

Chapter 870: LABELING OF MERCURY-ADDED PRODUCTS

SUMMARY: This rule establishes the standards for affixing labels to mercury-added products, as required under 38 MRSA § 1662.

- 1. Purpose.** The purpose of this rule is to reduce mercury emissions to the environment from mercury-added products by establishing standards for affixing labels to the product and product package as directed under 38 MRSA § 1662(1). Product labeling is expected to reduce mercury emissions by facilitating the purchase of non-mercury alternatives and by facilitating compliance with the source separation requirements of 38 MRSA § 1664.
- 2. Definitions.** The following terms, as used in this rule, have the following meanings:
 - A. Department.** "Department" or "DEP" means Department of Environmental Protection.
 - B. Manufacturer.** "Manufacturer" means a person who 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 last person to produce or assemble the product is a manufacturer. If a multi-component product is produced in a foreign country, the importer or domestic distributor is the manufacturer.
 - C. Mercury-added product.** "Mercury-added products" means any of the following items if mercury or a mercury compound is intentionally added during formulation or manufacture of the item to provide a specific characteristic, appearance or quality, or to perform a specific function:
 - (1) A thermostat or thermometer;
 - (2) An electrical switch;
 - (3) A medical or scientific instrument such as a manometer, sphygmomanometer or barometer ; and
 - (4) An electric relay or other electrical device, excluding a lamp or a battery.

A medical or scientific instrument is not a mercury-added product for the purpose of this rule if the only mercury-added component it contains is a lamp or battery.

NOTE: Although mercury-added lamps are not subject to the labeling requirements of this chapter, persons who sell the lamps in bulk for use in an industrial, commercial or office building must provide written notice to the purchaser as required under 38 MRSA § 1662(2). See <http://www.mainedep.com/dep/rwm/Hginvoice.htm> for guidance.

- D. MRSA.** "MRSA" means the Maine Revised Statutes Annotated.
- E. Person.** "Person" means an individual, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture.

- F. Retailer.** “Retailer” means any person who sells a mercury-added products in Maine, including persons who sell directly to consumers and persons who sell to others for resale.
- 3. Labeling required.** After January 1, 2002, a manufacturer or retailer may not sell a mercury-added product in Maine unless both the product and its packaging are labeled in accordance with sections 5 and 6 of this rule or unless the manufacturer conforms to the terms of an approved alternative compliance plan under section 7. A retailer may not be found in violation of this requirement if the retailer lacked knowledge that the product contained mercury.
- 4. Special rule for automobiles.** The requirement of section 3 does not apply to mercury-added products that are components in automobiles until July 15, 2002, provided the manufacturer submits an alternative compliance plan under section 7 of this rule by January 1, 2001. In deciding whether to approve an alternative compliance plan for labeling of automobile components, the department shall consult with automobile manufacturers, automobile dismantlers, automobile recyclers and other interested parties and may consider the extent to which the plan provides for identification of mercury-added components in vehicles assembled before July 15, 2002.
- 5. Labeling standards.** Prior to sale of a mercury-added product, the manufacturer of the product shall affix or cause to be affixed a label that conforms to the requirements of this section.
- A.** The label must clearly inform the purchaser and consumer, using words or symbols, that the product contains mercury and may not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled or otherwise managed to ensure that mercury does not become part of solid waste or wastewater. The following wording is acceptable:
- Contains Mercury. Don't Put in Trash. Recycle or Manage as Hazardous Waste.**
- B.** The label must be affixed to the product such that the label is clearly visible and legible. A label printed using 10 point font or larger is presumed to be legible.
- C.** Labels affixed to products must be printed, mounted, molded, engraved or otherwise affixed using materials that are sufficiently durable to remain legible for the useful life of the product.
- D.** If the product is sold in packaging that obscures the label on the product, then the packaging also must be labeled. If, prior to sale, a retailer re-packages the product, then the retailer shall label the new packaging in accordance with this chapter.
- E.** Where the purchaser or recipient is unable to view the labels on the product or product packaging at the time of purchase or receipt, such as in catalog sales transactions that occur

over the internet or by telephone, the manufacturer or retailer shall, prior to sale or distribution clearly inform the purchaser or recipient that the product contains mercury.

6. Mercury-added component parts. Mercury-added products that are components of larger products offered for sale in Maine must be labeled in accordance with the requirements of this rule. If the component is enclosed in the larger product such that the label on the component cannot be seen, then the product containing the component also must be labeled in accordance with the requirements of this rule and the label must identify the component in sufficient detail so that it may be readily located for removal. If the component is incorporated in the larger product such that the label on the component is fully visible, then labeling of the larger product is not required.

7. Alternative compliance plan. A manufacturer may apply to the department for approval to carry out an alternative compliance plan in lieu of compliance with the requirements of sections 5 and 6.

A. Application. An application for approval of an alternative compliance plan must be in writing and must:

- (1) Identify the requirement or requirements (e.g. font size; placement of the label directly on the product) for which alternative compliance is proposed;
- (2) Describe the proposed alternative and explain the justification for it;
- (3) Describe how the alternative ensures that purchasers or recipients of mercury-added products are made aware of mercury content prior to purchase or receipt;
- (4) Describe how a person discarding the product will be made aware of the need for proper handling to ensure that it does not become part of solid waste or wastewater;
- (5) Document the readiness of all necessary parties to implement the proposed alternative; and
- (6) Describe the performance measures to be used by the manufacturer to demonstrate that the alternative is providing effective pre-sale and pre-disposal notification.

B. Approval. The department may approve a proposed alternative compliance plan or approve it with modifications and conditions upon determining that compliance with the requirements of sections 5 and 6 is not feasible or that the proposed alternative would be at least as effective in providing pre-sale notification of mercury content and in providing instructions on proper management.

C. Duration. The plan may be approved for a period of no more than three years and may be renewed upon request provided the applicant demonstrates continued eligibility under the

criteria of this section and provided the applicant is in compliance with any conditions of its prior approval. Requests for renewal must be submitted to the department in writing at least 90 days prior to expiration. The request must indicate any changes in the product or packaging covered by the plan or any changes in the conditions cited by the manufacturer in support of its original request to carry out an alternative compliance plan.

- 8. Consistency with other states.** In carrying out the requirements of this rule, the department shall strive for consistency with labeling programs in other states. Notwithstanding other provisions of this rule, the manufacturer of a mercury-added product other than an automobile may comply with the labeling requirement of Maine law under 38 MRSA § 1662(1) if all units of the product sold in Maine are labeled in compliance with corresponding requirements adopted by another state. A manufacturer intending to comply with section 1662(1) in this manner shall provide the department with the following documents:
- A.** A copy of the label as it will appear on products and product packaging sold in Maine or, if the manufacturer will implement alternatives to labeling, a copy of the alternative labeling plan; and
 - B.** A copy of the letter approving the use of the label in another state or approving the alternatives to labeling.

Submittal of these documents to the department constitutes compliance with section 1662(1) unless, within 30 days of receipt, the department notifies the manufacturer that the label or labeling alternative violates Maine law and explains in writing the nature of the violation.

STATUTORY AUTHORITY: 38 MRSA § 1662(1)

EFFECTIVE DATE:
March 4, 2001