

§1665-B. Mercury-added thermostats

1. Definitions. For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Manufacturer" means a person who owns or owned a brand of mercury-added thermostats sold in the State before January 1, 2006. [PL 2009, c. 277, §4 (NEW).]

B. "Mercury-added thermostat" or "mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air conditioning equipment. "Mercury-added thermostat" or "mercury thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process. [PL 2009, c. 277, §4 (NEW).]

C. "Retailer" means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including, but not limited to, sales using the Internet or catalogues. [PL 2009, c. 277, §4 (NEW).]

D. "Wholesaler" means a business that the department determines is primarily engaged in the distribution and selling of heating, ventilation and air conditioning components to contractors that install heating, ventilation and air conditioning components. [PL 2011, c. 206, §28 (AMD).]

E. "Contractor" means a person engaged in the business of installing, servicing or removing thermostats and other heating, ventilation and air conditioning components. [PL 2015, c. 83, §1 (NEW).]

[PL 2015, c. 83, §1 (AMD).]

1-A. Prohibitions. The following prohibitions apply to the sale or distribution of mercury thermostats in the State.

A. A person may not sell or offer to sell or distribute for promotional purposes a mercury thermostat. [PL 2009, c. 277, §5 (NEW).]

B. A manufacturer not in compliance with this section is prohibited from offering any thermostat for sale in the State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's thermostats are not offered for sale in this State. [PL 2009, c. 277, §5 (NEW).]

C. A wholesaler or retailer may not offer for sale in this State any thermostat of a manufacturer that is not in compliance with this section. [PL 2009, c. 277, §5 (NEW).]

[PL 2009, c. 277, §5 (NEW).]

2. Manufacturer responsibility. Each manufacturer of mercury-added thermostats that have been sold in this State shall, individually or collectively:

A. Establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The collection and recycling program must be designed and implemented to ensure that:

(1) A maximum rate of collection of mercury-added thermostats is achieved;

(2) Handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with section 1663, with other provisions of this chapter and with the universal waste rules adopted by the board pursuant to section 1319-O;

(3) Authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to all heating, ventilation and air conditioning supply, electrical

supply and plumbing supply distributor locations that sell thermostats and to all retailers who volunteer to participate in the program; and

(4) By January 1, 2007, authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to municipalities and regions requesting bins for mercury-added thermostat collection at universal waste collection sites or at periodic household hazardous waste collection events, as long as the collection sites or events are approved by the department for mercury-added thermostat collections; [PL 2011, c. 420, Pt. E, §1 (AMD); PL 2011, c. 420, Pt. E, §5 (AFF).]

B. Work cooperatively with the department and others in accordance with subsection 4 to establish appropriate systems in order to implement the plan developed pursuant to subsection 4; [PL 2005, c. 558, §1 (NEW).]

C. Within 3 months after the department develops phase one of the plan required by subsection 4, implement phase one of the plan; [PL 2005, c. 558, §1 (NEW).]

D. Within 3 months after the department develops phase 2 of the plan required by subsection 4, implement phase 2 of the plan; [PL 2005, c. 558, §1 (NEW).]

E. Provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat to an established recycling collection point; [PL 2015, c. 83, §2 (AMD).]

F. [PL 2015, c. 83, §3 (RP).]

G. Submit an annual report to the department by April 1st of each year. The report must be submitted on a form provided by the department and must include :

(1) The number of mercury-added thermostats collected and recycled by that manufacturer pursuant to this section during the previous calendar year;

(2) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer pursuant to this section;

(3) An evaluation of the effectiveness of the manufacturer's collection and recycling program and the financial incentive provided pursuant to paragraph E;

(5) A description of the education and outreach strategies employed during the previous calendar year to increase participation and collection rates and examples of education and outreach materials used; and

(6) Modifications that the manufacturer is proposing to make in its collection and recycling program; and [PL 2015, c. 83, §4 (AMD).]

H. Beginning January 1, 2010, submit a quarterly report to the department within 30 days after the end of each quarter that, for each shipment of thermostats received by the manufacturer or manufacturer's agent for recycling during the quarter, provides:

(1) The collection location that shipped the thermostats;

(2) The date the manufacturer received the shipment;

(3) The number of mercury thermostats; and

(4) The total amount of mercury collected. [PL 2009, c. 277, §9 (NEW).]

[PL 2015, c. 83, §§2-4 (AMD).]

2-A. Wholesaler responsibility. A wholesaler may not sell a thermostat in the State unless the wholesaler acts as a collection site for thermostats that contain mercury. A wholesaler may meet the requirements of this subsection by participating as a collection site in a manufacturer collection and recycling program under subsection 2. A wholesaler shall post in a prominent location open to public

view a notice about the financial incentive plan developed pursuant to subsection 4. The notice must be approved by the department and supplied by the manufacturer at no cost to the wholesaler.

[PL 2009, c. 501, §24 (AMD).]

2-B. Termination of retailer participation. A manufacturer may terminate a retailer's participation in the collection program under subsection 2, paragraph A only after complying with the provisions of this subsection.

A. The manufacturer must notify the retailer, in writing, of noncompliance with program policies and procedures and provide the retailer an opportunity to comply. [PL 2009, c. 277, §11 (NEW).]

B. If the retailer continues to send in significant ineligible materials through the collection program after 2 written notices of noncompliance, the manufacturer may terminate the retailer's participation. [PL 2009, c. 277, §11 (NEW).]

C. For termination to occur under this subsection, the manufacturer must notify the retailer and the department in writing. [PL 2009, c. 277, §11 (NEW).]

[PL 2009, c. 277, §11 (NEW).]

3. Sales prohibition.

[PL 2009, c. 277, §12 (RP).]

4. Financial incentive plan. The department shall develop a manufacturer financial incentive plan in 2 phases. By January 1, 2007, the department shall develop phase one of the plan, which must address collection of mercury-added thermostats from contractors and service technicians. By August 1, 2007, the department shall develop phase 2 of the plan, which must address collection of mercury-added thermostats from homeowners. The plan must be developed in consultation with a stakeholder group that includes representatives from the thermostat industry, environmental groups, thermostat wholesalers and service contractors. The plan must be developed in a manner that ensures to the maximum extent practical that:

A. The capture rate of out-of-service mercury-added thermostats is maximized; [PL 2005, c. 558, §1 (NEW).]

B. Adequate incentives and education are provided to contractors, service technicians and homeowners to encourage return of thermostats to established recycling collection points; [PL 2005, c. 558, §1 (NEW).]

C. Administrative costs of the plan are minimized; [PL 2005, c. 558, §1 (NEW).]

D. The plan encourages the purchase of nonmercury thermostats qualified by the United States Environmental Protection Agency's Energy Star program as replacements for mercury-added thermostats; and [PL 2005, c. 558, §1 (NEW).]

E. Mechanisms are in place to protect against the fraudulent return of thermostats. [PL 2005, c. 558, §1 (NEW).]

The plan must include a requirement that manufacturers provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat to an established recycling collection point in accordance with subsection 2, paragraph E. The financial incentive may include, without limitation, cash, rebates, discounts, coupons or other incentives.

[PL 2015, c. 83, §5 (AMD).]

5. Goals. The goal of the collection and recycling efforts under this section is to collect and recycle at least 125 pounds of mercury per year from mercury-added thermostats within 2 years after the development of phase one of the plan required by subsection 4 and at least 160 pounds of mercury per year within 3 years after the development of phase 2 of the plan required by subsection 4.

[PL 2005, c. 558, §1 (NEW).]

6. Report. Annually, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report that includes an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. The report may be included in the report required pursuant to section 1772, subsection 1.

[PL 2013, c. 315, §1 (AMD).]

SECTION HISTORY

PL 2005, c. 558, §1 (NEW). PL 2009, c. 277, §§4-12 (AMD). PL 2009, c. 501, §24 (AMD). PL 2011, c. 206, §§28-31 (AMD). PL 2011, c. 420, Pt. E, §§1-3 (AMD). PL 2011, c. 420, Pt. E, §5 (AFF). PL 2013, c. 315, §1 (AMD). PL 2015, c. 83, §§1-5 (AMD).

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