

TITLE 22
EMERGENCY REGULATIONS
RESTRICTIONS ON THE USE OF HEAVY METALS
IN COVERED ELECTRONIC DEVICES
Department Reference Number: R-2006-06
Office of Administrative Law Emergency Number: 06-1221-02E

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 Health and Safety Code section 25214.10. According to section 25214.10.2, “adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.”

AUTHORITY AND REFERENCE

Health and Safety Code section 25214.10. This section grants DTSC authority to prohibit the sale or offering for sale in California of an electronic device containing certain concentrations of heavy metals if its sale or offering for sale would be prohibited in the European Union (EU). The proposed regulatory action implements, interprets, and make specific Health and Safety Code section 25214.10, subdivisions (b), (c), (d), (e), and (f).

Health and Safety Code section 25214.10.2. This section grants DTSC authority to adopt emergency regulations for implementation of Health and Safety Code section 25214.10.

Health and Safety Code section 58012 (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991.) This section grants DTSC authority to adopt regulations to execute its duties.

Public Resources Code section 42475.2. This section grants DTSC authority to adopt emergency regulations for implementation of Statutes 2003, chapter 526 (SB 20).

Public Resources Code section 42465.2. The proposed regulatory action implements, interprets, and makes specific Public Resources Code section 42465.2, subdivision (b).

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Existing Law

“RoHS” is an acronym for “Restriction of the Use of Certain Hazardous Substances.” California’s RoHS law is found in section 25214.10 of the Health and Safety Code. Section 25214.10 requires DTSC to adopt regulations that prohibit “electronic devices” from being sold or offered for sale in California if the electronic devices would be prohibited from being sold or offered for sale in the EU on or after their date of manufacture, to the extent that

Directive 2002/95/EC, adopted by the European Parliament and the Council of the EU on January 27, 2003, prohibits that sale due to the presence of certain heavy metals. Adoption of the proposed emergency regulation implements section 25214.10.

The electronic devices subject to the Health and Safety Code section 25214.10 prohibition are “covered electronic devices (CEDs)”, defined at Public Resources Code section 42463, subdivision (f)(1), as follows: “a video display device containing a screen greater than four inches, measured diagonally.” As of November 2006, DTSC had identified eight categories of CEDs in its regulations. The list of covered devices is found in subsection (c), Appendix X, chapter 11, division 4.5, title 22, California Code of Regulations.

Public Resources Code section 42465.2, subdivision (b) allows the manufacturer of CEDs to submit written verification to DTSC that demonstrates the manufacturer is in compliance with EU Directive 2002/95/EC, and any amendments to that Directive. The manufacturer who obtains DTSC certification of RoHS compliance for its products may submit abbreviated annual reports to California Integrated Waste Management Board. Therefore, the adoption of the proposed emergency regulation implements section 42465.2.

Public Resources Code section 42475.2 grants DTSC authority to adopt emergency regulations for implementation of Public Resources Code section 42465.2 as described in the paragraph above.

The United States Environmental Protection Agency has not adopted any regulations prohibiting the sale of CEDs. Hence, there are no federal regulations that are analogous to the proposed regulations.

Policy Statement Overview

DTSC’s objective is to, on or after January 1, 2007, prohibit the sale or offering for sale of electronic devices that contain four heavy metals (lead, mercury, cadmium, and hexavalent chromium) in California, if the sale or offering for sale is prohibited in the EU under Directive 2002/95/EC. DTSC will adopt the EU’s maximum concentration values for these four metals in its regulation implementing Health and Safety Code section 25214.10. DTSC’s RoHS regulation will also recognize any exemptions adopted by the EU for use of lead, mercury, cadmium, or hexavalent chromium that apply to CEDs.

Proposed Regulations

California Code of Regulations section 66260.202 is added to implement Health and Safety Code section 25214.10. Section 25214.10 prohibits the sale or offering for sale of a CED in California if the device is prohibited from being sold or offered for sale in the EU due to the presence of certain heavy metals. This regulation is necessary because DTSC is required by Health and Safety Code section 25214.10 to adopt regulations that prohibit the sale or offering for sale of CEDs in California if those CEDs are prohibited from being sold or offered

for sale in the EU by Directive 2002/95/EC, adopted by the European Parliament and the Council of the EU on January 27, 2003, or by a subsequent amendment to the Directive.

Section 66260.202, subsection (a), is necessary to establish the prohibition and have it take effect on January 1, 2007, for the eight categories of CEDs currently identified by DTSC in its regulations.

Section 66260.202, subsection (b), is necessary to further define the scope of the prohibition by clarifying that only CEDs that are manufactured on or after January 01, 2007 are subject to its prohibition and, in so doing, provide an appropriate transition period for manufacturers to adjust their businesses to the imposition of the prohibition. This subsection also clarifies that existing inventory (i.e., inventory that was manufactured prior to January 01, 2007) does not have to be removed from the California market.

Section 66260.202, subsection (c), is necessary to further define the scope of the prohibition by clarifying that the provisions of this section will not apply to a CED that is sold or offered for sale in the State only to persons for purposes of resale or offering for resale to persons outside of the State. For example, the prohibition would not apply to a distributor located in California who imports CEDs into the State and sells them only for resale outside California.

Section 66260.202, subsection (d), is necessary to implement Health and Safety Code section 25214.10, subdivisions (b), (e), and (f). If DTSC does not adopt the exemptions adopted by the EU through subsection (d), the regulation will require manufacturers to produce devices for sale in California that meet a different standard than that imposed by Directive 2002/95/EC, an outcome that is inconsistent with Health and Safety Code section 25214.10, subdivisions (e) and (f)(1). Furthermore, if DTSC does not adopt the exemptions synchronously with the EU then the regulation will not implement (and will be inconsistent with) Health and Safety Code section 25214.10, subdivision (b) because that subsection requires DTSC to adopt a regulation that not only conforms to the original Directive, but that also conforms to the Directive "as amended thereafter."

Subsection (e) is necessary to implement the mandate of Health and Safety Code section 25214.10, subsection (d), to exclude from the regulations those devices that would otherwise be prohibited from sale or being offered for sale in California based solely on metals used to meet consumer, health or safety requirements.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

DTSC finds this emergency rulemaking an emergency as a matter of law pursuant to Health and Safety Code section 25214.10.2. According to that section, "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 nondiscretionary costs or savings to local agencies.

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

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.