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Secretary for  
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## Department of Toxic Substances Control

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**Gavin Newsom**  
Governor

### **45-DAY PUBLIC NOTICE AND COMMENT PERIOD** **GENERATOR IMPROVEMENTS RULE**

**Department of Toxic Substances Control Reference Number: R-2023-08R**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to add California Code of Regulations, title 22, division 4.5, sections 66262.13, 66262.15, 66262.16, 66262.17, 66262.18, 66262.250, 66262.251, 66262.252, 66262.253, 66262.254, 66262.255, 66262.256, 66262.260, 66262.261, 66262.262, 66262.263, 66262.264, 66262.265, amend sections 66260.10, 66260.23, 66262.10, 66262.32, 66262.35, 66262.41, 66263.43, 66263.45, 66263.46, 66264.1, 66264.71, 66264.191, 66264.192, 66264.193, 66264.1030, 66264.1050, 66265.1, 66265.71, 66265.191, 66265.192, 66265.193, 66265.1030, 66265.1050, 66268.1, 66268.7, 66268.50, 66270.60, 66273.8, 66273.9, 66273.72, 66279.10, 67426.1, and repeal sections 66262.12, 66262.34.

### **WRITTEN COMMENT PERIOD**

A public comment period has been established commencing on March 24, 2023, and closing on May 8, 2023. Only comments received by DTSC on or before the closing date will be considered.

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats. Written comments may be submitted electronically through the DTSC regulations email address at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov). Please direct hard-copy written comments to the Office of Legislation and Regulatory Review, as specified below.

### **Notice Pertaining to Accessibility and Reasonable Accommodation**

All documents related to these regulations can be made available in an alternate format (i.e., Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability-related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact the Office of Legislation and Regulatory Review below as soon as possible, no later than 10 business days prior to the end of the comment period.

Office of Legislation and Regulatory Review  
Department of Toxic Substances Control  
P.O. Box 806

Sacramento, California 95812-0806

[regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)

Phone Number: (916) 322-4563

Fax Number: (916) 324-1808

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

## **PUBLIC HEARING**

DTSC has not scheduled a public hearing for this proposed rulemaking. To request a public hearing, any interested person or his or her duly authorized representative may contact the Office of Legislation and Regulatory Review, as specified above, no later than 15 days prior to the close of the written comment period.

## **AUTHORITY & REFERENCE**

These regulations are being adopted under the following authorities: Health and Safety Code sections 25141, 25150, 25158.1, 25159, 25159.5, 25161.

These regulations implement, interpret, or make specific the following statutes: Health and Safety Code sections 25110.02, 25141, 25150, 25158.1, 25159, 25159.5, 25159.6, 25168.1, 25179.3, 58004 and 58012, and 40 Code of Federal Regulations sections 260.10, 261.1, 261.4, 262.13, 262.14, 262.15, 262.16, 262.17, 262.18, 262.20(e), 262.21, 262.32, 262.41, 262.250, 262.251, 262.252, 262.253, 262.254, 262.255, 262.256, 262.260, 262.261, 262.262, 262.263, 262.264, 262.265, 263.20(h), 264.1, 264.71, 264.191, 264.192, 264.193, 264.551, 264.1030, 264.1050, 264.1031, 265.1, 265.71, 265.191, 265.192, 265.193, 265.1030, 265.1050, 268.1, 268.2, 268.7, 268.50, 270.2, 273.6, 273.8, 273.9, 273.81, 279.1, 279.10(b)(ii), 279.11, 279.20, 279.21, 279.30, 279.40, 279.44, 279.53. 49 CFR section 172.304; and 49 Code of Federal Regulations Part 172.

## **INFORMATIVE DIGEST**

### **Policy Statement Overview**

On November 28, 2016, the United States Environmental Protection Agency (U.S. EPA) made significant changes to the hazardous waste generator program under the Hazardous Waste Generator Improvements Rule (GIR). DTSC proposes to amend several sections in California Code of Regulations, title 22, division 4.5, pertaining to hazardous waste generator requirements to parallel the federal regulation changes.

California, as an authorized state, and DTSC, as the implementing agency, was authorized by U.S. EPA to administer the federal hazardous waste program on behalf of U.S. EPA in 1992. Because California is an authorized state, California's hazardous

waste program cannot be less stringent than the federal hazardous waste program and must be at least equivalent to the federal hazardous waste program to maintain its authorization.

DTSC proposes to adopt requirements from the GIR that are more stringent than California's existing hazardous waste generator requirements to ensure the California hazardous waste program is no less stringent than the federal hazardous waste program. DTSC also proposes to adopt the federal language in some equivalent provisions that are clearer or more concise than current California regulations that do not change existing requirements.

### **Background and Effect of the Proposed Regulatory Action**

U.S. EPA promulgated more than 60 revisions and new provisions to the federal hazardous waste generator program in the GIR. The primary objectives were to:

- reorganize the hazardous waste generator regulations;
- provide a better understanding of how the regulatory program works;
- address gaps in the existing regulations to strengthen environmental protection;
- provide greater flexibility to generators to manage their waste in a safe and cost-effective manner; and
- make technical corrections and conforming changes to address inadvertent errors and remove obsolete references.

The GIR regulations do not take effect in California until DTSC adopts them, or parts thereof, through the rulemaking process or through statutory amendments. DTSC has identified seven provisions in the GIR as more stringent than existing state requirements and is proposing to adopt these provisions in this rulemaking:

- 1) New renotification requirements
- 2) New labeling and marking requirements
- 3) New pre-transportation marking requirements
- 4) New large quantity generator closure requirements
- 5) Additional requirements for incompatible wastes in satellite accumulation areas
- 6) New requirements added to the preparedness, prevention, and emergency procedures for small quantity generators and large quantity generators including:
  - a) Documenting that arrangements with local authorities were made or attempted to be made by the generator; and
  - b) A quick reference guide that summarizes a large quantity generator's contingency plan
- 7) Additional requirements for containers holding ignitable and reactive wastes for large quantity generators.

California's hazardous waste regulations parallel federal hazardous waste regulations in many respects, including organizational structure. Therefore, the proposed regulations align with the federal regulation organizational changes. Specific reorganizations are detailed in the Initial Statement of Reasons (ISOR) document.

California's hazardous waste program is broader in scope than that of U.S. EPA because the requirements apply to generators of non-RCRA hazardous wastes. The proposed regulations apply many, but not all, of the GIR changes to both RCRA and non-RCRA hazardous waste generators in California.

### **Benefits of the Proposed Regulatory Action**

DTSC must adopt the GIR regulations that are more stringent than existing California regulations to maintain its authorization to administer the California hazardous waste program in lieu of the federal hazardous waste program. Adopting these requirements addresses gaps that exist in the current regulations and improves understanding of California's hazardous waste generator program, in turn improving compliance and strengthening environmental protection.

DTSC expects mirroring the reorganization of the GIR will make compliance with requirements easier for hazardous waste generators. U.S. EPA received strong support for the reorganization from the regulated community during the federal rulemaking comment period, and DTSC expects similar results for the regulated community in California.

### **Existing Laws and Regulations**

The proposed regulations amend, retain, restructure, and relocate existing California hazardous waste generator regulations in California Code of Regulations, title 22, division 4.5, to align with 40 Code of Federal Regulations changes that resulted from the GIR. The existing regulations affected include generator definitions, generator conditions for exemption, U.S. EPA identification numbers, renotification, and emergency planning regulations. Additionally, the rulemaking updates obsolete references and dates.

### **Related State Laws and Regulations**

The proposed regulations apply many, but not all, of the GIR requirements to both RCRA and non-RCRA hazardous wastes in California to mitigate potential confusion for a generator of both types of hazardous wastes.

Many of California's hazardous waste laws and regulations parallel those of the federal hazardous waste program. However, some of California's hazardous waste regulations are more stringent than those of the federal hazardous waste program. DTSC proposes to maintain the existing California regulations that are more stringent than the federal

regulations while restructuring them to conform with the organization of the federal hazardous waste regulations. Some GIR revisions to the federal regulations that are less stringent or equivalent to California's hazardous waste program are not included in the proposed regulations. Therefore, DTSC has determined that the changes to existing hazardous waste generator regulations in this rulemaking are not inconsistent or incompatible with existing state regulations.

### **Comparable Federal Regulation or Statute**

The proposed regulations do not differ substantially from the existing comparable federal regulations. Existing state requirements previously authorized by U.S. EPA are included in the proposed regulations to align with the reorganization of the federal regulations that resulted from the GIR. These regulations are not in conflict with any federal regulations.

## **DOCUMENTS RELIED ON**

This proposal relied on Federal Register 85732, Vol. 81, No. 228, November 28, 2016.

## **OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE**

### **California Environmental Quality Act (CEQA) Compliance**

DTSC has determined that there is no possibility that the proposed regulations will result in a significant environmental effect. Consistent with California Code of Regulations, title 14, section 15061(b)(2), DTSC has determined the proposed regulations are exempt from CEQA under the "categorical exemption." If the proposed regulations are finalized, a Notice of Exemption will be filed with the State Clearinghouse for public inspection.

### **Peer Review Compliance**

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard, or other requirement subject to scientific peer review.

## **DISCLOSURES REGARDING THE PROPOSED ACTION/FISCAL IMPACT ASSESSMENT**

DTSC has determined that the proposed regulations will impose costs or savings on a state agency but will not impose a cost to a 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, or other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DTSC has determined that the proposed regulations will not result in any changes to federal funds that the state of California receives.

### **Costs or Savings to Any State Agency**

DTSC determined that the proposed regulations will incur added costs to DTSC since the Department currently manages Certified Unified Program Agencies (CUPA) in Imperial and Trinity counties in California. DTSC estimates a total of \$22,250 will be incurred after the year of the rulemaking adoption, then \$157,300 in subsequent years due to regulation implementation, training, outreach, and inspection activities.

### **Local Agencies Non-Discretionary Cost or Savings**

Since much of the enforcement of generator standards has been delegated to the 79 CUPAs, CUPAs will primarily be impacted through initial outreach, training of the CUPA staff, and added inspection activities during the first year of implementation. There will be recurring inspections and update costs incurred by the CUPAs following the first year of new regulations implementation.

DTSC assumes that the fiscal impact each CUPA incurs will vary depending on the number of hazardous waste generators in their jurisdiction and the number of staff each CUPA has. DTSC also assumes that DTSC will provide guidance to all CUPAs on the new regulatory requirements through technical webinars and outreach activities when the regulations become effective. DTSC assumes that fifty percent of CUPAs with a large number of hazardous waste generators, and therefore a large number of CUPA inspectors, will provide additional training to their own inspectors in addition to the training they will receive from DTSC.

DTSC estimates that the costs each CUPA will incur as a result of the proposed regulations will be \$11,125 in the year following its adoption, and \$78,650 annually in subsequent years. Therefore, the estimated total cost to each CUPA over the next three years is \$168,425. These costs will be incurred only by fifty percent of the CUPAs with a large number of hazardous waste generators. There are 79 CUPAs in California managed by local agencies. Therefore, the total one-time fiscal impact for half of all CUPA offices (assumed forty CUPA offices) is estimated to be \$445,000 and the total annual recurring cost after the first year of the rulemaking adoption for all CUPA offices is estimated at \$6,292,000.

### **School Districts**

DTSC determined that the proposed regulations will not result in any costs or savings for any school districts.

### **Federal Funding to the State**

DTSC determined that the proposed regulations will not result in any changes to federal funds that the state of California receives.

## **Local Mandate**

DTSC has determined that adoption of these regulations will not impose a local mandate or result in costs subject to state 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.

## **Types of Businesses Affected**

The proposed regulations will affect a wide range of facility types that generate hazardous waste in California.

## **Projected Reporting, Recordkeeping, or other Compliance Requirements**

Under the proposed regulations, small quantity generators will be required to re-notify DTSC every four years using U.S. EPA Form 8700-12. The proposed regulations require both large and small quantity generators to document either their arrangement with local authorities (i.e., fire department, police department) or their attempt to make an emergency planning arrangement with local authorities. Large quantity generators will be required to notify DTSC before and after facility closure using U.S. EPA Form 8700-12. Additionally, large quantity generators will be required submit a quick reference guide of the contingency plan to the local emergency responder.

It is necessary for the health, safety, or welfare of the people of the state that the regulations which requires a report apply to businesses.

## **Cost Impacts on Representative Private Persons or Businesses**

DTSC conducted an economic impact assessment of the proposed regulations for businesses that generate hazardous wastes. DTSC estimates that, under the proposed regulations, the total annual added costs for all large quantity generators are \$10,432,167 and the total annual added costs for all small quantity generators are \$2,418,476. These added costs will result from the new GIR requirements that generators will be required to comply with, such as re-notification, labeling/marketing, closure, renotification, and emergency planning requirements. These new requirements are more stringent federal requirements that DTSC must adopt to maintain its state authorization.

## **Effect on Housing Costs**

DTSC has determined that the proposed regulation will have no significant effect on housing costs.

### **Effect on Small Businesses**

DTSC has determined that the proposed regulation will have a minimal effect on small quantity generators. The costs impact stems from re-notification and emergency contact with local authorities.

### **Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States**

None.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

### **Creation of New Businesses or Elimination of Existing Businesses**

The proposed regulations will not affect the number of businesses that generate hazardous waste. Additionally, the proposed regulations are intended to make the existing hazardous waste generator regulations clearer, thus improving compliance, but are not expected to have any impact on the quantity of businesses that exist in California beyond the normal rate of businesses opening and closing due to other reasons. DTSC does not anticipate any significant changes in the creation of new businesses or elimination of existing businesses in California under the proposed regulations.

### **Expansion of Businesses Currently doing Business**

DTSC does not anticipate any significant changes in the expansion of businesses currently doing businesses under the proposed regulations.

### **Creation of New Jobs or Elimination of Existing Jobs**

The proposed regulations will not affect the number of jobs related to the generation of hazardous waste.

### **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The proposed regulations are expected to improve the safety of California's residents, workers, and environment. The proposed reorganization of the hazardous waste regulations allows generators to find, understand, and comply with requirements more effectively which will increase public safety. Additionally, the proposed regulations will improve health and safety by addressing safety gaps in the hazardous waste regulations by adding new requirements to ensure that hazardous waste is managed properly and that emergencies are prevented or effectively mitigated.



## **CONSIDERATION OF ALTERNATIVES**

DTSC must determine that no reasonable alternative 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.

A detailed discussion of the proposed regulations, including the Consideration of Alternatives, is presented in the ISOR for these regulations.

## **CONTACT PERSONS**

Inquiries regarding technical aspects of the proposed regulation may be directed to Kareem Taylor at (916) 445-9553 or Chosu Khin at (916) 324-2428 or, if unavailable, the Office of Legislation and Regulatory Review, as specified above. However, such oral inquiries are not part of the rulemaking record. Statements, arguments, or contentions regarding the rulemaking and/or supporting documents must be submitted in writing for them to be considered by DTSC before it adopts, amends, or repeals these regulations.

## **AVAILABILITY OF TEXT OF PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND OTHER RULEMAKING DOCUMENTS**

Copies of the Notice of Proposed Action, Initial Statement of Reasons, all the information upon which its proposal is based, and the express terms of the proposed regulations (also known as the proposed regulatory text) are posted to DTSC's Internet website at <https://dtsc.ca.gov/dtsc-proposed-regulations/>.

The text of the proposed regulations contains the following formatting features:

- The symbol “\*\*\*\*” means that intervening text not proposed for amendment is not shown.
- Single Underline: Proposed additions are indicated in single underlining to show where the new text is being added.
- ~~Single Strikeout~~: Proposed deletions (repeal) are indicated strikethrough to show where the existing text is being removed.

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial, sufficiently related changes are made to the regulatory text, the modified full text (with the changes clearly indicated) will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation(s), attend the hearing, or provide written comments on these specific

regulations will be sent a copy of the modified text if substantial, sufficiently related changes are made.

Once DTSC finalizes the regulatory text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <https://dtsc.ca.gov/dtsc-proposed-regulations/>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

## **ALL OTHER QUESTIONS/COMMENTS/INQUIRIES/UPDATES**

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to the office of Legislation and Regulatory Review, as specified above. To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable e-list or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).