Thermostat wholesalers;
- (c) Thermostat retailers;
- (d) Contractors;
- (e) Qualified contractors;
- (f) Solid waste haulers;

- (g) Operators of solid waste facilities; and
 - (h) Any person who generates (including the original consumer), who generates, collects, processes, or manages a mercury-added thermostat for disposal in Massachusetts.
- (2) Compliance with 310 CMR 77.00 does not release manufacturers, wholesalers, retailers, contractors, qualified contractors, solid waste haulers, operators of solid waste facilities or other persons from the need to comply with other applicable state, federal and local requirements.

77.04: Collection of Mercury-Added Thermostats

- (1) Manufacturers that distributed, offered for final sale, or sold at final sale, any mercury-added thermostat within the Commonwealth shall, individually or collectively:
- (a) Establish a system to collect, transport, and properly manage out-of-service mercury-added thermostats, including recycling, from all collection sites established pursuant to 310 CMR 77.04. Mercury-added thermostat manufacturers shall not charge a fee or other charge for this service, except a one-time program administration fee not to exceed \$25 per collection container provided pursuant to 310 CMR 77.04(1)(b).
 - (b) Make collection containers available to thermostat wholesalers, thermostat retailers, qualified contractors, and local government authorities within the Commonwealth that request them. Such containers shall be accompanied by information on proper management of mercury-added thermostats as a hazardous waste or universal waste, in accordance with Department regulations at 310 CMR 30.000.
 - (c) Submit an annual report to the Department by March first of every year of the program, on a form prescribed by the Department, that shall include at a minimum:
 - 1. The number of mercury-added thermostats collected by the manufacturer(s) in the previous calendar year, and
 - a. The number disposed, and
 - b. The number from which the facility separated and recovered the components and mercury contained therein.
 - 2. The estimated total amount of mercury contained in the thermostat components collected and recycled by the manufacturer(s) in the previous calendar year;
 - ~~a. The amount of mercury disposed, and~~
 - ~~b. The amount of mercury made available for reuse~~
 - 3. An evaluation of the effectiveness of the manufacturer(s)' collection program including, but not limited to, ~~the number of persons using each of the manufacturer(s)' collection sites and~~ an estimate of how many out-of-service mercury-added thermometers have yet to be collected;
 - 4. An accounting of the administrative costs of administering the collection and recycling program; and
 - 5. A list of all locations where collection containers were provided by the manufacturer(s), including locations that received collection containers

during the calendar year. The list shall contain information including, but not limited to:

- a. Location address,
 - b. The date each location received its mercury-added thermostat collection container, and
 - c. The number of mercury-added thermostats collected from each location.
6. A description of the education and outreach efforts conducted pursuant to 310 CMR 77.04(1)(d).

(d) Conduct education and outreach to:

1. Promote the availability of collection containers to:
 - a. Thermostat wholesalers,
 - b. Thermostat retailers,
 - c. Qualified contractors, and
 - d. Units of local government in the Commonwealth.
2. Promote the importance of proper mercury-added thermostat management, mercury-added thermostat collection opportunities, and the availability of the manufacturer sponsored collection program to:
 - a. Contractors,
 - b. Homeowners, and
 - c. Persons.
3. Provide signage to participating collection sites that can be prominently displayed to promote the collection and recycling of out-of-service mercury-added thermostats.
4. Provide written materials or templates of written materials for reproduction by thermostat wholesalers and thermostat retailers to provide to customers at the time of purchase or delivery of thermostats. These materials shall include, but not be limited to, the following information:
 - a. The importance of properly managing out-of-service mercury-added thermostats; and
 - b. Mercury-added thermostat collection opportunities.

(2) Thermostat wholesalers shall:

- (a) Not offer for final sale, sell at final sale, or distribute any thermostat of a manufacturer that is not in compliance with 310 CMR 77.00.
- (b) Not offer for final sale, sell at final sale, or distribute any thermostat unless that thermostat wholesaler acts as a collection site for mercury-added thermostats.
 1. To qualify as a collection site, the thermostat wholesaler shall either:
 - a. Collect and manage mercury-added thermostats in accordance with applicable federal and state laws governing hazardous waste and universal waste, including 310 CMR 30.000; or
 - b. Participate as a collection site in a manufacturer sponsored collection program established pursuant to 310 CMR 77.04.
 2. All collection sites shall provide visible signage identifying the location as a mercury-added thermostat collection site.

(3) Thermostat retailers shall:

- (a) Not offer for final sale, sell at final sale, or distribute any thermostat of a manufacturer that is not in compliance with 310 CMR 77.00.
 - (b) Provide visible signage identifying the location as a mercury-added thermostat collection site, if acting as a collection site.
 - 1. To qualify as a collection site, the thermostat retailer shall either:
 - a. Collect and manage mercury-added thermostats in accordance with applicable federal and state laws governing hazardous waste and universal waste, including 310 CMR 30.000; or
 - b. Participate as a collection site in a manufacturer sponsored collection program established pursuant to 310 CMR 77.04.
- (4) Qualified contractors acting as collection sites shall provide visible signage identifying the location as a mercury-added thermostat collection site. To qualify as a collection site, qualified contractors shall either:
- (a) Collect and manage mercury-added thermostats in accordance with applicable federal and state laws governing hazardous waste and universal waste, including 310 CMR 30.000; or
 - (b) Participate as a collection site in a manufacturer sponsored collection program established pursuant to 310 CMR 77.04.

77.05: Management of Mercury-added Thermostats

- (1) Except as otherwise provided in this section, all persons shall dispose of mercury-added thermostats by recycling or by disposing as hazardous waste or universal waste in compliance with 310 CMR 30.000.
- (2) Contractors who remove mercury-added thermostats from buildings shall deliver such thermostats to a collection site established by mercury-added thermostat manufacturers pursuant to 310 CMR 77.04.
- (3) Persons who demolish buildings shall remove all mercury-added thermostats prior to building demolition and either:
 - (a) Deliver such thermostats to collection sites established by mercury-added thermostat manufacturers pursuant to 310 CMR 77.04, or
 - (b) Collect and manage mercury-added thermostats in accordance with applicable federal and state laws governing hazardous waste and universal waste, including 310 CMR 30.000.
- (4) Persons who remove mercury-added thermostats from a location that is participating in an energy efficiency or weatherization program supported or administered in whole or part by a department, agency, authority, or political subdivision of the Commonwealth or conducted as a result of any statutory requirement, including, but not limited to, demand-side management or least-cost procurement, shall deliver such thermostats to a collection site established by mercury-added thermostat manufacturers pursuant to 310 CMR 77.04.
- (5) No municipal or private solid waste haulers or operators of solid waste disposal facilities shall knowingly dispose, or allow to be disposed, a mercury-added thermostat as solid waste, as defined in 310 CMR 19.006, unless the mercury has been first removed by recycling or disposed as hazardous waste in accordance with 310 CMR 30.000.
- (6) Solid waste facility operators may knowingly accept or collect mercury-added thermostats for proper disposal, only if:

- (a) The device is segregated from solid waste and stored in an identified recycling container, and:
 - 1. the facility participates in a mercury-added thermostat manufacturer's collection program as a collection site, or
 - 2. the facility has established a site to collect, manage, and dispose of mercury-added thermostats as hazardous waste or universal waste in accordance with all applicable federal and state laws and regulations, including 310 CMR 30.000.
- (b) Solid waste facility operators will not be found in violation of 310 CMR 77.05, if they:
 - 1. Make a good faith and consistent effort, as determined by the Department, to comply with this subsection,
 - 2. Post, in a conspicuous location at the facility, a sign stating that mercury-added thermostats are not accepted at this facility, and
 - 3. Notify, in writing, any person authorized to deposit solid waste at that facility that mercury-added thermostats are not accepted at this facility.

Text Amendments to 310 CMR 75.00:

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Section

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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 is in one or more removable mercury-added button cell batteries,
 - (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~~

Redline from Public Hearing Draft

- (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, or
- (j) mercury-added thermostats subject to the requirements of 310 CMR 77.00.