

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 182  
PROCEDURES FOR REVIEW OF PETITIONS  
FOR MERCURY PRODUCT EXEMPTIONS

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AUTHORITY: Implementing and authorized by Section 22.23b of the Environmental Protection Act [415 ILCS 5/22.23b] and Section 27 of the Mercury-added Product Prohibition Act [410 ILCS 46/27].

SOURCE: Adopted at 30 Ill. Reg. 784, effective January 5, 2006; amended at 32 Ill. Reg. 10908, effective July 1, 2008; amended at 36 Ill. Reg. 9771, effective July 1, 2012

## SUBPART A: INTRODUCTION

### **Section 182.102 Purpose**

This Part establishes the procedures and criteria the Agency will use to review petitions for exemptions from the provisions of Section 22.23b of the Environmental Protection Act and Section 27 of the Mercury-added Product Prohibition Act. Petitions for exemptions and petitions for renewal of exemptions must be submitted in accordance with this Part.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.104 Definitions**

Unless otherwise specified, all terms shall have the meanings set forth in the Illinois Environmental Protection Act [415 ILCS 5] or the Mercury-added Product Prohibition Act [410 ILCS 46], as applicable. Additionally, for purposes of this Part, the following definitions apply:

"Agency" means the Illinois Environmental Protection Agency.

"Manufacturer" means any person that:

produces a product subject to the provisions of Section 22.23b of the Environmental Protection Act or Section 27 of the Mercury-added Product Prohibition Act; or

serves as an importer or domestic distributor of a product produced outside of the United States that is subject to the provisions of Section 22.23b of the Environmental Protection Act or Section 27 of the Mercury-added Product Prohibition Act.

In the case of a multi-component product, "manufacturer" means the last manufacturer to produce or assemble the product, unless the product is produced or assembled outside of the United States, in which case, "manufacturer" means the importer or domestic distributor of the product.

*"Mercury-added product" means a product to which mercury is added intentionally during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture. [410 ILCS 46/10]*

*"Mercury relay" means a product or device, containing mercury added during its manufacture, that opens or closes electrical contacts to effect the operation of*

*other devices in the same or another electrical circuit. "Mercury relay" includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays. (Section 3.283 of the Environmental Protection Act)*

*"Mercury switch" means a product or device, containing mercury added during its manufacture, that opens or closes an electrical circuit or gas valve, or makes, breaks, or changes the connection in an electrical circuit, including, but not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors. (Section 3.284 of the Environmental Protection Act)*

(Source: Amended at 36 Ill. Reg. 9771, effective July 1, 2012)

### **Section 182.106 Severability**

If any Section, subsection, sentence, or clause of this Part is adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause not adjudged unconstitutional, void, invalid, or otherwise unlawful.

## **SUBPART B: PETITIONS FOR EXEMPTIONS**

### **Section 182.202 Petitions**

- a) *The manufacturer of a mercury switch or mercury relay, or a scientific instrument or piece of instructional equipment containing mercury added during its manufacture, may apply to the Agency for an exemption from the provisions of Section 22.23b of the Environmental Protection Act for one or more specific uses of the switch relay, instrument, or piece of equipment by filing a written petition with the Agency. (Section 22.23b(c) of the Environmental Protection Act)*
- b) *The manufacturer of a mercury-added product listed in Section 27(a) of the Mercury-added Product Prohibition Act may apply for an exemption for one or more uses of the product by filing a written petition with the Agency. (Section 27(c) of the Mercury-added Product Prohibition Act)*

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.204 Requirements for Petitions**

- a) Two copies of the petition must be submitted on forms prescribed by the Agency and must be mailed or delivered to the address designated by the Agency on the

forms. The Agency's record of the date of filing shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt.

- b) Petitions for exemptions from Section 22.23b of the Environmental Protection Act must include, but shall not be limited to, the following information:
- 1) The petitioner's name, address, telephone number, and North American Industry Classification System (NAICS) code. The petitioner's web address must also be included if the petitioner has a web address;
  - 2) The name, address, and telephone number of a contact person for the petitioner. The contact person's e-mail address must also be included;
  - 3) Identification of the product for which the exemption is sought and a description of the specific uses of the product for which the exemption is sought;
  - 4) A description of the location of the mercury or mercury-containing component in the product and a description of how to remove the mercury or mercury-containing component;
  - 5) A description of the purpose of the mercury in the product;
  - 6) Identification of all available nonmercury alternatives to the product or mercury-containing component of the product;
  - 7) Documentation demonstrating that use of the product provides a net benefit to the environment, public health, or public safety when compared to each of the available nonmercury alternatives identified under subsection (b)(6) of this Section;
  - 8) Documentation demonstrating that a convenient and widely available system exists for the proper end of life collection, transportation, and processing of the product for which the exemption is sought. The documentation must include, but shall not be limited to, a written plan for the proper collection, transportation, and processing of the product. The plan must include, but shall not be limited to, the following:
    - A) A description of the system that will be used for the proper end of life collection, transportation, and processing of the product by the manufacturer, by an industry or trade group, or via another similar system that ensures the product is properly collected, transported, and processed;

- B) Documentation demonstrating the readiness and willingness of all necessary parties to perform as intended in the collection, transportation, and processing system;
  - C) A description of the financing for the collection, transportation, and processing system;
  - D) A description of an education program that will inform the relevant portions of the public and private sectors about the product, the purpose of the collection, transportation, and processing system, and how consumers of the product may participate;
  - E) Identification of the annual collection goal for the product;
  - F) A description of the performance measures to be used to determine whether the collection, transportation, and processing system is meeting the annual collection goal for the product;
  - G) A description of the record keeping protocol to assure conformance with the plan; and
  - H) A description of additional or alternative actions that will be implemented to improve the collection, transportation, and processing of the product in the event the annual collection goal for the product is not met.
- c) Petitions for exemptions from Section 27 of the Mercury-added Product Prohibition Act must include, but shall not be limited to, the following information:
- 1) The petitioner's name, address, telephone number, and North American Industry Classification System (NAICS) code. The petitioner's web address must also be included if the petitioner has a web address;
  - 2) The name, address, and telephone number of a contact person for the petitioner. The contact person's e-mail address must also be included;
  - 3) Identification of the product for which the exemption is sought and a description of the specific uses of the product for which the exemption is sought;
  - 4) A description of the location of the mercury or mercury-containing component in the product and a description of how to remove the mercury or mercury-containing component;

- 5) A description of the purpose of the mercury in the product;
- 6) Identification of all available nonmercury alternatives to the product or mercury-containing component of the product;
- 7) Documentation demonstrating that one of the following applies:
  - A) Use of the product provides a net benefit to the environment, public health, or public safety when compared to each of the available nonmercury alternatives identified under subsection (b)(6) of this Section; or
  - B) Technically feasible nonmercury alternatives are not available at comparable cost;
- 8) Documentation demonstrating that a system exists for the proper collection, transportation, and processing of the product at the end of its useful life. The documentation must include, but shall not be limited to, a written plan for the proper collection, transportation, and processing of the product. The plan must include, but shall not be limited to, the following:
  - A) A description of the system that will be used for the proper end of life collection, transportation, and processing of the product by the manufacturer, by an industry or trade group, or via another similar system that ensures the product is properly collected, transported, and processed;
  - B) Documentation demonstrating the readiness and willingness of all necessary parties to perform as intended in the collection, transportation, and processing system;
  - C) A description of the financing for the collection, transportation, and processing system;
  - D) A description of an education program that will inform the relevant portions of the public and private sectors about the product, the purpose of the collection, transportation, and processing system, and how consumers of the product may participate;
  - E) Identification of the annual collection goal for the product;
  - F) A description of the performance measures to be used to determine whether the collection, transportation, and processing system is meeting the annual collection goal for the product;

- G) A description of the record keeping protocol to assure conformance with the plan; and
- H) A description of additional or alternative actions that will be implemented to improve the collection, transportation, and processing of the product in the event the annual collection goal for the product is not met.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.206 Preliminary Review of Petitions**

- a) Within 10 working days after receipt of a petition, the Agency shall determine whether to accept the petition for review or to reject the petition as incomplete. The petitioner may waive this deadline in writing.
- b) If the petition is rejected, notice of the rejection shall be given to the petitioner by certified mail, return receipt requested. The notice of rejection shall include an explanation of the Agency's decision.
- c) Upon receipt of a notice of rejection for incompleteness, the petitioner may amend the petition and resubmit it to the Agency, which will initiate the review process again.
- d) If the petition is accepted as complete, review of the petition shall proceed in accordance with Subpart C of this Part.

#### **SUBPART C: AGENCY DECISION MAKING**

### **Section 182.302 Public Notice and Comments**

- a) Within 30 days after receipt of a complete petition for an exemption from Section 22.23b of the Environmental Protection Act, the Agency shall post a notice of the petition on its website and submit a notice of the petition to the Secretary of State for publication in the Illinois Register. The notice of the petition must include, but shall not be limited to, the following information:
  - 1) Identification of the petitioner and the product for which the exemption is sought.
  - 2) A description of the use of the product.
  - 3) A statement that a copy of the petition is available for review at the Agency's headquarters during normal business hours.

- 4) A statement that written public comments on the petition may be submitted to the Agency for a period of 45 days after the date of publication of the notice.
  - 5) The address to which written public comments on the petition can be submitted to the Agency.
- b) Before approving an exemption from Section 22.23b of the Environmental Protection Act, the Agency must review all public comments on the petition that were submitted to the Agency within 45 days after the date the notice required under subsection (a) was published in the Illinois Register.
- c) *Prior to approving an exemption from Section 27 of the Mercury-added Product Prohibition Act the Agency may publish notice of its receipt of the petition for the exemption on its website and consider public comments submitted in response to the petition. (Section 27 of the Mercury-added Product Prohibition Act) Such notices must include, but shall not be limited to, the following information:*
- 1) Identification of the petitioner and the product for which the exemption is sought.
  - 2) A description of the use of the product.
  - 3) A statement that a copy of the petition is available for review at the Agency's headquarters during normal business hours.
  - 4) A statement that written public comments on the petition may be submitted to the Agency for a period of 45 days after the date of publication of the notice.
  - 5) The address to which written public comments on the petition can be submitted to the Agency.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

#### **Section 182.304 Consultation with Other States**

- a) *Before approving any exemption from Section 22.23b of the Environmental Protection Act, the Agency must consult with other states to promote consistency in the regulation of products containing mercury added during their manufacture. (Section 22.23b of the Environmental Protection Act)*
- b) *Prior to approving an exemption from Section 27 of the Mercury-added Product Prohibition Act, the Agency may consult with other states to promote consistency*

*in the regulation of the product for which the exemption is requested. (Section 27 of the Mercury-added Product Prohibition Act)*

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.306 Criteria for Reviewing Petitions**

- a) *The Agency may grant an exemption from Section 22.23b of the Environmental Protection Act, with or without conditions, if the manufacturer demonstrates the following:*
  - 1) *A convenient and widely available system exists for the proper collection, transportation, and processing of the switch, relay, instrument, or piece of equipment at the end of its useful life; and*
  - 2) *The specific use or uses of the switch, relay, instrument, or piece of equipment provides a net benefit to the environment, public health, or public safety when compared to available nonmercury alternatives. (Section 22.23b(c) of the Environmental Protection Act)*
  
- b) *The Agency may grant an exemption from Section 27 of the Mercury-added Product Prohibition Act, with or without conditions, if the manufacturer demonstrates the following:*
  - 1) *A system exists for the proper collection, transportation, and processing of the product at the end of its useful life; and*
  - 2) *One of the following applies:*
    - A) *Use of the product provides a net benefit to the environment, public health, or public safety when compared to available nonmercury alternatives; or*
    - B) *Technically feasible nonmercury alternatives are not available at comparable cost. (Section 27 of the Mercury-added Product Prohibition Act)*

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.308 Final Agency Action**

- a) The Agency shall grant or deny the requested exemption within 90 days after the receipt of a complete petition.

- b) *Exemptions shall be granted for a period or term of 5 years.* (Section 22.23b(c) of the Environmental Protection Act and Section 27 of the Mercury-added Product Prohibition Act)
- c) Notice of the Agency's final action on a petition shall be given to the petitioner by certified mail, return receipt requested. If the Agency denies an exemption, the notice shall include an explanation of the Agency's decision.
- d) If the Agency denies a requested exemption or grants a requested exemption with conditions, the petitioner may appeal the Agency's final decision by filing a petition for review with the Board in accordance with 35 Ill. Adm. Code 105. Petitions for review must be filed with the Board within 35 days after the date of service of the Agency's final decision. (See 35 Ill. Adm. Code 105.206.)

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

#### SUBPART D: RENEWALS OF EXEMPTIONS

##### **Section 182.402 Petitions for Renewal of Exemptions**

The manufacturer may request renewals of the exemption for additional 5-year periods by filing additional written petitions with the Agency.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

##### **Section 182.404 Requirements for Petitions for Renewal**

- a) Two copies of the petition for renewal must be submitted on forms prescribed by the Agency and must be mailed or delivered to the address designated by the Agency on the forms. The Agency's record of the date of filing shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt.
- b) Petitions for renewals of exemptions from Section 22.23b of the Environmental Protection Act must include, but shall not be limited to, the information required under Section 182.204(b) of this Part. Any information that modifies information submitted in previous petitions must be clearly identified.
- c) Petitions for renewals of exemptions from Section 27 of the Mercury-added Product Prohibition Act must include, but shall not be limited to, the information required under Section 182.204(c) of this Part. Any information that modifies information submitted in previous petitions must be clearly identified. Petitions must also demonstrate that all conditions of the product's original exemption approval continue to be met.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.406 Preliminary Review, Public Notice and Comments, and Consultation with Other States**

The Agency's review of petitions for renewal shall be subject to the requirements of Sections 182.206, 182.302, and 182.304 of this Part.

### **Section 182.408 Criteria for Reviewing Petitions for Renewal**

The Agency may renew an exemption, with or without conditions, if the manufacturer demonstrates that the criteria set forth in Section 182.306 of this Part and the conditions of the product's original exemption approval continue to be satisfied.

(Source: Amended at 32 Ill. Reg. 10908, effective July 1, 2008)

### **Section 182.410 Final Agency Action**

- a) The Agency shall grant or deny the requested exemption renewal within 90 days after the receipt of a complete petition for renewal.
- b) Renewals of exemptions shall be granted for a period of 5 years.
- c) Notice of the Agency's final action on a petition for renewal shall be given to the petitioner by certified mail, return receipt requested. If the Agency denies an exemption renewal, the notice shall include an explanation of the Agency's decision.
- d) If the Agency denies a requested exemption renewal or grants a requested exemption renewal with conditions, the petitioner may appeal the Agency's final decision by filing a petition for review with the Board in accordance with 35 Ill. Adm. Code 105. Petitions for review must be filed with the Board within 35 days after the date of service of the Agency's final decision. (See 35 Ill. Adm. Code 105.206.)