



Department of Environmental Protection

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RESPONSE TO COMMENTS ON PROPOSED AMENDMENTS TO

310 CMR 77.00

Collection and Recycling of Mercury-added Thermostats

And technical amendments to 310 CMR 75.00

**Collection, Recycling, Labeling and Sales Ban of Mercury-Added Products
consistent with 310 CMR 77.00**

REGULATORY AUTHORITY:

M.G.L. Chapter 21H, Section 6J1/2

And Chapter 196 of the Acts of 2014

SUMMARY OF REGULATORY CHANGES

On July 13, 2018 the Massachusetts Department of Environmental Protection (MassDEP) proposed a new regulation, 310 CMR 77:00: Collection and Recycling of Mercury-added Thermostats and technical amendments to 310 CMR 75:00: Collection, Recycling, Labeling and Sales Ban of Mercury Added Products, to implement Chapter 196 of the Acts of 2014. Chapter 196 of the Acts of 2014 amended The Massachusetts Mercury Management Act, M.G.L. c. 21H, §§ 6A-6N (“Mercury Management Act”).

The Mercury Management Act is designed to keep waste mercury out of the trash and wastewater where it can be released into the environment. Chapter 196 of the Acts of 2014 revised the Mercury Management Act and added a new Section 6J½, which imposes requirements on manufacturers that sold or distributed mercury-added thermostats in the Commonwealth and on different entities managing the recycling and disposal of mercury-added thermostats. The regulations at 310 CMR 77.00 describe these responsibilities. The regulatory amendments to 310 CMR 75.00: Collection, Recycling, Labeling and Sales Ban of Mercury Added Products exempts mercury-added thermostats from regulation under 310 CMR 75.04 to make clear that mercury-added thermostats will be regulated under the new 310 CMR 77.00.

PUBLIC NOTICE

MassDEP held a public hearing and solicited comments on the proposed regulations and amendments in accordance with Massachusetts General Law Chapter 30A. On July 13, 2018, MassDEP published a notice in the Boston Globe and Springfield Republican announcing the public hearing and public comment period on the proposed amendments. A public hearing was held on August 3, 2018 in Boston, Massachusetts. The comment period closed on August 13, 2018.

RESPONSE TO COMMENTS

This document summarizes and responds to comments that were received during the public comment period. Those who provided comments are listed below:

Name	Organization	Oral Date	Written Date
Mark Kohurst, Director of Environmental Health and Safety	National Electrical Manufacturers Association (NEMA) and The Thermostat Recovery Corporation	8/3/18	
Joseph Eaves, Head (Acting) NEMA Government Relations	National Electrical Manufacturers Association		8/13/18
Robert A. Rio, Esq. Senior Vice President and Counsel Government Affairs	Associated Industries of Massachusetts		8/11/2018
Elizabeth Saunders, MA Director	Clean Water Action	8/3/18	8/13/18

1. Comment: (Kohurst, Rio and Eaves)

Commenters objected to the requirement that an estimate of the number of mercury-added thermostats remaining to be collected be included in the annual report submitted individually or collectively by the manufacturers. Their reasoning was that no other state requires it and there is no good scientific basis for such an estimate.

Response: Chapter 196 of the Acts of 2014 requires manufacturers to submit an annual report to the department. Among the information required in the report is "...an evaluation of the effectiveness of the manufacturer's collection program." An estimation of the number of thermostats yet to be collected, coupled with an explanation of the assumptions used to make it, are essential components of any such evaluation. The Department recognizes that this information would be estimated.

2. Comment: (Kohurst, Rio and Eaves)

The commenters do not want to use a form specified by the Department because the Thermostat Recycling Corporation is already providing similar information to other states and would prefer to use their existing format.

Response: The annual report required by 310 CMR 77.00 seeks some information different from that provided to other states. MassDEP will work to ensure that the form tracks the existing format to the extent possible.

3. Comment: (Kohurst, Rio and Eaves)

The commenters object to the requirement that the annual report include the number of individuals using each collection site. They cite lack of compliance with California's requirement that HVAC contractors provide their license number when they drop off thermostats as a reason to not require this data and believe that the number collected is sufficient.

Response: MassDEP believes that the information about the number of thermostats collected from each site that will be provided is a sufficient indication of the extent to which collection sites are being used. The requirement to include the number of individuals using the site has been eliminated.

4. Comment: (Kohurst and Eaves)

The commenters object to the requirement that the annual report contain the number of thermostats from which the mercury was separated and recovered because that procedure is done for all thermostats collected.

Response: The annual report will allow the respondent to state that all of the mercury was recovered from all collected thermostats.

5. Comment: (Kohurst and Eaves)

The commenters object to the requirement that the annual report contain information on the amount of recovered mercury made available for reuse because the commenter claims that disposal contractors consider this information to be proprietary and because MassDEP could get the information directly from the contractors.

Response: While the ultimate fate of the recovered mercury is an important consideration in the overall environmental impact of mercury collection programs, the Department believes that thermostat manufacturers can fulfill their obligation to evaluate the effectiveness of their thermostat collection program without this information. The requirement to provide this information has been removed from the regulations.

6. Comment: (Rio)

The commenter objects to the requirement that the annual report include the number of thermostats collected and the amount of mercury therein.

Response: These specific requirements are stated in Chapter 196 of the Acts of 2014:

“..an annual report to the department that shall include, but not be limited to, the following information:

- (i) the number of mercury-added thermostats collected and recycled by the manufacturer under this section during the previous calendar year
- (ii) the estimated total amount of mercury contained in the thermostat components collected by the manufacturer under this section in the previous calendar year...”

7. Comment: (Rio)

The commenter objected to the inclusion of any information in the annual report beyond what was itemized in Chapter 196 of the Acts of 2014 as beyond MassDEP’s statutory authority. The commenter also stated that the requirement for additional information in the annual report beyond what was enumerated in the statute was inconsistent with Executive Order 562 (EO 562) which Governor Baker signed on March 31, 2015 and that requires each agency to review its existing regulations to reduce unnecessary regulatory burdens and to promulgate new regulations consistent with the Executive Order.

Response: By including the language “...an annual report to the department that shall include, but not be limited to, the following information ...”, Chapter 196 of the Acts of 2014 specifically did not limit MassDEP to the information listed in the statute. The additional information requested in the regulation is important to evaluate the effectiveness of this program in minimizing public exposure to mercury, a highly toxic metal with serious public health impacts.

8. Comment: (Saunders)

The commenter outlined the hazards of uncontrolled mercury to fetuses, children and pregnant women and emphasized the importance of the regulations. The commenter was concerned about the delay between the adoption of the statute and the promulgation of the regulations. The commenter also stated:

“The effectiveness of these regulations at collecting thermostats will depend on the education and outreach program as well as enforcement by MassDEP. The education program as outlined in these regulations contains neither metrics for measuring nor incentives for achieving effectiveness. Clean Water Action would recommend adding to the annual report not only a description of the collection program (which is a vague requirement) but data that demonstrates the scope and effectiveness such as number of signs or written materials provided, number of signs or written materials confirmed used and/or other strategies for quantifying and assessing the outreach.”

Response: The required education and outreach program mirrors the language in Chapter 196 of the Acts of 2014. Because the department is required by the statute to provide an evaluation of the program to the legislature following the first year of the program, the agency will be expecting manufacturers to provide robust descriptions of their education and outreach efforts and evaluations of the effectiveness of their collection programs.