

Guidance on Compliance with Phase-out Requirements for Mercury-added Products Sold & Distributed in California, Connecticut, Illinois, Maine, New York, Rhode Island, & Vermont

This Guidance has been reviewed and endorsed by senior state environmental directors from the states of California, Connecticut, Illinois, Maine, New York, Rhode Island, and Vermont.

This Guidance Document is designed to help manufacturers, importers and distributors of mercury-added products understand how to comply with California, Connecticut, Illinois, Maine, New York, Rhode Island, and Vermont requirements for the phase-out of certain mercury-added products (and how to apply for an exemption where allowed). Throughout this document there is text that is highlighted in blue; this indicates that the material is hyperlinked to other web pages that provide additional information and guidance on that topic.

The participating states are coordinating the administration of these laws to phase-out the sale of mercury-added products through the Interstate Mercury Education and Reduction Clearinghouse (IMERC) to:

- promote consistency among the states; and
- provide a single point of contact for manufacturers

IMERC was established by state environmental officials to help them implement laws and programs aimed at reducing mercury in consumer products, the waste stream, and the environment. IMERC is a program of the Northeast Waste Management Officials' Association (NEWMOA).¹

¹ NEWMOA is a non-profit, non-partisan interstate association made up of environmental agency directors from the hazardous waste, solid waste, waste site cleanup, pollution prevention, and underground storage tank programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Its mission is to develop and sustain an effective partnership of states to explore, develop, promote, and implement economically sound solutions for the reduction and management of materials and waste, and for the remediation of contaminated sites, in order to achieve a clean and healthy environment.

What is a Mercury-added Product?

A **mercury-added product** is generally defined by most IMERC member states as any formulated or fabricated product that contains mercury, a mercury compound, or a component containing mercury, when the mercury is intentionally added to the product (or component) for any reason. Specific definitions vary by state.

A **fabricated** mercury-added product is a combination of individual components, one or more of which has mercury added, that combine to make a single unit.

A **formulated** mercury-added product is a chemical product, including but not limited to laboratory chemicals, cleaning products, cosmetics, pharmaceuticals, and coating materials that are sold as a consistent mixture of chemicals.

Why are the States Requiring Phase-out of the Sale of Certain Mercury-added Products?

The purpose of restricting sales of certain mercury-added products is to eliminate non-essential uses of mercury in consumer, household, and commercial products, thereby reducing potential mercury releases to the environment associated with the production, use, and disposal of such products. For more information on the health and environmental effects of mercury, go to: www.newmoa.org/prevention/mercury/.

Mercury-added Product Sales Bans may also apply to the products your company makes and/or distributes. The difference between a mercury-added product sales ban and a mercury-added product sales phase-out is that there are no exemptions allowed under a product sales ban. For more information on state mercury-added product sales bans go to: <http://www.newmoa.org/prevention/mercury/imerc/productban.cfm>.

What are the States' Mercury-added Product Sales Phase-out Requirements?

The states of California, Connecticut, Illinois, Maine, Rhode Island, and Vermont restrict the sale or distribution of the mercury-added products outlined in Table 1. A product that falls within one of these categories may not be sold after the effective date listed in the Table unless an **exemption** is applied for and granted by each state or the product qualifies for a statutory exception. The state of New York restricts the sale or distribution of mercury-added products as indicated in the Table, but there is no provision for obtaining an exemption in New York.

Table 1: Effective Dates of State Bans on the Sale of Mercury-added Products

Mercury-added product	Effective date	Examples of products that could be in this category
Any <u>fabricated</u> product with ≥ 1000 mg Hg ²	July 1, 2004 in CT	Flame sensors, float switches, tilt switches, relays, electricity meters, thermometers, thermostats, sphygmomanometers, barometers, manometers, mercury vapor lamps
	January 1, 2006 in RI	
Any <u>fabricated</u> product with ≥ 100 mg Hg	July 1, 2006 in CT	Reed switches, wetted relays, pressure transducers, sensor electrodes, xenon lamps
	July 1, 2007 in RI	
Any <u>fabricated</u> product with ≥ 10 mg Hg	July 1, 2009 in RI	Fluorescent bulbs, scanner lamps, wetted relays
Any <u>formulated</u> product with >250 ppm Hg	July 1, 2004 in CT	Laboratory reagents, solutions and chemicals
	January 1, 2006 in RI	
Any <u>formulated</u> product with ≥ 50 ppm Hg	July 1, 2007 in CT	Laboratory reagents, solutions and chemicals
	July 1, 2007 in RI	
Any <u>formulated</u> product with ≥ 10 ppm Hg	July 1, 2009 in RI	Laboratory reagents, solutions and chemicals
Thermostats	January 1, 2006 in ME	
Barometers, esophageal dilators, bougie tubes, gastrointestinal tubes, flow meters, hygrometers, psychrometers & pyrometers	January 1, 2006 in NY	
	July 1, 2006 in ME	
	January 1, 2007 in VT	
Diostats	January 1, 2008 in CA	
Hydrometers & manometers	July 1, 2006 in ME	
	January 1, 2007 in NY and VT	
Neon signs	January 1, 2007 in VT	
Switches & relays	July 1, 2006 in CA & ME	
	January 1, 2007 in VT	
	July 1, 2007 in IL	
	January 1, 2008 in NY	

Each of the state phase-out laws contain statutory exceptions that exempt certain products from the statute without the need to apply for and obtain a written exemption. Mercury-added products that may qualify for statutory exceptions are summarized below.

²If a product has more than one mercury-added component, each component is considered a separate product. The mercury content of the larger product is not determined by adding the mercury content of the components. For example, if an electronic product contains two mercury-added switches, one of which has 700 milligrams (mg) of mercury and the other 500 mg, the phase-out date for these switches is July 1, 2006 in Connecticut and July 1, 2007 in Rhode Island.

Rhode Island and Connecticut:

- any pharmaceuticals, pharmaceutical products, biological products, or any substance that may be lawfully sold over the counter without a prescription under the Federal Food, Drug and Cosmetics Act;
- any mercury-added product with a code, date of manufacture, or which it can be otherwise demonstrated that it was manufactured prior to the effective dates;
- any motor vehicles manufactured prior to October 1, 2003;
- under RI law, laboratory chemical standards, fluorescent lamps, and specialized lighting used in the entertainment industry;
- products that contain mercury-containing lamps for backlighting that are not easily removed by the purchaser; and
- specialized lighting used in the entertainment industry, such as metal halide lights used in stadiums.

Maine:

- thermostats for use by the visually impaired;
- products in which the use of mercury is federally required;
- replacement switches and relays; and
- products in which the only mercury-added component is a button cell battery or lamp.

Vermont:

- federally required uses of switches, relays, instruments, and measuring devices;
- replacement switches and relays used in manufacturing or otherwise integrated and not physically separate from the larger product in use prior to January 1, 2007;
- instruments and measuring devices where the only mercury-added component is a button cell battery; and
- mercury-added lamps used in semi-conductor manufacturing and other manufacturing operations.

Illinois:

- federally required uses of mercury-added switches and relays;
- replacement mercury-added switches and relays used in manufacturing or otherwise integrated and not physically separate from the larger product in use prior to July 1, 2007;
- mercury-added switches and relays used at electric generating facilities or in medical diagnostic equipment regulated under the Federal Food, Drug and Cosmetic Act; and,
- mercury-added switches in thermostats used to sense and control room temperature.

New York:

- federally required uses of mercury-added products listed in the bullets below;
- replacement barometers, esophageal dilators, bougie tubes or gastrointestinal tubes, flow meters, hygrometers or psychrometers, and pyrometers that are components of a larger product in use prior to January 1, 2006;
- resale of barometers, esophageal dilators, bougie tubes or gastrointestinal tubes manufactured before December 31, 2005;
- replacement hydrometers or manometers that are components of a larger product in use prior to January 1, 2007;

- resale of hydrometers or manometers manufactured before December 31, 2006;
- replacement switches and relays that are components of a larger product in use prior to January 1, 2008; and
- resale of switches and relays manufactured before December 31, 2007.

California:

- federally required uses of mercury-added products;
- button cell battery if it is the only mercury-added component;
- replacement mercury-added switches and relays used in manufacturing or otherwise integrated and not physically separate from the larger product in use prior to July 1, 2006;
- resale of refurbished imaging and therapy systems utilized for diagnostic purposes that include a mercury switch or relay if the system manufacturer notifies the state of their intention to operate under the exemption; and
- mercury switches or relays that contain less than 1 milligram of mercury if the switch or relay manufacturer notifies the state of their intention to operate under the exemption.

If, after consulting the relevant statutory text, you think your product qualifies for one of the exceptions listed above, you are encouraged to obtain written confirmation that the exception applies by notifying the regulatory authority in each state in writing of the basis of your claim. You can fulfill this requirement by completing a Mercury-added Product Phase-out Exemption Application Form as described below.

What is the Role of the Interstate Mercury Education and Reduction Clearinghouse (IMERC) in assisting the States with Implementation of their Phase-out Exemption?

IMERC conducts the following activities to help support state implementation of their mercury-added product phase-out laws:

- providing a location for manufacturers to submit Mercury-added Product Phase-out Exemption Applications that apply to California, Connecticut, Illinois, Maine, New York, Rhode Island, and Vermont;
- facilitating the review by the member states concerning (1) manufacturer applications for exemptions to the phase-out of the sale of mercury-added products; and (2) manufacturer plans for collection and proper waste management of mercury-containing materials;
- responding to questions and comments regarding member state mercury-added product requirements; and
- assisting the states with their efforts to educate the regulated community and the public regarding the state requirements and how to comply with them.

Decisions regarding approval of mercury-added product phase-out exemptions are made by each individual state environmental agency. Upon approval of a phase-out exemption application, the state sends a letter to the applicant detailing the approval, the period of time over which it applies, and the schedule for reporting on the effectiveness of the proposed collection system.

Use of the IMERC process is strongly encouraged to avoid duplication of effort by all concerned, but is not required. Companies may choose to submit exemption applications to individual

states, and should do so if they wish to designate some or all of the application as confidential business information (CBI), since IMERC is not equipped to handle CBI submittals. Where more than one state receives an exemption request covering the same mercury-added products, the states can be expected to consult extensively with each other to achieve an appropriate level of consistency across jurisdictions.

How Can Manufacturers Apply for an Exemption to the States' Phase-out Requirements?

Except in New York, if a company's product falls within one of the categories of products covered by the states' sales phase-out requirements as outlined above and they want to continue to sell their product in the applicable states, they may apply for an administrative exemption for their product or product category. The applications for administrative exemption must address the criteria outlined below. Exemptions can be granted for up to a five-year period, depending on the state. However, the appropriate duration of an exemption will be decided on a case-by-case basis.

Applicants for exemptions to the states' sales phase-out should complete and sign a Phase-out Exemption Application Form and follow the associated Instructions. Applications are generally due one year before the effective date for which they are seeking an exemption, except in Illinois where they are due by July 1, 2006.

In New York, the exceptions are listed above. There is no phase-out exemption application process for New York State.

What Criteria Must Manufacturers Meet to Receive an Exemption from the Phase-out Limits?

Applications for mercury-added product phase-out exemptions **must** address the following questions:

- Are there no technically feasible non-mercury added products that are available at a reasonable cost?
- Is the use of mercury in the product more beneficial to the environment or protective of public health or public safety than non-mercury alternatives?

The application must also include a proposal for a system for collecting, transporting, and processing the product at the end of its useful life. Applicants may choose to submit the collection plan after they are notified whether the application meets the other criteria for approval of the exemption request. The collection system plan must describe how the manufacturer, either on its own or in conjunction with other parties, intends to create a system for collecting the product/s at the end of their useful life. This collection system does not have to be managed by the product manufacturer; however, the cost must not be borne by state or local government. The collection system plan should include proposed numerical collection and recycling targets and a description of how the plan will measure and achieve those targets. The states strongly encourage the manufacturers to work with local recycling programs and companies when establishing these plans. The collection system plan must describe the associated education and outreach program that will inform the relevant portions of the public

and private sector about the mercury-added products, the purpose of the collection system program, and how they may participate.

What Information Must be Submitted When Seeking a Phase-out Exemption?

The Mercury-added Product Phase-Out Exemption Application is available at the following IMERC webpage: www.newmoa.org/prevention/mercury/imerc/phaseoutinfo.cfm. To have California, Connecticut, Illinois, Maine, Rhode Island, and Vermont officials jointly review the Exemption Application, complete this Form and submit originals to the addresses for the Connecticut Department of Environmental Protection (CT DEP), Illinois Environmental Protection Agency (IL EPA), Rhode Island Department of Environmental Management (RI DEM – also include \$200 fee and notarized certification statement in your Rhode Island application), and IMERC that are listed at the bottom of the Application. IMERC ensures that the other participating states receive the Application and facilitates its joint review. The IMERC Committee that reviews these Applications consists of representatives of each state's environmental agency that are appointed by the Agency's Commissioner/Director.

If the Application is incomplete, requires additional information, or is not acceptable to the states for some reason, IMERC will contact the applicant and request modifications. The following information must be submitted with each Exemption Application:

- Section VIII. TYPE OF APPLICATION** - Date and type of exemption application, including if it is a first time submittal for a particular mercury-added product or product category, if it serves as an update to information previously submitted including the reason(s) for the update, or a renewal of previously granted exemption.
- Section IX. APPLICANT'S INFORMATION** – Applicant's name, mailing address, telephone number, web address, and relationship to the product manufacturer. The contact person's name, address, telephone number, and e-mail address.
- Section X. PRODUCT MANUFACTURER'S INFORMATION** - Product manufacturer's name, contact person, mailing address, telephone number, e-mail address for contact person and web address.
- Section XI. PRODUCT INFORMATION** - Briefly describe the mercury-added product or component for which an exemption is being sought. The description should include a brief description of the purpose of the mercury in the product or component. Include a description of how to remove the mercury or mercury-containing component.
- Section XII. SALE OF MERCURY-ADDED REPLACEMENT PARTS** - If the exemption request is for a mercury switch or relay, supply the following information:
 - whether the switch or relay is a replacement part in a larger product;
 - the date the larger product was placed into service;
 - whether the larger product is used in manufacturing; and,
 - if applicable, the larger product's function in the manufacturing process.
- Section VI. BASIS FOR EXEMPTION REQUEST** – Indicate the reason(s) you are applying for an exemption using one or more of the following criteria:

1. There are no technically feasible non-mercury alternatives available at a reasonable cost.
2. The use of mercury in the product is mandated by a state or federal law or requirement.
3. There are technically feasible non-mercury alternatives, but the mercury-added product is more beneficial to the environment, public health or public safety.

SECTION VII. REQUIRED SUPPORTING INFORMATION

1. Attach a copy of most recent IMERC Mercury-added Product Notification Form approval.
2. If the exemption request is being made because no technically feasible non-mercury alternatives are available at a reasonable cost, attach a narrative and supporting data that describe:
 - A. why the product or component must use mercury;
 - B. in detail, the potential non-mercury alternative products or components and why they are not technically feasible;
 - C. the current status of industry efforts to find non-mercury alternatives;
 - D. the research process conducted by the applicant to investigate non-mercury alternatives;
 - E. how it was determined that non-mercury alternatives are not feasible, including discussions with outside unbiased experts; and
 - F. if claimed that non-mercury alternatives are available but the cost is unreasonable, data documenting your claim.
3. If you checked item VI (2), provide the citation to federal or state law or other requirement that the mercury-containing product must be used. Provide a copy of the law or contract and highlight the specific provisions requiring the use of mercury.
4. If the exemption request is being made because the mercury-containing product is more beneficial to the environment, public health, or public safety than technically feasible non-mercury alternatives, attach a narrative and supporting data that describes:
 - A. the specific benefit to the environment, public health or public safety being claimed;
 - B. how the claimed benefit of the mercury-containing product differs from the benefits of available non-mercury alternatives;
 - C. the amount of mercury that will be placed in commerce annually if the exemption is granted; and
 - D. the steps that will be taken to ensure that the mercury in the product is not released during use and disposal.

Section VIII. COLLECTION PLAN – Applicants are required to prepare a plan for the proper collection, transportation, and processing of the mercury-added product or component. The plan must include:

- documentation demonstrating the financing and implementation of the proposed collection system;
- documentation describing a public education program, including implementation dates, which will inform the relevant portions of the public and private sector about the mercury-added products, the purpose of the collection system program, and how consumers may participate;
- annual target capture rates for the product(s);
- a description of the performance measures to be used to demonstrate that the collection system is meeting the capture rate targets;
- the recordkeeping protocol that the manufacturer or company other than the manufacturer will maintain to assure compliance with the plan;
- the frequency and method for disposal/recycling for the items that are collected;
- documentation of the readiness of all necessary parties to perform as intended in the collection and recycling or disposal system; and
- additional or alternative actions that will be implemented to improve the collection system and its operation in the event that the program targets are not met.

Section IX. EXEMPTION RENEWALS – For renewal of an exemption, an applicant must submit documentation demonstrating that reasonable efforts have been made to remove mercury from the product.

Section X. ILLINOIS WAIVER OF COMPLETENESS REVIEW – Illinois rules require that a complete exemption application include documentation describing a convenient and widely available system for the proper end-of-life collection, transportation, and processing of the mercury-added product or component. Manufacturers wanting to wait to submit the collection plan until after the rest of their application has been reviewed must waive the completeness review by the Illinois EPA. In most instances, the other states reviewing exemption applications will not require submission of a collection plan until the rest of the application has been thoroughly reviewed. Waiving the completeness review will enable the IMERC states to collectively review applications and prepare requests for additional information. Exemption approval letters will be sent to each applicant individually by each IMERC state.

Section XI. CERTIFICATION – A certification dated and signed by a senior management official or their designee must accompany each application.

Section XII. MANUFACTURER’S DESIGNATED INDUSTRIAL TRADE GROUP REGISTRATION

– In all the IMERC states, except Illinois, a trade group may submit one exemption application on behalf of their members. The application includes signed documentation from the manufacturer that the trade group submitting the application is acting on their behalf. Any exemptions granted will be only for companies that have submitted the Trade Group Registration.

States may request additional information from the manufacturer or company/ organization acting on their behalf to determine whether the product will be granted a phase-out exemption.

Where Can I Get More Information?

For more information on state specific Mercury-added Product Phase-out requirements visit the following websites:

- **California** <http://www.dtsc.ca.gov/HazardousWaste/Mercury/>
- **Connecticut** <http://www.dep.state.ct.us/wst/mercury/mercury.htm>
- **Illinois** <http://www.epa.state.il.us/mercury/>
- **Maine** <http://www.state.me.us/dep/mercury>
- **New York** <http://www.dec.state.ny.us/website/dshm/redrecy/c145home.html>
- **Rhode Island** <http://www.dem.ri.gov/dem/topics/mercury.htm>
- **Vermont** <http://www.mercvt.org>

You can also contact IMERC if you have any questions about this guidance material and state mercury-added product phase-out requirements at:

IMERC
c/o NEWMOA
129 Portland Street, 6th floor
Boston, MA 02114
(617) 367-8558 x302
tgoldberg@newmoa.org

Confidential Business Information: If your company has concerns about confidential business information (CBI), you **cannot** submit a Mercury-added Product Phase-out Exemption Application to the Interstate Mercury Education and Reduction Clearinghouse (IMERC). For CBI consideration, submit the IMERC Exemption Application and a written request for CBI treatment directly to the following state agencies at:

California Department of Toxic Substances Control
Hazardous Waste Management Program
1001 “I” Street, 11th Floor
PO Box 806
Sacramento, CA 95812-0806
Contact: Mike Horner, 916-322-7889, mhorner@dtsc.ca.gov

Connecticut Department of Environmental Protection
Waste Planning & Standard, Recycling Section
79 Elm Street

Hartford, CT 06106
Contact: Thomas Metzner, 860-424-3242, or Tom.Metzner@po.state.ct.us
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Contact: Becky Lockart, 217-524-9642 or Becky.Lockart@epa.state.il.us

Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017
Contact: Enid Mitnik, 207-287-8556 or enid.mitnik@maine.gov

New York
New York State Department of Environmental Conservation
Division of Solid and Hazardous Materials
625 Broadway
Albany, NY 12233-7250
Contact: Peter Pettit, 518-402-8705 or pmpettit@gw.dec.state.ny.us

Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908
Contacts: Ron Gagnon, 401-222-4700 (x7500) or ron.gagnon@dem.ri.gov
Beverly Migliore, 401-222-4700 (x7503) or beverly.migliore@dem.ri.gov

Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05671
Contact: Karen Knaebel, 802-241-3455 or Karen.Knaebel@state.vt.us