

TEXT OF FINAL REGULATIONS

**DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS
CHAPTER 24 MERCURY THERMOSTAT COLLECTION
AND PERFORMANCE REQUIREMENTS**

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL REFERENCE NUMBER: R-2010-3
OFFICE OF ADMINISTRATIVE LAW NOTICE FILE NUMBER: Z-2012-0807-05**

Legend: Changes are shown from the existing text of California Code of Regulations, title 22, Division 4.5 as:

New proposed text is presented in underline

Amend the Table of Contents by adding chapter 24, sections 66274.1, 66274.2, 66274.3, 66274.4, 66274.5, 66274.7, and 66274.8 to division 4.5 of California Code of Regulations, title 22, to read:

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Add California Code of Regulations, title 22, division 4.5, chapter 24 to read:

Chapter 24. Mercury Thermostat Collection and Performance Requirements

§66274.1. Scope.

(a) This chapter establishes performance requirements that specify collection rates and a methodology for determining the number of out-of-service mercury-added thermostats becoming waste annually.

(b) A person managing out-of-service mercury-added thermostats pursuant to this chapter shall also comply with all applicable requirements of chapter 23 of this division.

Authority: Sections 58012, 25150, and 25214.8.17, Health and Safety Code.

Reference: Sections 25214.8.12 and 25214.8.17, Health and Safety Code.

§66274.2. Applicability.

Effective July 1, 2013, the requirements of this chapter shall apply to:

(a) Manufacturers as described in California Code of Regulations, title 22, section 66274.3;

(b) HVAC contractors as described in California Code of Regulations, title 22, section 66274.3; and

(c) Demolition contractors as described in California Code of Regulations, title 22, section 66274.3.

Authority: Sections 58012, 25150, and 25214.8.17, Health and Safety Code.

Reference: Section 25214.8.17, Health and Safety Code.

§66274.3. Definitions.

When used in this chapter, the terms listed in this section have the meanings given below. Terms used in this chapter that are not defined in this section but are defined in chapter 10 of this division and/or in chapter 6.5 of division 20 of the Health and Safety Code have the meanings given in those sources.

“Collection Rate” means the number of out-of-service mercury-added thermostats collected, as reported by a manufacturer or group of manufacturers, divided by the calculated number of out of service mercury added thermostats becoming waste annually, determined pursuant to California Code of Regulations, title 22, section 66274.4, expressed as a percentage.

“Demolition contractor” means a C-21 contractor as defined in California Code of Regulations, title 16, section 832.21.

“Heating, ventilating and air-conditioning (HVAC) contractor” means a C-20 contractor as defined in California Code of Regulations, title 16, section 832.20.

“Household hazardous waste collection facility (HHWCF)” has the same meaning as in Health and Safety Code section 25218.1, subdivision (f).

“Incentive,” as used in Health and Safety Code section 25214.8.13, subdivision (g), means a cash payment or provision of a coupon, discount, or rebate to a service technician, homeowner, or contractor for each out-of-service mercury-added thermostat returned to a manufacturer-sponsored thermostat collection location with manufacturer-provided thermostat collection bins.

“Manufacturer” has the same meaning as in California Health and Safety Code section 25214.8.11, subdivision (a).

“Mercury-added thermostat” has the same meaning as in California Health and Safety Code section 25214.8.11 subdivision (b).

“Out-of-service mercury-added thermostat” has the same meaning as in California Health and Safety Code section 25214.8.11, subdivision (c).

“Program” has the same meaning as in California Health and Safety Code section 25214.8.11, subdivision (d).

“Retailer” has the same meaning as in California Health and Safety Code section 25214.8.11 subdivision (e).

“SERA” means Skumatz Economic Research Associates of Superior, Colorado.

“SERA report” means “A Study to Meet Requirements for State of California Thermostat Recycling Legislation-Mercury-Containing Thermostats: Estimating Inventory and Flow from Existing Residential & Commercial Buildings,” prepared for

Mark Tibbetts, Thermostat Recycling Corporation, by Lisa A. Skumatz, Ph.D., Skumatz Economic Research Associates, Inc. (SERA), December 2009, appended attachment June 2010.

“Thermostat” has the same meaning as in California Health and Safety Code section 25214.8.11, subdivision (f).

“Thermostat collection location” means a location that accepts out-of-service mercury-added thermostats for recycling pursuant to the requirements in article 3 of chapter 23; “thermostat collection location” includes, but is not limited to, a wholesaler or retailer that collects thermostats pursuant to California Health and Safety Code section 25214.8.14.

“TP” means the annual collection rate performance requirement for out-of-service mercury-added thermostats, determined pursuant to California Code of Regulations, title 22, section 66274.5.

“TT” means the total number of out-of-service mercury-added thermostats becoming waste in a given calendar year, determined pursuant to the methodology described in California Code of Regulations, title 22, section 66274.4.

“Wholesaler” has the same meaning as in California Health and Safety Code section 25214.8.11 subdivision (g).

Authority: Sections 58012, 25150, and 25214.8.17, Health and Safety Code.

Reference: Sections 25214.8.11, 25214.8.12, 25214.8.13, 25214.8.17, and 25218.1, Health and Safety Code.

§66274.4. Methodology for Determining the Number of Out-of-Service Mercury-Added Thermostats Becoming Waste Annually.

(a)(1) The number of out-of-service mercury-added thermostats becoming waste in a calendar year (TT) shall be determined as follows. For a given calendar year, the number of out-of-service mercury-added thermostats becoming waste shall be the annual flow specified in the “Low Estimate” column of Table 1.5 of the SERA report for that year (beginning with “year 4” for 2013). The table below specifies the number of out-of-service mercury-added thermostats becoming waste each year (TT).

<u>A</u> <u>Year</u>	<u>B</u> <u>“Low</u> <u>Estimate”</u> <u>from table</u> <u>1.5 of the</u> <u>SERA</u> <u>report</u>
<u>2013</u>	<u>217,000</u>
<u>2014</u>	<u>212,000</u>
<u>2015</u>	<u>207,000</u>
<u>2016</u>	<u>202,000</u>
<u>2017</u>	<u>197,000</u>
<u>2018</u>	<u>193,000</u>
<u>2019</u>	<u>187,000</u>
<u>2020</u>	<u>181,000</u>
<u>2021</u>	<u>174,000</u>
<u>2022</u>	<u>168,000</u>

(2) If the effective date of this section is July 1, 2013, the pro rata portion of TT for 2013 shall be 50 percent of 217,000, or 108,500 out-of-service mercury-added thermostats, and the collection rate performance requirement, TP, shall be 30 percent of this value, representing 32,550 out-of-service mercury-added thermostats.

(b) Any person may submit to the department additional data on the number of mercury-added thermostats estimated to remain in use in California and the number of these thermostats that will become waste in each year. At least six months prior to making such a submittal, the person may provide the department with a proposed plan or methodology for obtaining the additional data; at its discretion, the department may provide feedback to the person on this proposed plan or methodology. Any submittal made pursuant to this subsection shall include all raw data, formulas, assumptions, models and calculations used, sufficient to allow the department to replicate the calculations.

(c) The department shall consider any data submitted pursuant to subsection (b) of this section and may adjust the estimated number of thermostats becoming waste

annually (TT) specified in this section if the department determines that the data supports such an adjustment.

Authority: Sections 58012 25150, and 25214.8.17, Health and Safety Code. Reference: Sections, 25214.8.17 and 25214.8.18 Health and Safety Code.

§66274.5. Annual Collection Rate Performance Requirements.

Beginning with calendar year 2013, a manufacturer or group of manufacturers shall meet or exceed the collection rate performance requirement (TP) specified in subsection (a) of this section for that year.

(a)(1) The table below specifies the collection rate performance requirement (TP) as a percentage of out-of-service mercury-added thermostats becoming waste annually (column C) and as a number of out-of-service mercury-added thermostats (column D).

<u>A. Year</u>	<u>B. TT, determined pursuant to §66274.4</u>	<u>C. Performance requirement (TP), expressed as a percentage of TT</u>	<u>D. Performance requirement (TP), expressed as a number of thermostats (=B x C)</u>
<u>2013</u>	<u>217,000</u>	<u>30%</u>	<u>65,100</u>
<u>2014</u>	<u>212,000</u>	<u>45%</u>	<u>95,400</u>
<u>2015</u>	<u>207,000</u>	<u>55%</u>	<u>113,850</u>
<u>2016</u>	<u>202,000</u>	<u>65%</u>	<u>131,300</u>
<u>2017</u>	<u>197,000</u>	<u>75%</u>	<u>147,750</u>
<u>2018 and Subsequent Years</u>		<u>75%</u>	

(2) The department may adopt regulations updating the performance requirements for 2018 and subsequent years. Unless and until the department adopts such regulations, the collection rate performance requirement (TP) shall be 75 percent of TT in 2018 and in subsequent years shall remain 75 percent of the number of out-of-service mercury-added thermostats becoming waste each year (TT), as calculated pursuant to California Code of Regulation, title 22, section 66274.4 subsection (a).

(b) If more than one manufacturer or group of manufacturers operates a program in a given calendar year:

(1) Based on information in the annual reports submitted pursuant to California Code of Regulation, title 22, section 66274.8, subsections (a) and (c) by all programs in prior years, the department shall assign a pro rata proportion of TT to each manufacturer or group of manufacturers operating a program.

(2) Each program’s performance requirement shall be determined pursuant to subsection (a) of this section except that the program’s collection rate goal shall be

calculated using the program's pro rata proportion of TT determined by the department pursuant to paragraph (1) of this subsection.

(3) Any manufacturer or group of manufactures wishing to dispute the pro rata proportion of TT assigned to it by the department may submit data to the department in support of its position within 30 days of posting of the information specified in subsection(c) of this section by the department on its internet Web site. The department shall consider such data and may adjust the pro rata proportions of TT assigned to each program if the data supports such an adjustment. If the department makes any adjustments pursuant to this paragraph, the department shall, within 60 days, update the information posted on its Internet Web site pursuant to subsection (c) of this section, as necessary.

(c) On or before May 1, 2013, and on or before May 1 of each subsequent year, the department shall post the following information on its Internet Web site regarding each program's collection of out-of-service mercury-added thermostats during the previous calendar year:

(1) TT as determined pursuant to California Code of Regulation, title 22, section 66274.4, subsection (a) of section 66274.4 or the program's pro rata proportion of TT determined pursuant to subsection (b) of this section, as appropriate;

(2) The total number of out-of-service mercury-added thermostats collected by the program, as reported pursuant to California Code of Regulation, title 22, section 66274.8, subsection (e);

(3) The program's collection rate performance requirement (TP), as specified in subsection (a) or as determined pursuant to subparagraph (b)(2) of this section, as appropriate;

(4) The actual collection rate achieved by the program, expressed as a percentage of TT or the program's pro rata proportion of TT, as appropriate; and

(5) A determination of whether or not the program achieved its performance requirement.

Authority: Sections 58012, 25214.8.13, 25150, and 25214.8.17, Health and Safety Code. Reference: Sections 25214.8.12, 25214.8.13, and 25214.8.17, Health and Safety Code.

§66274.7. Identification Requirements when Delivering Mercury Thermostats to a Collection Location

(a)(1) Upon delivery of out-of-service mercury-added thermostats to a collection location pursuant to California Health and Safety Code section 25214.8.15, an HVAC contractor or an employee of an HVAC contractor shall provide the business operating the collection location with the contractor's Contractors State Licensing Board Identification Number.

(2) Upon delivery of out-of-service mercury-added thermostats to a collection location pursuant to California Health and Safety Code section 25214.8.16, a demolition contractor or an employee of a demolition contractor shall provide the business operating the collection location with the contractor's Contractors State Licensing Board Identification Number.

(b) An HVAC contractor, demolition contractor, or employee of an HVAC or demolition contractor that delivers out-of-service mercury-added thermostats in a plastic bag or other container, may comply with the requirements in subsection (a) of this section by printing the contractor's Contractors State Licensing Board Identification Number on the bag or container or on a label affixed to the bag or container.

Authority: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25214.8.13, 25214.8.15, and 25214.8.16, Health and Safety Code.

§66274.8. Annual Reporting Requirements.

On or before April 1 of each calendar year, a manufacturer or group of manufacturers that operates a program shall submit an annual report to the department that shall include all of the information specified in California Health and Safety Code section 25214.8.13, subsection (i) and all of the following additional information for the calendar year covered by the report:

(a) A listing of all manufacturers represented in the program that historically produced mercury-added thermostats and sold them in California;

(b) The additional information specified below:

(1) The name, physical address, and contact phone number of each location at which out-of-service mercury-added thermostats were collected in bins provided by the manufacturer or group of manufacturers;

(2) The name, physical address, and contact phone number of each location from which a collection bin or bins were returned to the manufacturer or group of manufacturers; and

(3) The date or dates on which the bin or bins were received by the manufacturer or group of manufacturers.

(c)(1) The total number of intact out-of-service mercury-added thermostats in all bins returned to the manufacturer or group of manufacturers during the calendar year covered by the report, specifying the number from each manufacturer; and

(2) The information provided pursuant to subsection (c)(1) of this section shall include counts of thermostats produced by historical manufacturers that are no longer in business and a count of out-of-service mercury-added thermostats whose manufacturers cannot be determined.

(d) For loose ampoules returned in collection bins:

(1) The total number of loose ampoules received during the calendar year covered by the report;

(2) The estimated number of out-of-service mercury-added thermostats represented by the loose ampoules, which shall be calculated as follows:

(A) Using a conversion factor of two ampoules per thermostat; or

(B) Using an alternate conversion factor determined by the manufacturer or group of manufacturers. A manufacturer or group of manufacturers shall include data and calculations to support its use of an alternate conversion factor.

(e) The total number of out-of-service mercury-added thermostats collected, which shall be determined by adding the number of intact out-of-service mercury-added thermostats collected, as reported pursuant to subsection (c) of this section and the estimated number of out-of-service mercury-added thermostats represented by loose ampoules, as reported pursuant to subsection (d)(2) of this section.

(f) A listing of all participating locations to which the manufacturer or group of manufacturers shipped collection bins that were not returned to the manufacturer or group of manufacturers within 18 months of shipment, as of December 31 of the reporting year.

(g) A listing of Contractors State Licensing Board Identification Numbers provided pursuant to California Code of Regulations, section 66274.7, subsection (a).

(h) A description of:

(1) Any changes to the program from the previous year and an evaluation of their effectiveness in increasing collection rates; and

(2) Any planned changes to the program to increase collection rates.

(i) A manufacturer or group of manufacturers that also implements an out-of-service mercury-added thermostat collection program in one or more other states shall provide the following information about each such program:

(1) The name of the state;

(2) The number of out-of-service mercury-added thermostats collected in the state during the same calendar year covered by the report; and

(3) The number of collection locations for out-of-service mercury-added thermostats in the state, if known.

Authority: Sections 58012 and 25150, Health and Safety Code. Reference: Sections 25214.8.13 and 25214.8.17, Health and Safety Code.