

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Mercury Risk Reduction
(LAC 33:I.2701, 2703, 2705, 2707, 2709, 2711, 2713, 2715, 2717, 2719, and 2721) (OS077)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Office of the Secretary regulations, LAC 33:I.2701, 2703, 2705, 2707, 2709, 2711, 2713, 2715, 2717, 2719, and 2721 (Log #OS077).

This rule implements Act 126 of the 2006 Regular Session of the Legislature regarding the control of mercury releases to the environment. This rule creates a comprehensive system for control of mercury-containing products; requires notification to the DEQ by manufacturers of mercury-containing products; phases out mercury-containing products with increasingly stringent restrictions on sales; requires manufacturers to provide collection plans for discarded mercury-containing products; provides for labeling of mercury-containing products and public outreach on the dangers of mercury; bans certain methods of disposal of mercury-containing products; bans certain uses of mercury-containing products; and provides for exemptions to the requirements. Specific language is included for the disposal ban and proper management of mercury in scrap metal facilities and for providing for the continued use of dental amalgam. The basis and rationale for this rule are to implement Act 126 of the 2006 Regular Session of the Legislature regarding the control of mercury releases to the environment in order to reduce risks of mercury exposure. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on September 25, 2008, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS077. Such comments must be received no later than October 2, 2008, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to judith.schuerman@la.gov. Copies of this

proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS077. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 27. Mercury Risk Reduction

Subchapter A. Requirements Related to the Sale of Mercury-Added Products

§2701. Authority

A. Regulations for the purpose of mercury risk reduction in the state of Louisiana are hereby established by the department pursuant to R.S. 30:2571-2588.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571-2588.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2703. Purpose

A. The purpose of this Chapter is to supplement procedures and requirements set forth in the Louisiana Mercury Risk Reduction Act, R.S. 30:2571 et seq., for manufacturers of mercury-added products offered for sale, users of mercury-added products in drinking water and wastewater treatment systems, and dismantlers of end-of-life products that contain mercury-added products within the state of Louisiana. This Chapter is in addition to any other requirements to provide notice, and nothing in this Chapter shall be construed to relieve the department or any other person from any other requirement set forth in Title 33 of the *Louisiana Administrative Code*. Furthermore, nothing in this Chapter shall prevent a manufacturer of mercury-added products, or the department, from providing additional means for public information and participation consistent with this Chapter or any other Chapter of Title 33 of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2705. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

Amalgam—any of various alloys of mercury and other metals, as with tin or silver.

Amalgam Sludge—the mixture of liquid and solid material collected within vacuum pump filters or other amalgam capture devices.

Appliances (White Goods)—discarded domestic and commercial appliances, such as refrigerators, ranges, washers, and water heaters.

Chair Side Traps—devices that capture amalgam waste during amalgam placement or removal procedures.

Contact Amalgam—amalgam that has been in contact with a patient. Examples include extracted teeth with amalgam restorations, carving scrap collected at chair side, and amalgam captured by chair side traps, filters, or screens.

Empty Amalgam Capsule—an individually-dosed container left over after mixing pre-capsulated dental amalgam.

Fabricated Mercury-Added Product—a product that consists of a combination of individual components that combine to make a single unit including, but not limited to, mercury-added measuring devices, lamps, and switches.

Formulated Mercury-Added Product—a chemical product, including, but not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals, and coating materials, that is sold as a consistent mixture of chemicals.

Health Care Facility—any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

Manufacturer—any person, firm, association, partnership, corporation, governmental entity, organization, or combination or joint venture that produces a mercury-added product, or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multi-component mercury-added product, the *manufacturer* is the last manufacturer to produce or assemble the product. If the multi-component product is produced in a foreign country, the *manufacturer* is the importer or domestic distributor.

Mercury-Added Novelty—a mercury-added product intended mainly for personal or household enjoyment or adornment. *Mercury-added novelties* include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel including footwear, and similar products.

Mercury-Added Product—a product, commodity, or chemical, or a product with a component, that contains mercury or a mercury compound intentionally added to the product, commodity, chemical, or component in order to provide a specific characteristic, appearance, or quality or to perform a specific function or for any other reason. These products include *formulated mercury-added products* and *fabricated mercury-added products*, as defined in this Subsection. The presence of mercury as a contaminant does not of itself make a product a *mercury-added product*.

Mercury Fever Thermometer—a mercury-added product that is used for measuring body temperature.

Motor Vehicle—an automobile, motor home, motorcycle, all-terrain vehicle, recreational vehicle trailer, boat trailer, semitrailer, truck, truck-tractor, and any other device that is self-propelled and drawn, in, upon, or by which any person or property is or may be transported or drawn either upon or off a public highway, except such as is moved by animal power, or is used exclusively upon stationary rails or tracks, or is an implement of husbandry.

Non-Contact Amalgam (Scrap)—excess amalgam mix left over at the end of a dental procedure that has not come into physical contact with a patient.

Vacuum Pump Filter—a device used for filtering amalgam solids from vacuum lines that may contain amalgam sludge and water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2707. Notifications

A. Effective January 1, 2007, no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Louisiana without prior notification in writing by the manufacturer of the product to the Office of the Secretary in accordance with the requirements of this Section. The Interstate Mercury Education and Reduction Clearinghouse (IMERC) report may be used for notification purposes; a form can be obtained from IMERC, the department, or the department's website.

1. The notification to the department shall, at a minimum, include:

- a. a brief description of the product to be offered for sale, use, or distribution;
- b. the amount of, and purpose for, mercury in each unit of the product;
- c. the total amount of mercury contained in all products manufactured by the manufacturer; and
- d. the name and address of the manufacturer, and the name, address, and phone number of a contact at the manufacturer.

2. For purposes of complying with this Section, the manufacturer may submit to the department a copy of the report sent by the manufacturer to IMERC. At a minimum, the copy of the report shall contain the information listed in Subparagraphs A.1.a-d of this Section.

B. Any mercury-added product for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this Section.

C. With the approval of the department, the manufacturer may supply the information required in this Section for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is a change in the information, or when requested by the department, within 90 days of the change. A notification in accordance with this Subsection is to be submitted to the Office of the Secretary.

D. A manufacturer may request confidentiality for certain submitted information by following the procedures in LAC 33:I.Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2709. Notification of Restrictions Governing Sale of Certain Mercury-Added Products

A. The final sale or use or distribution of certain mercury-added products have been restricted in R.S. 30:2575(A)-(D).

B. Manufacturers that produce and sell such materials shall notify retailers about these restrictions in writing. The notification shall contain the following information:

- 1. the date of restriction;
- 2. proper handling and disposal instructions;
- 3. recycling options; and
- 4. proper clean-up instructions in case of spills.

C. Manufacturers shall keep records documenting this notification and make them immediately available for the department's inspection upon request. These records shall be maintained for at least three years after the notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2711. Petitions for Exemptions from Phase Outs

A. The manufacturer of a mercury-added product subject to the phase-out provisions of R.S. 30:2576 may petition the administrative authority for an exemption.

B. Applications for exemption from mercury-added product phase-out must contain the following information:

1. documentation of the basis for the requested exemption or renewal of exemption;
2. a description of how the manufacturer will ensure that a system exists for the proper collection, transportation, and processing of the products at the end of their useful lives;
3. documentation of the readiness of all necessary parties to perform as intended in the planned system;
4. a statement of the consistency of the exemption request with the practices of other IMERC states;
5. criteria considering whether use of the product is beneficial to the environment or protective of public health or protective of public safety, and, if so, how;
6. criteria considering whether there exist any technically feasible alternatives to the use of mercury in the product, and, if so, a description of such alternatives; and
7. criteria considering whether any comparable non-mercury added products are available at a reasonable cost, and, if so, a description of such products and their costs.

C. A mercury-added product shall be exempt from the limits on total mercury content set forth in R.S. 30:2576(A), if the level of mercury or mercury compounds contained in the product is required in order to comply with federal or state health, safety, or homeland security requirements. In order to claim an exemption under this provision the manufacturer must notify, in writing, the Office of the Secretary and provide the legal justification for the claim of exemption.

D. The administrative authority may provide exemptions from the limits on total mercury content set forth in R.S. 30:2576(A) for a product or category of products when requested to do so, and when such an exemption is deemed appropriate after consideration of the factors enumerated in Paragraphs B.1-7 of this Section, as well as any other pertinent factors.

E. The administrative authority shall decide whether to grant the exemption requested within 180 days from the date on which the request for exemption was filed, unless a longer time period is agreed upon by mutual consent of the applicant and the administrative authority.

F. Exemptions may be renewed upon reapplication by the manufacturer and findings by the department of continued eligibility under the criteria of this Section and of compliance by the manufacturer with the conditions of its original approval. Exemptions may be renewed one or more times, and each renewal shall be for a period of no longer than two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2713. Labeling of Mercury-Added Products

A. The responsibility for product and package labels required by this Section and R.S. 30:2577 shall be on the manufacturer and not on the wholesaler or retailer unless the wholesaler or retailer agrees with the manufacturer to accept responsibility in conjunction with implementation of an alternative to the labeling requirements of this Section approved under R.S. 30:2579 and LAC 33:I.2715. In the case of a multi-component product the responsible manufacturer is the last manufacturer to produce or assemble the product or, if the multi-component product is produced in a foreign country, the responsible manufacturer is the importer or domestic distributor.

B. Except for items described in R.S. 30:2578, mercury-added products and their associated packaging manufactured after July 1, 2008, shall be labeled in accordance with this Section.

C. The following labeling standards shall apply to all mercury-added consumer products and associated packaging. The label shall:

1. be clearly visible to the product purchaser prior to sale and at the point of sale;
2. be printed in English using a 10 point font or larger;
3. be mounted, engraved, molded, embossed, or otherwise affixed to the product using materials that are sufficiently durable to remain legible throughout the life of the product;
4. bear the wording "Contains Mercury" or equivalent wording;
5. state that the product cannot be placed in the trash and must be recycled, handled as a universal waste, or disposed of as a hazardous waste. This requirement can be satisfied by any of the following wordings, or other wordings that are substantially equivalent.

"Contains Mercury. Don't Put In Trash. Recycle or Dispose as Hazardous Waste."

"Contains Mercury. Dispose of According to Local, State, and Federal Laws."

"Contains Mercury. Dispose of Properly. "

D. The labeling requirements of Subsection C shall not apply to non-consumer replaceable lamps and components as long as directions for proper disposal are included in the technician's repair manual.

E. If a mercury-added product is a component of another product, the product containing the mercury-added component and the component itself must both be labeled. The product containing a mercury-added component shall be labeled in accordance with Paragraphs C.1-5 of this Section. The label on the larger product must clearly identify the internal mercury-added component with sufficient detail so that it may be readily located for removal. The labeling requirements of this Subsection shall not apply to non-consumer lamps and components as long as directions for proper disposal are included in the technician's repair manual. This requirement can be satisfied by the following wording, or other wording that is substantially equivalent.

"The [insert description of component] in this product contains mercury. Dispose of according to local, state, and federal laws."

F. If the product is sold in packaging that obscures the label, the packaging also must be labeled.

1. The label on the packaging must:

- a. be visible at the time of purchase;
- b. bear the wording "Contains Mercury" in a 10 point or larger font;
- c. identify the mercury-added component within the package (e.g., "Lamp Contains Mercury." if the product is a light fixture that includes a fluorescent lamp); and
- d. bear the wording "Dispose of according to local, state, and federal laws." or "Do not place in trash. Dispose of as a hazardous waste." or some equivalent wording.

2. Manufacturers of products packaged but not yet sold before the effective date of this Section may apply to the department for an exemption from the labeling requirements of this Section.

G. If the product is offered for sale or use or promotional purposes by catalog, telephone, or Internet such that the label on the product or packaging is not visible prior to purchase or receipt, the consumer must be made aware prior to purchase or receipt that there is intentionally-added mercury in the product by placing a label or providing other information in sales literature, on website pages, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2715. Alternative Methods of Public Notification

A. A manufacturer may apply to the department for an alternative to the requirements of R.S. 30:2577 and LAC 33:I.2713 where strict compliance with the requirements is not feasible, or the proposed alternative would be at least as effective in providing pre-sale notification of mercury content and in providing instructions on proper disposal, or federal law governs labeling in a manner that preempts state authority.

B. The manufacturer of a mercury-added product subject to the labeling provisions of R.S. 30:2577 and LAC 33:I.2713 may apply to the department for approval of an alternative labeling plan. Applications for approval of an alternative labeling plan must contain the following information:

1. documentation of the justification for the requested alternative, which shall include, but not be limited to, any claim that strict compliance with the requirements of R.S. 30:2577 and LAC 33:I.2713 is not feasible, and any claim that federal law governs labeling in a manner that preempts state authority;

2. a description of how the alternative ensures that purchasers or recipients of mercury-added products will be made aware of mercury content prior to purchase or receipt;

3. a description of how a person discarding the product will be made aware of the need for proper handling to ensure that the product is not disposed of with trash or garbage or in a sewer system;

4. documentation of the readiness of all necessary parties to implement the proposed alternative; and

5. a description of the performance measures to be utilized by the manufacturer to demonstrate that the alternative is providing effective pre-sale notification and pre-disposal notification.

C. The department may approve, deny, modify, or condition a requested alternative to the requirements of R.S. 30:2577 and LAC 33:I.2713. Approval of the application for the alternative method of public notification shall be for a period of no more than two years and may, upon continued eligibility under the criteria of R.S. 30:2577 and this Section and compliance with the conditions of its prior approval, be renewed for two-year intervals. Prior to approving an alternative, the department shall consult with neighboring states and regional and national organizations to ensure that the alternative labeling requirements are consistent with those of other governments in the region.

D. Requests for renewals of alternative labeling plans shall be submitted to the Office of the Secretary in writing six months prior to the renewal anniversary date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2717. Collection of Mercury-Added Products

A. A manufacturer of any mercury-added product containing more than 10 milligrams of mercury that is offered for final sale or use or distributed for promotional purposes in the state must implement a collection system plan that has been approved by the department. A manufacturer may develop a collection system plan either on its own or in concert with others.

B. The collection system plan must provide for the removal and collection of the mercury-added component or the collection of both the mercury-added component and the product containing it.

C. Prior to offering any mercury-added product containing more than 10 milligrams of mercury for final sale or use or distribution for promotional purposes in Louisiana, the manufacturer shall submit a written collection system plan to the Office of the Secretary and receive the department's approval. The proposed plan shall include the following information:

1. the manufacturer's name, mailing address, and if available, Internet address;
2. the contact person's name and phone number;
3. documentation describing a public education program, including implementation dates, that will inform the public about the purpose of the collection system program and how to participate in it;
4. identification of the targeted capture rate for the mercury-added product, product category, or component;
5. a plan for implementation of the proposed collection system, including documentation demonstrating the financing thereof;
6. documentation of the willingness of all necessary parties to implement and participate in the program, and their contact information;
7. a description of the performance measures to be used to demonstrate that the collection system is meeting capture rate targets;
8. a description of 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;
9. a description of a recycling or disposal plan;
10. a signed certification stating that the person signing:

a. has personally examined and is familiar with the information submitted within the collection system plan and all attachments; and
b. is authorized to sign the certification by the entity on whose behalf he is signing.

D. Within a year of the department's approval of the collection system plan, the manufacturer, or the entity that submitted the plan on behalf of the manufacturer, shall ensure that a convenient and accessible recovery system for the users of those products is in full operation. Two years following the implementation of the collection system plan required under this Section, and every two years thereafter, the manufacturer, or the entity that submitted the plan on behalf of the manufacturer, shall submit a report on the effectiveness of the collection system. The report shall be submitted to the Office of the Secretary by July 1 of each reporting year. The report shall include the following information:

1. an estimate of the amount of mercury that was collected;
2. the capture rate for the mercury-added products or components;
3. the results of the other performance measures included in the manufacturer's collection system plan; and
4. such other information as the department may require.

E. Mercury-added formulated products intended to be totally consumed in use, such as cosmetics, pharmaceuticals, and reagents and other laboratory chemicals, shall be exempt from the requirements of this Section.

F. The manufacturer of a mercury-added product subject to the collection system requirements of R.S. 30:2581 and this Section may apply to the department for an exemption from R.S. 30:2581 and this Section for a product or category of products. An exemption request shall contain, at a minimum, the following information:

1. the amount of mercury in the mercury-added product;
2. the total amount of the mercury-added product sold in Louisiana;
3. the total amount of the mercury-added product disposed of in Louisiana;
4. the feasibility of a collection system; and
5. the overall risk to human health and the environment posed by the mercury-added product.

G. The administrative authority shall decide whether to grant the requested exemption within 180 days from the date on which the request for exemption was filed, unless a longer time period is agreed upon by mutual consent of the applicant and the administrative authority.

H. Exemptions may be renewed upon reapplication by the manufacturer and findings by the department of continued eligibility under the criteria of R.S. 30:2581 and this Section and of compliance by the manufacturer with the conditions of its original approval and any other conditions the department may have added. Exemptions may be renewed one or more times, and each renewal may be for a period of no longer than two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2719. Disposal Ban and Proper Management of Mercury in Scrap Metal Facilities

- A. On and after January 1, 2007, mercury shall not be discharged to water,

wastewater treatment, and wastewater disposal systems except when it is done in compliance with applicable local, state, and federal requirements.

B. No person, including, but not limited to, Louisiana-licensed dismantlers and parts recyclers, motor vehicle crushers, and scrapped motor vehicle dealers, shall crush, bale, shear, or shred a motor vehicle unless the person has made a reasonable effort, to the extent safe and practicable, to remove, or verify the removal of, the mercury-containing convenience lighting switches and antilock braking system components. The person removing, or verifying the removal of, the mercury-containing convenience lighting switches and antilock braking system components shall maintain written certification of the removal or verification that the mercury-containing convenience lighting switches and antilock braking system components have been removed to the extent safe and practicable. Verification that the mercury-containing convenience lighting switches and antilock braking system components have been removed shall be accomplished by:

1. adoption of a best management practice (BMP) governing component mercury-added products in motor vehicles, which is provided by or approved by the department, or any other such BMP that is submitted to and approved by the department. A copy of an approved BMP and lists of known recent makes and models of motor vehicles with mercury-containing switches is available from the department and can be obtained from the department's website; and

2. participation in the EPA-partnered National Vehicle Mercury Switch Recovery Program (NVMSRP), also known as End of Life Vehicle Solutions (ELVS).

C. Any facility receiving vehicles that have been scrapped by being dismantled, crushed, scrapped, shredded, baled, sheared, or otherwise rendered more easily transported to the recycler shall obtain the certification from a duly authorized representative of the person delivering the scrap that the mercury-containing convenience lighting switches and antilock braking system components required to be removed have been removed and are not contained in the scrap being delivered. Persons receiving the vehicles shall also conduct a visual inspection, as practicable, of the scrap delivered to verify that the component mercury-added products have been removed.

D. No person shall crush, bale, shear, or shred an appliance containing mercury-containing switches or other mercury-added products unless the person has made a reasonable effort, to the extent safe and practicable, to verify that the component mercury-added products and/or switches have been removed. Verification of the removal of component mercury-added products and/or mercury-containing switches contained within the appliance shall be accomplished by:

1. adoption of a best management practice (BMP) governing component mercury-added products in appliances (white goods), which is provided by or approved by the department, or any other such BMP that is submitted to and approved by the department. A copy of an approved BMP and lists of known recent makes and models of appliances with mercury-containing switches is available from the department and can be obtained through the department's website; and

2. maintenance of written certification of the screening and removal of the mercury-added products and/or mercury-containing switches by the person removing, or verifying the removal of, the component mercury-added products and/or mercury-containing switches.

E. Any facility receiving appliances for scrapping that contained mercury-added

products and/or mercury-containing switches shall obtain a certification by a duly authorized representative of the person delivering the scrap that the mercury-added products and/or mercury-containing switches have been removed and are not included in the scrap delivered. The person receiving the scrap shall conduct a visual inspection, as safe and practicable, to verify that all of the mercury-added products and/or mercury-containing switches have been removed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

§2721. Best Management Practices for Health Care Facilities

A. Any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product must maintain a current and appropriate Material Safety Data Sheet (MSDS), as defined in 42 U.S.C. 11049, for any elemental mercury used.

B. Any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product must maintain a statement signed by its authorized representative that certifies that its employees and other persons acting under its direction or control:

1. will use the mercury only for medical, dental, research, or manufacturing purposes;
2. understand that mercury is toxic, and will store, use, and otherwise handle such mercury in accordance with Subsection C of this Section; and
3. will dispose of the elemental mercury, formulated mercury-added product, fabricated mercury-added product, or mercury-added product in accordance with Subsection C or F of this Section.

C. Within 180 days of the effective date of these regulations, any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product shall develop, maintain, and comply with a Mercury Management Plan (MMP) that is designed to eliminate or capture mercury in waste. The MMP shall contain, at a minimum, the following requirements.

1. A baseline inventory of mercury-containing devices and substances at the facility shall be listed.
2. A timeline for the reduction and eventual elimination of mercury-containing equipment and chemicals, with the exception of dental amalgam, shall be established.
3. Mercury management protocols for safe handling, mercury spill cleanup procedures, disposal procedures, and education and training of employees shall be established.
4. Discarded mercury-containing devices and substances shall be recycled to the maximum extent practicable, and records associated with such recycling shall be maintained at the facility for at least three years. Discarded mercury-containing devices and substances:
 - a. shall only be offered for recycling to treatment, storage, or disposal facilities that, if located in the United States, are either:
 - i. permitted under 40 CFR 270, LAC 33:V.Subpart 1, or a RCRA-approved hazardous waste program of any other state; or
 - ii. authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271; and

b. shall not be offered for disposal by incineration.

5. Management and storage of discarded mercury-containing devices and substances waste shall be protective of human health and the environment. Storage shall be in structurally sound, leak-proof, sealed, labeled containers that are impervious to mercury vapors. An example of a container meeting these criteria would be a clear glass container. Glass containers shall be secured inside a sturdy, padded box in order to prevent breakage of the glass and subsequent release of mercury.

6. An environmentally preferable purchasing (EPP) policy for mercury products and a process to regularly review mercury use reduction and elimination progress shall be established.

7. All other aspects of the MMP shall, at a minimum, conform to any best management practices (BMP) developed by the American Hospital Association or the American Medical Association or the American Dental Association or by Hospitals for a Healthy Environment (H2E). The H2E BMP is known as the Mercury Waste Virtual Elimination Model Plan.

D. Use of Dental Amalgam. Within 180 days of the effective date of these regulations, any health care facility using dental amalgam shall develop, maintain, and comply with a Dental Amalgam Management Plan that is designed to capture mercury in dental amalgam waste and excess. This management plan shall contain, at a minimum, the following requirements.

1. Chair-side traps and vacuum pump filters shall be used for the purpose of waste amalgam capture. Such devices shall be operated according to the manufacturer's recommendations.

2. Disposal of elemental mercury, dental amalgam, and used, disposable amalgam capsules shall be minimized by implementing practices that reduce mercury in waste, such as use of a variety of amalgam capsule sizes to minimize non-contact amalgam waste.

3. Waste amalgam (amalgam sludge and contact and non-contact amalgam) shall be recycled to the maximum extent practicable, and records associated with such recycling shall be maintained at the facility for at least three years. Waste amalgam shall be disposed of in accordance with Paragraph C.4 of this Section.

4. Management and storage of amalgam waste shall be in accordance with Paragraph C.5 of this Section.

5. Water line cleaners shall be of a type that will minimize dissolution of amalgam. Only pH neutral, non-bleach, non-chlorine-containing suction line cleaners shall be used. Water lines shall be cleaned daily on chairs where restorative dentistry is performed and as necessary, or according to the vacuum pump manufacturer's recommendations, on other chairs.

6. All other aspects of the Dental Amalgam Management Plan shall, at a minimum, conform to the BMP for amalgam waste as developed by the American Dental Association (ADA) and effective on June 2, 2006. The ADA publishes BMPs for the disposal of dental amalgam waste. The ADA may be contacted through their website or at American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678; phone 312-440-2500.

E. Manufacturers of mercury-containing devices and substances shall establish a convenient and accessible collection system for formulated mercury-added products, fabricated mercury-added products, and/or mercury-added products from medical facilities in accordance with LAC 33:I.2717.

F. Mercury-containing devices and substances that contain mercury in sufficient

quantities to be considered a hazardous waste as defined in LAC 33:V.Subpart 1, Hazardous Waste Regulations shall be subject to that Subpart if such waste cannot be recycled in accordance with Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: OS077

Person

Preparing

Statement: Sharon ParkerDept.: Environmental QualityEmail: sharon.parker@la.govPhone: 225-219-3559Office: Secretary

Return

Address: P.O. Box 4302
Baton Rouge La 70821

Rule

Title: Mercury Risk Reduction
(LAC 33:I.Chapter 27)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Minimal to no costs or savings will be realized for the implementation of this proposed rule. All activities associated with this rule can be accomplished through use of existing personnel and budget with no or minimal increases in time or budget expenditures. Tracking notifications, phase-outs, labeling, and collections of mercury-added products are simplified through membership in the Interstate Mercury Education and Reduction Clearinghouse (IMERC), where multiple member states work together to accomplish these mutual goals. Mercury-added products can be replaced with non-mercury alternatives with similar functionality and at similar prices. If no non-mercury alternative exists for a specific product, the manufacturer may apply for administrative exemption from the sales ban or phase-out in order to continue sales supporting a demonstrated need, which will allow local government to continue purchasing the specific product.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no increase or decrease in revenues for state and local government as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Dental facilities, mercury-added products manufacturers (none known in Louisiana), steel recycling facilities, and salvage yards will be most affected by this proposed rule. Most actions they will need to take are being done voluntarily for other programs in which they are participating. Some of these programs pay the facilities for the mercury-added product they remove or the mercury they collect.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effects on competition or employment are expected. This proposed rule provides consistency with other states regarding mercury risk reduction in manufacturing.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule creates a comprehensive system for control of mercury-containing products; requires notification to the DEQ by manufacturers of mercury-containing products; phases out mercury-containing products with increasingly stringent restrictions on sales; requires manufacturers to provide collection plans for discarded mercury-containing products; provides for labeling of mercury-containing products and public outreach on the danger of mercury; bans certain methods of disposal of mercury-containing products; bans certain uses of mercury-containing products; and provides for exemptions to the requirements. Specific language is included for the disposal ban and proper management of mercury in scrap metal facilities and for providing for the continued use of dental amalgam.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This proposed rule is being adopted to implement Act 126 of the 2006 Regular Session of the Legislature regarding the control of mercury releases to the environment.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No increase in the expenditure of funds is anticipated.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ___ Yes. If yes, attach documentation.

(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 08-09	FY 09-10	FY 10-11
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	Minimal	Minimal	Minimal
MAJOR REPAIR & CONSTR POSITIONS (#)			

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Minimal to no costs or savings will be realized for the implementation of this proposed rule. All activities associated with this rule can be accomplished through use of existing personnel and budget with no or minimal increases in time or budget expenditures. Tracking notifications, phase-outs, labeling, and collections of mercury-added products are simplified through membership in the Interstate Mercury Education and Reduction Clearinghouse (IMERC), where multiple member states work together to accomplish these mutual goals. Inspections of dental facilities, scrap yards, and other steel recycling facilities already occur, and additional resource allocation necessary to determine compliance with this rule will be negligible.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND			
AGENCY SELF-GENERATED DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Current funding is adequate to implement the proposed rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Local governments will not experience any monetary savings or costs as a result of this rule. Mercury-added products can be replaced with non-mercury alternatives with similar functionality and at similar prices. If no non-mercury alternative exists for a specific product, the manufacturer may apply for administrative exemption from the sales ban or phase-out in order to continue sales supporting a demonstrated need, which will allow local government to continue purchasing the specific product.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no increase or decrease in revenues for state and local government as a result of this proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Dental facilities, mercury-added products manufacturers (none known in Louisiana), steel recycling facilities, and salvage yards will be most affected by this proposed rule. Most actions they will need to take are being done voluntarily for other programs in which they are participating. Some of these programs pay the facilities for the mercury-added product they remove or the mercury they collect.

- Dental facilities – must install filters and chair-side traps and capture waste amalgam for proper disposal, but may already be doing so *per* guidelines of the American Dental Association.
- Manufacturers of mercury-added products (none known in the state) must notify Louisiana of sales and ensure products are phased out, labeled, and/or collected at end of life-- but must already do so *per* related requirements in numerous other states.
- Steel recycling facilities – must develop programs to ensure that mercury-added products contained within scrap metal are removed prior to melting, but must already do so *per* federal Electric Arc Furnace Area Source Rule.
- Salvage yards (specifically those that handle automobiles and appliances) – must ensure that certain mercury-added products are removed prior to crushing/shredding, but may be remunerated through the National Vehicle Mercury Switch Removal Program. These entities are already required to remove other components from vehicles prior to crushing, such as oil, gasoline, fuel tanks, antifreeze, transmission fluids, tires, and batteries.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

This proposed rule will have no effect on the gross income of the above entities except for those that manufacture mercury-added products, none of which are known to be located in Louisiana.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No effects on competition or employment are expected. This proposed rule provides consistency with other states regarding mercury risk reduction in manufacturing.