

# 2018

# ILLINOIS

# REGISTER

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## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Collection of Out-of-Service Mercury Thermostats
- 2) Code Citation: 35 Ill. Adm. Code 190
- 3) 

<u>Section Numbers</u> :	<u>Adopted Actions</u> :
190.120	Amendment
190.130	Amendment
190.135	New Section
190.140	Amendment
- 4) Statutory Authority: Section 25(c) of the Mercury Thermostat Collection Act [415 ILCS 98/25(c)]
- 5) Effective Date of Rules: December 11, 2018
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any incorporated by reference is on file in the Illinois Environmental Protection Agency's principal office located at 1021 North Grand Avenue East, P.O. Box 19276, Springfield IL 62794-9276 and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 14342; August 3, 2018
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Illinois EPA made the following changes: in Section 190.120, within the "thermostat wholesaler" definition, added a comma after "including"; in Section 190.130(a)(1), deleted "of this Part"; in Section 190.130(a)(2), changed "set forth below." to ", as follows:"; in Section 190.135(a)(2), changed "set forth below" to "follows"; in Section 190.135(a)(2)(A), replaced "twenty" with "20"; in Section 190.135(a)(2)(B), replaced "forty" with "40"; in Section 190.135(a)(3)(C), changed "subsection (b)(3)" to "subsection (a)(3)"; in Section 190.135(b), changed "which" to "that"; and in Section 190.135(c), deleted "of this Section".

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- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Pursuant to its duty to maximize the annual collection of out-of-service mercury thermostats in the State, Illinois EPA adopted amendments that focus less on aspirational numbers and more on concrete, verifiable best practices.
- 16) Information and questions regarding these adopted rules shall be directed to:

Gabriel H. Neibergall  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19726  
Springfield IL 62794-9276

217/782-5544

The full text of the Adopted Amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCYPART 190  
COLLECTION OF OUT-OF-SERVICE MERCURY THERMOSTATS

Section	
190.100	Purpose
190.110	Applicability
190.120	Definitions
190.130	Annual Collection Goals
<a href="#">190.135</a>	<a href="#">Narrative Collection Program Goals</a>
190.140	Severability

AUTHORITY: Implementing and authorized by Section 25(c) of the Mercury Thermostat Collection Act [415 ILCS 98/25(c)].

SOURCE: Old Part repealed at 22 Ill. Reg. 14327, effective July 15, 1998; new Part adopted at 38 Ill. Reg. 22635, effective November 20, 2014; amended at 42 Ill. Reg. 24897, effective December 11, 2018.

**Section 190.120 Definitions**

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part ~~will~~shall be the same as those applied to the same words or terms in the Mercury Thermostat Collection Act.

"Act" means the Mercury Thermostat Collection Act- [415 ILCS 98].

"Agency" means *the Illinois Environmental Protection Agency*. [415 ILCS 98/10]

"Collection location" means a permanent or temporary physical location at which mercury thermostats are collected for transportation, recycling, and disposal as part of a collection program.

"Collection program" means *a system for collection, transportation, recycling, and disposal of out-of-service mercury thermostats that is financed and managed*

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*or provided by a thermostat manufacturer individually or collectively with other thermostat manufacturers in accordance with the Act. [415 ILCS 98/10]*

*"Contractor" means a person engaged in the business of installation, service, or removal of heating, ventilation and air-conditioning components. [415 ILCS 98/10]*

*"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, including those products or devices used to sense and control room temperature in residential, commercial, industrial, and other buildings. "Mercury thermostat" does not mean thermostats used to sense and control temperature as part of a manufacturing or industrial process. [415 ILCS 5/22.23b(f)]*

*"Out-of-service mercury thermostat" means a mercury thermostat that is removed, replaced, or otherwise taken out of service. [415 ILCS 98/10]*

*"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity or its legal representatives, agents, or assigns. [415 ILCS 98/10]*

*"Thermostat manufacturer" means a person who owns or owned a name brand of one or more mercury thermostats sold in Illinois. [415 ILCS 98/10]*

*"Thermostat retailer" means a person who sells in Illinois thermostats of any kind primarily to homeowners or other nonprofessionals through any sale or distribution mechanism. A thermostat retailer that meets the definition of thermostat wholesaler will be considered a thermostat wholesaler. [415 ILCS 98/10]*

*"Thermostat wholesaler" means a person who is engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components, including, but not limited to, thermostats, to contractors, and whose total wholesale sales account for 80% or more of its total sales. A thermostat manufacturer, as defined in this Section, is not a thermostat wholesaler. [415 ILCS 98/10]*

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(Source: Amended at 42 Ill. Reg. 24897, effective December 11, 2018)

**Section 190.130 Annual Collection Goals**

a) Collection programs required under the Act ~~must~~shall be designed to collectively achieve the following annual statewide collection goals:

- 1) Compliance with the Collection Program Goals set forth in Section 190.135; and
- 2) The collection of no fewer than the number of out-of-service mercury thermostats, as follows:

Calendar Year	Mercury Thermostats Taken Out of Service
2015	22,500
2016	25,000
2017	30,000
2018	<del>7,000</del> <u>32,500</u>
2019	<del>6,000</del> <u>37,500</u>
2020	<del>5,000</del> <u>40,000</u>

b) Failure to Achieve Annual Collection Goals in Calendar Year 2015 or 2017

- 1) *If the collection programs do not collectively achieve the collection goals provided for in this Part for calendar year 2015 or 2017, thermostat manufacturers shall, individually or collectively, submit to the Agency for review and approval proposed revisions to the collection programs that are designed to achieve the goals in subsequent calendar years. The proposed revisions shall be submitted to the Agency with the annual report required in Section 20 of the Act. [415 ILCS 98/15(c)]*
- 2) *If the Agency determines the revised collection programs will not collectively achieve the collection goals set forth in this Part, the Agency may require modifications to one or more collection programs that the Agency determines are necessary to achieve the collection goals. Modifications required by the Agency may include improvements to outreach and education conducted under the collection program,*

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*expansion of the number and location of collection sites established under the program, modification of the roles of participants, and a \$5 financial incentive in the form of either cash or a coupon offered by the manufacturer to contractors and consumers for each out-of-service mercury thermostat returned to a collection site. [415 ILCS 98/15(d)(2)]*

- c) *Any person adversely affected by a goal established by subsection (a) may obtain a determination of the validity or application of the goal by filing a petition for review on or before January 9, 2015. Any appeal must be filed in with the Appellate Court for the District in which the cause of action arose. During the pendency of the review, the goal under review shall remain in effect. [415 ILCS 98/25(d)]*
- d) *No later than April 1, 2016 and no later than April 1 of each year thereafter, each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers, submit an annual report on its collection program to the Agency covering the one-year period ending December 31 of the previous year, to be posted on the manufacturer's website in accordance with Section 20(b) of the Act. [415 ILCS 98/2025(b)]*

(Source: Amended at 42 Ill. Reg. 24897, effective December 11, 2018)

**Section 190.135 Narrative Collection Program Goals**

- a) Collection Program Goals
- 1) Each collection program must maintain at least 525 collection locations statewide, or 20% more collection locations statewide than were maintained during the previous calendar year, whichever is less.
- 2) Each collection program must engage in outreach to its collection locations, as follows:
- A) Biannual in-person on-site outreach, by a collection program representative, to any collection location in its collection program that returned 20 or fewer mercury thermostats during either of the previous two calendar years.

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- B) Quarterly telephonic outreach to any collection location in its collection program that returned 40 or fewer mercury thermostats during the previous calendar year.
  - C) Quarterly electronic outreach to all collection locations in its collection program.
- 3) Each collection program must include outreach campaigns targeting additional potential program participants.
- A) Each of the following categories of persons must be the target of at least two outreach campaigns:
    - i) Thermostat wholesalers;
    - ii) Contractors;
    - iii) Thermostat retailers; and
    - iv) Homeowners.
  - B) Each collection program's outreach campaigns must include, at a minimum, information about its collection program, a description of the environmental benefits of participating in the collection program, and an offer to participate in its collection program.
  - C) Nothing in subsection (a)(3) prohibits any collection program from individually or collectively conducting additional outreach campaigns that target other audiences.
- b) Each collection program must demonstrate compliance with this Section in its annual reporting that includes the number of thermostats collected pursuant to Section 190.130(d).
- c) Compliance with the Collection Program Goals set forth in subsection (a) will constitute satisfaction of the collection goals established by the Agency in accordance with Section 25(c) of the Act and this Part.

(Source: Added at 42 Ill. Reg. 24897, effective December 11, 2018)

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**Section 190.140 Severability**

If any Section, subsection, sentence, or clause of this Part is judged invalid, that adjudication ~~will~~[shall](#) not affect the validity of this Part as a whole or any Section, subsection, sentence, or clause of this Part not judged invalid.

(Source: Amended at 42 Ill. Reg. 24897, effective December 11, 2018)