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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Mercury Thermostat Collection and Performance Requirement

Department Reference Number: R-2010-03

Office of Administrative Law Notice File Number: Z-2012-0807-05

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt California Code of Regulations, title 22, division 4.5, chapter 24, article 1, sections **66274.1 to 66274.8**.

PUBLIC HEARING

DTSC will hold a public hearing on the proposed regulations on **October 2, 2012** in the Byron Sher Auditorium, Cal/EPA Building, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing relevant to this proposal. The public hearing will convene at 9.00 a.m. and will remain open as long as attendees are presenting testimony. Please submit written comments to the contact person listed at the end of this notice. For written comments to be considered they must be submitted no later than 5:00 p.m. on **October 2, 2012**.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to register before the hearing. Pre-hearing registration is conducted at the location of the hearing from **(8.30 a.m. to 10.30 a.m.)**. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

Notice to Hearing Impaired - Accessibility. If you have special accommodation or language needs, please contact Reasonable Accommodation Coordinator **Adrian Recio**, at **(916) 324-3095** or by e-mail at **arecio@dtsc.ca.gov** as soon as you receive

this document. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities.

Health and Safety Code section **58012**. This section grants DTSC authority to adopt and enforce rules and regulations to execute its duties. (*Added by Governor's Reorganization Plan No. 1, §146, eff. July 17, 1991. See http://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf*).

Health and Safety Code section **25150**. This section grants DTSC authority to adopt standards and regulations dealing with the management of hazardous waste.

Health and Safety Code section **25187**. This section grants DTSC authority to enforce the standards and regulations dealing with out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.13**. This section provides requirements for manufacturers of out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.15** that establishes requirements for heating, ventilation and air-conditioning contractors who install and remove out-of-service mercury-added thermostats.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section **25187** that grants DTSC authority to enforce the standards and regulations dealing with out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.11** that defines terms dealing with the collection of mercury-added thermostats.

Health and Safety Code section **25214.8.12** that provides manufacturer establish and maintain a program for out-of-service mercury-added thermostats in compliance.

Health and Safety Code section **25214.8.13**. This section provides requirements for manufacturers of out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.14** that establishes collection locations for out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.15** that establishes requirements for heating, ventilation and air-conditioning contractors who install and remove out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.16** that establishes requirements for demolition professionals handling out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.17** that grants DTSC authority to adopt, by regulation, criteria for the collection of out-of-service mercury-added thermostats.

Health and Safety Code section **25214.8.18** that provides criteria for the identification of out-of-service mercury-added thermostats that become waste.

California Code of Regulations, title 16, sections **832.20 and 832.21** that defines contractors dealing with the management of mercury-added thermostats.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

Thermostats are used in heating, ventilation and air conditioning (HVAC) devices and in temperature controls for heat pumps. Before the 1990s, most thermostats contained mercury. Research found that mercury-added thermostats were a major source of mercury pollution and on January 1, 2006, the State of California banned the sale of mercury-added thermostats. Mercury has been found to cause neurological and reproductive disorders in humans and wildlife, and when it is released into the environment it has serious, long-term environmental and public health effects. Not only can mercury be transported long distances, in aquatic ecosystems it can be converted into methyl mercury, a highly toxic form that accumulates in fish and humans.

Accordingly, DTSC proposes to adopt a new chapter 24, Mercury Thermostat Collection and Performance Requirements, to division 4.5 of Title 22, California Code of Regulations to satisfy the mandates of Health and Safety Code sections 25214.8.17 directs DTSC to adopt regulations that develop performance requirements to specify collection rates for out-of-service mercury-added thermostats and establish a methodology for calculating the number of out-of-service mercury-added thermostats becoming waste annually. This rulemaking assists in the reduction of mercury pollution with the aim of protecting public health and the environment.

Existing Laws and Regulations

In California Health and Safety Code sections 25214.8.1 through 25214.8.6 mercury thermostats are classified as a hazardous waste and their sale, distribution or disposal in solid waste landfills are prohibited.

Health and Safety Code section 25214.8.12 requires a thermostat manufacturer or a group of thermostat manufacturers to establish a collection and recycling program.

Health and Safety Code section 25214.8.13 requires HVAC wholesalers that have a physical location in California to act as a collection location for mercury-added thermostats.

Health and Safety Code section 25214.8.17 directs DTSC to adopt regulations that develop performance requirements to specify collection rates for out-of-service mercury-added thermostats and establishes a methodology for calculating the number of out-of-service mercury-added thermostats becoming waste annually.

Relation to Existing Federal Regulations

Existing federal universal waste regulations provide streamlined collection and management requirements for mercury-containing equipment and lamps (40 CFR 273). Unlike California, the federal rule does not address out-of-service mercury-added thermostats. The United States Environmental Protection Agency (U.S. EPA) does not have proposed regulations regarding out-of-service mercury-added thermostats. Therefore, the proposed regulations will neither duplicate nor conflict with the federal regulations.

Relation to Existing State Regulations

The proposed regulation is not inconsistent or incompatible with any existing state regulations. An automated search of Title 16 and 22 using the following keywords “mercury”, “thermostats”, “mercury-added thermostats”, and “mercury collection” was conducted via Westlaw and yielded no conflicting state regulations.

CONSIDERATION OF ALTERNATIVES

Chosen Alternative: DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Rejected Alternatives:

1. *Do Nothing.* DTSC rejected this option because HSC section 25214.8.17 directs DTSC to adopt regulations that develop performance requirements to specify collection rates for out-of-service mercury-added thermostats and establish a methodology for determining the number of out-of-service mercury-added thermostats becoming waste annually. To do nothing would place Californians in jeopardy of continued exposure to mercury, which could have serious environmental and public health problems as research as demonstrated.

2. *Contractor Reporting Requirements.* DTSC rejected this alternative because new contractor reporting requirement would have imposed an added financial burden on thousands of small businesses in California. Compliance rates would likely have been low, reporting errors would have been inevitable and the resources required of DTSC to effectively enforce a new administrative requirement on such a large number of individual businesses would have been considerable. Furthermore, this alternative contradicts the intent of the legislature in adopting an extended producer responsibility

law: that the responsibility and costs for collecting and properly managing out-of-service mercury-added thermostats should fall primarily to the manufacturers. .

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC has made an initial determination that adoption of this regulation 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 nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT

DTSC has determined that the proposed regulation will not impose costs or savings to any state or local agency or school district that is required to be reimbursed pursuant to part 7 of division 4, commencing with section 17500 of the Government Code. The proposed regulation is not anticipated to result in any other nondiscretionary cost or savings imposed on local agencies or any change in federal funding to the state.

DETERMINATION OF NO ADVERSE STATEWIDE ECONOMIC IMPACT

DTSC has made an initial determination found through the economic analysis assessment that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

Since 2002, mercury-added thermostats have been deemed universal waste. The statute allows demolition contractors, and requires heating, ventilation and air-conditioning contractors, to minimize costs by using the manufacturer-sponsored take-back program that provides HVAC wholesalers with a thermostat collection container. These regulations set a performance requirement for the manufacturers to collect and recycle a certain number of out-of-service mercury-added thermostats annually. Although the statute reduces handling costs to small businesses, the costs to manufacturers are likely to increase. The lifetime cumulative cost to manufacturers for compliance with the proposed performance requirement regulations is estimated to be between \$3 million and \$5 million.

RESULTS OF REGULATORY ECONOMIC IMPACT ANALYSIS

DTSC has conducted an economic impact assessment, as required by Government Code section 11346.3, and found that no businesses or jobs will be created, expanded or eliminated in California as a result of the proposed regulation. The rulemaking does, however, aim to reduce the amount of mercury pollution which helps to protect public health and the environment.

The regulation does not impact HVAC and demolition contractors who are required to take all out-of-service mercury added thermostat to local HVAC wholesalers who are deemed by law to be manufacturer-sponsored collection locations.

It is estimated the regulation would require thermostat manufacturers operating a collection program an estimated \$ 2,916,638 over the next 10 years. However, the cost avoidance provided by this regulation is estimated to be \$ \$492,262, in comparison to the current cost of operating a national program.

EFFECT ON HOUSING COSTS

DTSC has made a determination that the proposed regulation will have no significant effect on housing costs.

EFFECT ON SMALL BUSINESSES (1 CCR 4)

DTSC has determined that the regulation could have a small positive impact on small businesses. HVAC and demolition contractors may experience a cost savings resulting from the opportunity to transport out-of-service mercury-added thermostats to local HVAC wholesale collection locations instead of transporting the thermostats to household hazardous waste collection facilities or paying a hazardous waste company to transport the thermostats to a Class 1 hazardous waste facility for disposal.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be an exempt General Rule [CCR, Sec. 15061(b)(3)] under the California Environmental Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Prior to taking any action to adopt the final version of this regulation, DTSC will submit information to the University of California to perform an external peer review for the proposed adoption of these regulations. DTSC will report the findings of the peer reviewers on the information and data, in accordance with the requirements of California Health and Safety Code section 57004. DTSC has determined that the survey plan sponsored by the thermostat manufacturers provides a sufficient framework to establish a method to generate statistically valid data in order to estimate the number of mercury thermostats still in use in California and becoming waste annually. The survey plan titled, Mercury Thermostats: Estimating Inventory and Flow from Existing Buildings: Technical Approach Summary (March 2009) was conducted by Skumatz Economic Research Associates (SERA) on behalf of the Thermostat Recycling Corporation (TRC).

TRC is a non-profit corporation formed by the manufacturers to establish and operate a thermostat collection and recycling program in California.

INCORPORATED BY REFERENCE

The regulation incorporates this reference: 'SERA Report': "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.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to **Neena Sahasrabudhe** of DTSC at **(916) 324-8660** or, if unavailable, to **Andre Algazi** of DTSC at **(916) 324-3114**. However, such oral inquiries are not part of the rulemaking record.

A public comment period for has been established commencing on **August 17, 2012**, and closing on **October 2, 2012** for statements, arguments, or contentions regarding the rulemaking and/or supporting documents that must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which its proposal is based, and the express terms of the proposed regulation are posted to DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from **Kryisia Von Burg** of DTSC's Regulations Section as specified below.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend the hearing, or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

Once the regulation has been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from **Kryisia Von Burg** at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at

<http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable EList or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Krycia Von Burg, Regulations Coordinator
Regulations Section
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P.O. Box 806
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E-mail Address: regs@dtsc.ca.gov

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Ms. Von Burg's phone number is (916) 324-2810. If Ms. Von Burg is unavailable, please call Mr. Cordova at (916) 324-7193.