Enterprise Services Policy No. POL-DES-70.95M.060-00

Mercury Free Products Purchasing Preference

**Applies to**: Any state office or activity of the executive branch of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](http://apps.leg.wa.gov/RCW/default.aspx?cite=28B.10.016), correctional and other types of institutions ([RCW 39.26.010(1)](https://apps.leg.wa.gov/rcw/default.aspx?Cite=39.26.010)) ([RCW 39.26.100](https://app.leg.wa.gov/RCW/default.aspx?cite=39.26.100)) ([RCW 39.26.102](https://app.leg.wa.gov/RCW/default.aspx?cite=39.26.102)).

**Authorizing sources**:

* State Law [RCW 70.95M.060](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.060)
* State Law [RCW 70.95M.030](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.030)
* State Law [RCW 70.95M.080](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.080)
* Executive Order [Executive Order 04-01](https://www.digitalarchives.wa.gov/GovernorLocke/eo/eo_04-01.htm)
* Executive Order [Executive Order 18-01](https://www.governor.wa.gov/sites/default/files/exe_order/18-01%20SEEP%20Executive%20Order%20%28tmp%29.pdf)

**Effective date**: TBD

**Last update**: N/A

**Sunset review date:** [5 years from effective date]

**Approved by**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Chris Liu, Director

# Reason for Policy

This policy establishes the purchasing priority and preference required in RCW 70.95M.060 for agencies purchasing products that may contain mercury. This statutory requirement was adopted to eliminate or reduce threats to human heal and the environment from release of mercury. See <https://www.doh.wa.gov/CommunityandEnvironment/Contaminants/Mercury>.

# Policy

## 1. Priority and preference must be given to the purchase of products that contain no mercury.

* 1. This Policy applies to the procurement of all “mercury-added products” as defined in [RCW 70.95M.010(8)](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.010).
  2. The following product categories are applicable to this policy, as provided by the [Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database](https://imerc.newmoa.org/publicsearch/NEWMOA_IMERC.aspx#/CustomizedSearch):

|  |  |
| --- | --- |
| Appliances | Measuring Devices |
| Batteries | Medical Instruments, unless used in medical or research tests regulated by the FDA under the FDA and Cosmetic Act (21 U.S.C. Sec. 301) |
| Computers | Office Equipment |
| Dental Amalgam | Pumps |
| Displays/Screens | Relays |
| Electronics | Sensors |
| Formulated Products | Switches |
| Heating/Cooling Equipment | Thermometers |
| Industrial Machinery | Thermostats |
| Lamp Fixtures | Toys |
| Lamps | Valves |

* 1. Where there are mercury-free products commercially available (“economically feasible”), they must be purchased to the exclusion of products that contain mercury-added compounds or components.
  2. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. Agencies shall apply a minimum of 5 percent preference to each product bid that contains the least amount of mercury-added compounds or components as compared to other bidders.
  3. In the special circumstance where the product containing mercury is designed to reduce electricity consumption by at least forty percent, the preference is given to the qualifying mercury alternative available that saves the same or a greater amount of electricity.
  4. When a master contract or DES approved cooperative contract has not applied the no mercury statutory requirements. Agencies are required to apply the preference when selecting among multiple vendors or products.

## 2. Direct Buy purchases must comply

1. Compliance to this policy is expected for direct buy (non-competitive) purchases when reasonably practicable.
   * 1. Products purchased under the Direct Buy process, are required to be mercury-free.
     2. In circumstances where a nonmercury-added product is not available, the application of the preference shall be at the discretion of the covered agency.

## 3. Agencies are not required to apply a priority or preference when:

1. Using a master contract or DES approved cooperative contract, as DES has already applied the preference.
2. Mercury-added products are required by federal law.

## 4. Proper Disposal of Mercury-Added Products

1. In accordance with RCW 70.95M.030, agencies must dispose of mercury and mercury-added products in an environmentally responsible and acceptable manner based on the [department of health’s instructions on proper disposal methods](https://www.doh.wa.gov/CommunityandEnvironment/Contaminants/Mercury).

## 5. Agencies will be required to complete environmental purchasing training.

1. Within 6 months of the effective date of this policy, personnel who are responsible for small purchases, competitive procurements, and contract management activities shall complete the mandatory training provided by DES available in the Learning Management System (LMS).
2. Employees assigned these responsibilities after the initial 6-month implementation period of this policy shall complete the required training within 90 days of assignment. Specifically, this applies to all new employees, employee’s assigned new responsibilities/duties, and employees in new positions, who are responsible for competitive procurements.

## 6. Agencies will document and report compliance with this Policy.

1. Agencies shall use Washington’s Electronic Business Solution (WEBS) to report environmental attributes that were included in solicitations posted on WEBS; and which of those attributes were included in the resulting awards.
2. The documentation of the purchasing of products, complying with this policy, for Direct Buy purchases shall be at the discretion of the agency.
3. Agencies will document and retain purchasing decisions that reflect compliance with RCW 70.95M and this Policy with the procurement file.
4. Agencies are expected to exercise sound professional judgment in implementing no mercury products preference.
5. The agency’s record of compliance with this policy may be factored into an agency’s procurement risk assessment.

7. A violation of chapter 70.95 RCW is punishable by a civil penalty. ([RCW 70.95M.080](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.080)).

# Procedures

**Procedure:** [**Environmental Purchasing Risk Calculator**](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/training/NonStateEmp/PCB/PCBsRiskCalculator/story_flash.html)

# Appendices

[Sample Contract Language](Drafts/Sample%20Mercury%20Language.docx)

# Forms/Instructions

[Contractor Mercury Content Certification Form](Drafts/Contractor%20Certification%20Mercury%20Preference.docx)

# Frequently Asked Questions

**FAQ:** N/A

History

Adopted

[DATE]

Amended

There are no amendments to this policy.