

TITLE 22

EMERGENCY REGULATIONS

ADDITION TO THE LIST OF COMMON ELECTRONIC HAZARDOUS WASTES IN CHAPTER 11, APPENDIX X, SUBSECTION (C)

Department Reference Number: R-04-12
Office of Administrative Law Emergency Number: 04-1216-03E

FINDING OF EMERGENCY

Health and Safety Code section 25214.10.2 grants authority to the Department of Toxic Substances Control (DTSC) to adopt emergency regulations for implementation of the Electronic Waste Recycling Act of 2003 and amendment [(Stats. 2003, ch. 526 (SB 20) and Stats. 2004, ch. 863 (SB 50)]. According to that section, “adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, and general welfare.”

AUTHORITY AND REFERENCE

Health and Safety Code section 25140. This section grants DTSC authority to prepare, adopt, and revise a listing of wastes which are determined to be hazardous.

Health and Safety Code section 25141. This section grants DTSC authority to adopt regulation criteria and guidelines for the identification of hazardous wastes.

Health and Safety Code section 25214.10.1. Health and Safety Code section 25214.10.1, subdivision (b), grants authority to DTSC to adopt regulations that identify electronic devices that DTSC determines to be hazardous waste when discarded. The proposed regulatory action implements, interprets, and makes specific Health and Safety Code section 25214.10.1, subdivision (c), (d) and (e).

Health and Safety Code section 25214.10.2. This section grants DTSC authority to adopt emergency regulations for implementation of article 6 of chapter 6.5 of division 20 of the Health and Safety Code (commencing with section 25214.9).

Public Resources Code section 42475. This section grants DTSC the authority to adopt regulations that are necessary for implementation of Public Resources Code, division 30, part 3, chapter 8.5.

Public Resources Code section 42475.2. This section grants DTSC authority to adopt emergency regulations for implementation of Statutes 2004, chapter 863 (SB 50).

The proposed regulatory action implements, interprets, and makes specific Public Resources Code section 42463, subdivision (f)(1). This section establishes the definition of a covered electronic device that is subject to the Electronic Waste Recycling Act of 2003, as amended.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Existing Law

Under current State law, an electronic device that is listed in California Code of Regulations, title 22, chapter 11, Appendix X, subsection (c) (Appendix X), is presumed to be hazardous pursuant to the hazardous waste control laws, and each such device must be managed as a “covered electronic device” unless its manufacturer has obtained DTSC’s concurrence that it is non-hazardous. California Code of Regulations, title 22, section 66260.201, subsection (a) interprets and makes specific the manufacturer’s statutory obligations to notify retailers of the covered electronic device classification of the device.

In recently enacted legislation [Statutes 2004, chapter 863 (SB 50)], Public Resources Code Section 42463, subdivision (f)(1) defines a “covered electronic device” as “a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of section 25214.10.1 of the Health and Safety Code”. Public Resources Code section 42463, subdivision (g) defines “covered electronic waste” as a “covered electronic device” that is discarded. Accordingly, any person who is handling a discarded covered electronic device is also managing a hazardous waste subject to the applicable standards of chapter 6.5, division 20 of the Health and Safety Code. SB 50 requires DTSC to adopt regulations that identify additional electronic devices that DTSC determines are presumed to be a hazardous waste when discarded. SB 50 authorizes DTSC to adopt such regulations as emergency regulations.

Current federal law identifies liquid crystal display (LCD) and Plasma televisions as hazardous waste, when discarded, because they exhibit the toxicity characteristic for lead. Since federal law contains no special management standards for these wastes, they are subject to full Resource Conservation and Recovery Act (RCRA) hazardous waste standards. LCD and Plasma televisions generated from households are excluded from federal regulation.

Policy Statement Overview

Many discarded electronic devices are hazardous wastes in California under the State’s existing criteria. They contain lead and other regulated toxic substances and can pose potential harm to the environment when they are placed in municipal landfills. Electronic waste recovered for recycling can pose a significant threat to public health, worker safety, and the environment if not properly managed.

Statutes 2003, chapter 526 (SB 20) enacted the Electronic Waste Recycling Act of 2003 (ch. 8.5 of part 3 of division 30 of the Public Resources Code, commencing with section 42460). SB 20 established an aggressive schedule for dealing with electronic wastes. Specifically, the State Legislature's goal in implementing the Electronic Waste Recycling Act is to eliminate electronic waste stockpiles and legacy devices by December 31, 2007 [Public Resources Code section 42461, subdivision (h)]. The primary tool for achieving this goal is the consumer-funded collection and recycling program established by SB 20 and refined by SB 50. A prerequisite for the application of this program to an electronic device is the identification of the electronic device as a covered electronic device.

To provide for the identification of covered electronic devices, SB 50 establishes the requirement for DTSC to identify in regulation electronic devices that DTSC determines are presumed to be hazardous waste when discarded, in addition to those devices currently listed in California Code of Regulations, title 22, chapter 11, Appendix X, subsection (c). The proposed regulations implement this requirement by adding LCD and Plasma televisions as hazardous waste, when discarded, to the Appendix X list. Listing these devices will establish sale of these devices in California as a funding source for the proper management of other discarded covered electronic devices and will provide an incentive for the proper management of these devices when subsequently discarded; thereby furthering the State Legislature's goal stated above.

Proposed Regulations

The proposed regulations add LCD and Plasma televisions to the list of devices presumed to be hazardous waste based on DTSC's testing. LCD and Plasma televisions are being listed because they contain lead and copper at concentrations exceeding the hazardous waste thresholds. Adding these two types of televisions to the Appendix X list is necessary to subject them to the requirements of the Electronic Waste Recycling Act of 2003, as amended by SB 50.

California Code of Regulations, title 22, section 66260.21, subsection (a) was added to DTSC's regulations to interpret and make specific a manufacturer's SB 20 obligations to notify retailers of the "covered electronic device" classification of the manufacturer's electronic devices. SB 50 provided some statutory specificity to these manufacturer's obligations. Consequently, section 66260.201 has been amended to implement and be consistent with these SB 50 requirements.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

DTSC finds this rulemaking an emergency as a matter of law pursuant to Health and Safety Code section 25214.10.2, which states "adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, and general welfare."

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other non-discretionary costs or savings to local agencies. These regulations identify the electronic devices that DTSC has determined are hazardous wastes when discarded. Local agencies, as with all other businesses and persons, will be required to pay a small fee at the purchase of any covered electronic device.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no significant impact on State revenue or costs. These regulations identify the electronic devices that DTSC has determined are hazardous waste. State agencies, as with all other businesses and persons, will be required to pay a small fee at the purchase of any covered electronic device.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.