

Nonmercury-Added Products Purchasing Preference Policy

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](#), correctional and other types of institutions ([RCW 39.26.010\(1\)](#)) ([RCW 39.26.100](#)) ([RCW 39.26.102](#)).

Authorizing sources:

- State Law RCW 70A.230
- State Law RCW 70A.230.060
- State Law RCW 70A.230.100
- Executive Order [Executive Order 04-01](#)
- Executive Order [Executive Order 20-01](#)

Original Release date: August 1, 2022

Original Effective date: February 1, 2021

Effective date of this revision: August 1, 2023

Sunset review date: 5 years from original effective date

Approved by:  Tara C. Smith, Director

Reason for Policy

This policy establishes the purchasing priority and preference required in [RCW 70A.230](#) for competitive purchases of products that may contain mercury. This statutory requirement was adopted to eliminate or reduce threats to human health and the environment from release of mercury. Refer to [Department of Health's Mercury webpage](#).

Policy

1. Priority and preference must be given to the purchase of products that contain no mercury.
 - a. This Policy applies to the procurement of all “mercury-added products” as defined in RCW 70A.230.010(8).
 - b. The following product categories are subject to this policy:

Appliances	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)
Batteries	Office Equipment
Computers	Pumps
Displays/Screens	Relays
Electronics	Sensors

Formulated Products	Switches
Heating/Cooling Equipment	Thermometers
Industrial Machinery	Thermostats
Lamp Fixtures	Toys
Lamps	Valves
Measuring Devices	

c. When purchasing products subject to this policy:

- i. In establishing nonmercury-added requirements and preferences, agencies shall reference [Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database](#).
 - ii. Where there are nonmercury-added products commercially available, they must be purchased to the exclusion of products that contain mercury-added compounds or components; unless there is no economically feasible nonmercury-added alternative that performs a similar function.
 - iii. 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% preference to each product bid that contains the least amount of mercury-added compounds or components as compared to other bidders.
 - iv. In the special circumstance where the product containing mercury is designed to reduce electricity consumption by at least 40%, the preference is given to the qualifying mercury alternative available that saves the same or a greater amount of electricity.

2. [Direct Buy Purchases](#)

Prior to purchasing products under the direct buy policy, agencies shall give consideration to products, subject to this policy, that contain no mercury or the least amount of mercury-added compounds or components (where there is no mercury free product).

3. [Agencies are not required to apply a priority or preference when:](#)

- a. Using a master contract or DES approved cooperative contract, as DES is responsible for applying the preference.
- b. Mercury-added products are required by federal law.
- c. A non-competitive procurement process is used.
- d. Purchasing prescription drugs, devices, and biological products regulated by the U.S. Food and Drug Administration (FDA), or any substance that may be lawfully sold over-the-counter without a prescription under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq. See RCW 70A.230.100. Dental Amalgams are medical devices pursuant to the Federal Food, Drug, and Cosmetic Act and are therefore excluded from this policy.¹

4. [Agencies will be required to complete environmental purchasing training.](#)

- a. Within 6 months of the effective date of this policy, personnel who are responsible for small

¹ See 21 CFR 872.3070, <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm?fr=872.3070>

purchases, competitive procurements, and contract management activities shall complete the mandatory training provided by DES available in the [Learning Center](#) (LC).

- b. 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.

5. [Agencies will document and report compliance with this Policy.](#)

- a. Agencies shall use Washington's Electronic Business Solution (WEBS) to report nonmercury-added preferences that were included in solicitations posted on WEBS; and which of those attributes were included in the resulting awards.
- b. Where an agency determines that it will not apply a nonmercury-added product preference, the reasons for this determination will be documented in the procurement file and in WEBS.
- c. Agencies will document and retain purchasing decisions that reflect compliance with RCW 70.95M and this Policy with the procurement file.
- d. Agencies are expected to exercise sound professional judgment in implementing no mercury products preference.
- e. The agency's record of compliance with this policy may be factored into an agency's procurement risk assessment.

Procedures

Procedure: [Environmental Procurement Decision Tree](#) - provides guidance on which environmental requirements you need to apply to your specific procurement. It also includes the following sections:

1. [Environmental Preferable Purchasing Desk Aid](#)
2. Sample Contract Language
3. Bidder Certification Environmental Preference Form
4. FAQ: Nonmercury-Added Products Preference FQA

History

Adopted

August 14, 2020

- Revised RCW 70.95M.060 to the new recodified RCW 70A.230.060, that went into effect June 11, 2020
- Revised RCW 70.95M.010(8) to the new recodified RCW 70A.230.010(8)
- Retitled DES-70.95M.060-00 to DES-70A.230-00
- Minor formatting changes

Amended

August 1, 2022

- Revised RCW 70.95M.060 to the new recodified RCW 70A.230.060, that went into effect June 11, 2020
- Revised RCW 70.95M.010(8) to the new recodified RCW 70A.230.010(8)
- Retitled DES-70.95M.060-00 to DES-70A.230-00
- Minor formatting changes
- Added revision date
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August 1, 2023

- Excluded dental amalgams from the policy pursuant to RCW 70A.230.100
- Minor formatting changes