

MEMORANDUM 2026-7

**Recodification of Toxic Substances Statutes:
Cumulative Draft of Material Previously Approved**

In the current phase of this study, the Commission¹ pursuant to legislative directive² is preparing a nonsubstantive recodification of [Chapter 6.5 \(commencing with Section 25100\) of Division 20](#) of the Health and Safety Code. This memorandum presents the most current cumulative draft of recodified provisions of Chapter 6.5 that the Commission has provisionally approved for inclusion in a tentative recommendation in the study.

The primary rationale for presenting this cumulative draft at Commission meetings is to provide Commissioners and other interested persons a reference indicating the current status of the proposed recodification. Each time the Commission provisionally approves new proposed recodified provisions at a Commission meeting, the staff adds the approved provisions to the most recently approved cumulative draft,³ and the updated draft is then presented at the next Commission meeting at which the study is on the meeting agenda.⁴

The staff appreciates the Department of Toxics Substances Control (“DTSC”) staff’s ongoing suggestions about the organization of the recodified provisions.

Unless otherwise indicated, all references in this memorandum to “proposed” statutory provisions are to provisions in the proposed recodification, and all statutory references without that designation are to provisions of the existing Health and Safety Code, or other

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

² See [2024 Cal. Stat. res. ch. 169](#) (ACR 169, Kalra). Commission recommendations recodifying former Chapter 6.8 of Division 20 were previously submitted to and thereafter enacted by the Legislature. See [Hazardous Substance Account Recodification Act \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 257](#) (AB 2293, Committee on Environmental Safety and Toxic Materials); [Hazardous Substance Account Recodification Act: Conforming Revisions \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 258](#) (AB 2327, Committee on Environmental Safety and Toxic Materials).

³ The cumulative draft is also regularly updated to incorporate new legislation adding, amending, or repealing existing sections of Chapter 6.5. These revisions, as well as any other revisions needed to previously approved provisions aside from conforming or technical revisions, are presented to the Commission for approval in the memorandum presenting the cumulative draft.

⁴ The recodified provisions most recently approved by the Commission, which are included in the cumulative draft attached to this memorandum, were presented to the Commission by Memoranda [2025-49](#) and [2025-50](#), and approved on December 4, 2025. See Memorandum [2026-1](#), pp. 4-5.

existing codes.

Comments on any aspect of the attached draft,⁵ including suggestions that a substantive issue raised by a proposed revision should be considered for future study,⁶ are welcome.

Respectfully submitted,

Steve Cohen
Senior Staff Counsel

⁵ Written comments should be sent to scohen@clrc.ca.gov. Comments may also be presented orally at any Commission meeting at which this study is on the meeting agenda. The Commission's meeting agendas can be viewed on the Commission [website](#).

⁶ The Commission's assignment in this study also directs the Commission to include in its final report to the Legislature "a list of substantive issues that the commission identifies in the course of its work, for possible future study." See [2024 Cal. Stat. res. ch. 138](#) (ACR 169, Kalra), para. 13.

CUMULATIVE DRAFT OF PROPOSED DIVISION 46
OF THE HEALTH & SAFETY CODE

Note. This is a work in progress. The material shown below may be changed. For a tentative outline and discussion of the proposed organization of new Division 46 of the Health & Safety Code, see [Memoranda 2020-13](#), Exhibit pp. 3-5; [2023-33](#), pp. 2-3; and [2025-16](#). All the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code, unless otherwise indicated.

Comments. A draft of an official Commission “Comment” follows each proposed code section in the recodification. Those Comments will be included in any final recommendation. The Comments are drafted as if the existing code sections have been repealed and replaced with the proposed legislation. Thus, existing code sections are referred to as “former” sections.

The Comments indicate the source of each recodified code section and describe how the recodified code section compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

Notes. Some provisions in this draft are followed by a “Note.” Notes are typically intended to be temporary and will not be part of the Commission’s final recommendation. Notes are drafted to reflect the state of the law today. Thus, the sections in the proposed legislation are referred to as “proposed” sections.

Notes serve to flag issues requiring special attention or treatment. Where a Note serves as a prompt for public comment, it will typically be continued in the Commission’s tentative recommendation as a Note calling for comment. However, where, for instance, the Commission decides against a proposed restatement and reverts to existing statutory language, the Note describing the proposed restatement would not be continued in future drafts.

Cross-references. In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.5. Where the cross-referenced provision has not yet been included in the recodification draft, the cross-reference is unchanged and is shown in bold text. Bracketed text designates cross-references that have been updated in form, but still need to be updated to reflect the recodified section number.

As new Division 46 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

Where a proposed section or Commission Comment is drafted to refer to a section of the recodified law that has not yet been included in the draft, the text refers to “Section [XXXXX].” These references will be updated when the relevant provision is drafted.

Tables. There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code Chapter 6.5 that has been included in this draft.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this draft.

Substantive Issues for Possible Future Study. As part of the Legislature’s assignment to the Commission to conduct this study, the Legislature directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” That list appears in this document following the disposition and derivation tables.

Public comment. The Commission welcomes public comment on any issue relating to the content of this draft or to any other aspect of this study. Comments should be directed to Steve Cohen (scohen@clrc.ca.gov).

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 83000-[XXXXX] (added). Toxics Reduction and Management**
2 SEC. ____ . Division 46 (commencing with Section 83000) is added to the Health
3 and Safety Code, to read:

4 **DIVISION 46. HAZARDOUS SUBSTANCES AND WASTE**
5 **MANAGEMENT**

6 **Notes. (1)** The proposed title of this division, “Hazardous Substances And Waste Management,”
7 is intended to concisely describe the contents of Chapter 6.5 of Division 20. **The Commission**
8 **welcomes comments on whether an alternative title would better describe the contents for**
9 **Chapter 6.5 of Division 20 for users of this law.**

10 **(2)** The provisional outline for this recodification project would recodify the entirety of Chapter
11 6.5 (commencing with Section 25100) of Division 20 in this proposed division. The provisions
12 contained in this draft, particularly those that cross-refer to the division, will require reconsideration
13 and possible adjustment if provisions of Chapter 6.5 of Division 20 are recodified in a different
14 location.

15 **PART 1. GENERAL PROVISIONS**

16 **CHAPTER 1. FINDINGS AND DECLARATIONS**

17 **§ 83000. Legislative findings**

18 83000. The Legislature finds that:

19 (a) Increasing quantities of hazardous wastes are being generated in the state, for
20 which the generators of the hazardous waste must provide safe disposal.

21 (b) Long-term threats to public health and to air and water quality are posed by
22 the landfill disposal of many types of untreated hazardous wastes and by the
23 inappropriate handling, storage, use, and disposal of hazardous wastes.

24 (c) Extensive technology exists for the safe treatment, neutralization, and
25 destruction of many types of hazardous wastes prior to disposal.

26 (d) Numerous opportunities exist to reduce the amount of hazardous waste
27 generated in the state and to conserve resources through the application of existing
28 source reduction and recycling technology.

29 (e) The people of the state face immense costs as a result of improper hazardous
30 waste handling and disposal practices.

31 **Comment.** Section 83000 continues former Section 25100 without substantive change.

32 See Sections 83205 (“handling”), 83210 (“hazardous waste”), 83325 (“recycling”), 83355
33 (“storage”), 83370 (“treatment”).

1 **§ 83005. Legislative declarations**

2 83005. The Legislature therefore declares that:

3 (a) In order to protect the public health and the environment and to conserve
4 natural resources, it is in the public interest to establish regulations and incentives
5 which ensure that the generators of hazardous waste employ technology and
6 management practices for the safe handling, treatment, recycling, and destruction
7 of their hazardous wastes prior to disposal.

8 (b) In order to assist the generators of hazardous waste in meeting the
9 responsibility for the safe disposal of hazardous waste it is necessary to establish the
10 Hazardous Waste Management Council.

11 (c) The Legislature further declares that in order to protect the public of this state
12 and particularly the communities where hazardous wastes are treated and disposed,
13 it is essential to assure full compensation of all people injured or damaged by
14 hazardous wastes. It is therefore necessary that the Hazardous Waste Management
15 Council, created pursuant to Section 25206, make recommendations regarding a
16 system of insurance and mechanisms establishing liability to achieve this result, as
17 required by subdivision (e) of Section 25208.

18 (d) It is in the best interest of the health and safety of the people of the State of
19 California for the state to obtain and maintain authorization to administer a state
20 hazardous waste program in lieu of the federal program pursuant to Section 3006 of
21 Public Law 94-580, as amended, the Resource Conservation and Recovery Act of
22 1976 (42 U.S.C. 6926). Therefore, it is the intent of the Legislature that the director
23 shall have those powers necessary to secure and maintain interim and final
24 authorization for the state hazardous waste program pursuant to the requirements of
25 Section 3006 of Public Law 94-580, the Resource Conservation and Recovery Act
26 of 1976 (42 U.S.C. 6926), and to implement such program in lieu of the federal
27 program.

28 **Comment.** Section 83005 continues former Section 25101 without substantive change. Obsolete
29 references to the “Hazardous Waste Management Council” and associated cross-referenced
30 provisions have been retained for ease of historical reference.

31 See Sections 83165 (“director”), 83205 (“handling”), 83210 (“hazardous waste”), 83220
32 (“hazardous waste management” or “management”), 83260 (“natural resources”), 83325
33 (“recycling”), 83370 (“treatment”).

34 **§ 83010. Findings related to access to public records**

35 83010. The Legislature has found that access by the people of this state to public
36 records is a fundamental and necessary right. The Legislature finds that it is
37 necessary to further the public’s right of access to public records pertaining to
38 hazardous waste management, information, and cleanup, to assure the fullest
39 opportunity for public participation in permitting and other decisions in order to
40 protect public health and the environment.

41 **Comment.** Section 83010 continues former Section 25103 without substantive change.

42 See Section 83220 (“hazardous waste management” or “management”).

1 **§ 83015. Construction of division related to state or local agency enforcement or**
2 **administration**

3 83015. No provision of this division shall limit the authority of any state or local
4 agency in the enforcement or administration of any provision of law that it is
5 specifically permitted or required to enforce and administer.

6 **Comment.** Section 83015 continues former Section 25105 without substantive change.

7 **§ 83020. Relationship of division with law governing administrative regulations and**
8 **rulemaking**

9 83020. Except as expressly provided by statute, this division does not supersede
10 or modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
11 Title 2 of the Government Code.

12 **Comment.** Section 83020 continues former Section 25106 without substantive change.

13 CHAPTER 2. EFFECT OF RECODIFICATION

14 **§ 83035. Short title**

15 83035. This division recodifies the provisions of former Chapter 6.5
16 (commencing with Section 25100) of Division 20. The act that added this division,
17 and the act that consists of conforming revisions to reflect the addition of this
18 division, shall be known and may be cited as the “Hazardous Waste Control
19 Recodification Act.”

20 **Comment.** Section 83035 is new. It provides a convenient means of referring to the
21 recodification of former Chapter 6.5 (commencing with Section 25100) of Division 20. For
22 background, see *Recodification of Hazardous Waste Control Provisions*, __ Cal. L. Revision
23 Comm’n Reports __ (202x).

24 **§ 83040. Nonsubstantive reform**

25 83040. Nothing in the Hazardous Waste Control Recodification Act is intended
26 to substantively change the law contained in former Chapter 6.5 (commencing with
27 25100) of Division 20. The act is intended to be entirely nonsubstantive in effect.
28 Every provision of this division and every other provision of this act, including,
29 without limitation, every cross-reference in every provision of the act, shall be
30 interpreted consistent with the nonsubstantive intent of the act.

31 **Comment.** Section 83040 is new. It is modeled on Penal Code Section 16005. It makes clear
32 that the Hazardous Waste Control Recodification Act has no substantive effect. The act is intended
33 solely to make the provisions of former Chapter 6.5 (commencing with Section 25100) of Division
34 20 more user-friendly. For background, see *Recodification of Hazardous Waste Control Provisions*,
35 __ Cal. L. Revision Comm’n Reports __ (20XX).

36 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
37 provision in this division, see Section 83050. For specific guidance on the impact of a judicial
38 decision assessing the constitutionality of a predecessor of a provision in this division, see Section
39 83055.

40 See Section 83035 (“Hazardous Waste Control Recodification Act”).

1 **§ 83045. Continuation of existing law**

2 83045. (a) A provision of this division, insofar as it is substantially the same as a
3 previously existing provision relating to the same subject matter, shall be considered
4 as a restatement and continuation of the previously existing provision and not as a
5 new enactment.

6 (b) A reference in a statute or regulation to a previously existing provision that is
7 restated and continued in this division shall, unless a contrary intent appears, be
8 deemed a reference to the restatement and continuation.

9 (c) A reference in a statute or regulation to a provision of this division that is
10 substantially the same as a previously existing provision, shall, unless a contrary
11 intent appears, be deemed to include a reference to the previously existing provision.

12 (d) A reference in a regulation to a provision of former Chapter 6.5 (commencing
13 with Section 25100) of Division 20, rather than to the provision of this division that
14 continues the former provision, has no effect on the validity of the regulation.

15 **Comment.** Section 83045 is new.

16 Subdivision (a) is similar to Section 2, which is a standard provision found in many codes. See,
17 e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Penal Code §§ 5, 16010(a); Prob.
18 Code § 2(a); Veh. Code § 2.

19 Subdivision (b) is drawn from Government Code Section 9604, and Penal Code Section
20 16010(b).

21 Subdivision (c) is drawn from Family Code Section 2, and Penal Code Section 16010(c).

22 Subdivision (d) is drawn from Section 78015(d). It is added to make clear that any delay in
23 updating regulations to reflect the enactment of this division does not have any effect on the validity
24 of the regulation. A regulation continues to be valid even if it refers to a provision of former Chapter
25 6.5 (commencing with Section 25100) of Division 20.

26 **§ 83050. Judicial decision interpreting former law**

27 83050. (a) A judicial decision interpreting a previously existing provision is
28 relevant in interpreting any provision of this division that restates and continues that
29 previously existing provision.

30 (b) However, in enacting the Hazardous Waste Control Recodification Act, the
31 Legislature has not evaluated the correctness of any judicial decision interpreting a
32 provision affected by the act.

33 (c) The Hazardous Waste Control Recodification Act is not intended to, and does
34 not, reflect any assessment of any judicial decision interpreting any provision
35 affected by the act.

36 **Comment.** Section 83050 is new. It is modeled on Penal Code Section 16020.

37 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
38 construing its successor in this division.

39 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.5 (commencing with
40 Section 25100) of Division 20, the Legislature has not taken any position on any case interpreting
41 any of those provisions.

42 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
43 predecessor of a provision in this division, see Section 83055. For general guidance on the
44 nonsubstantive impact of the Hazardous Waste Control Recodification Act, see Section 83040.

45 See Section 83035 (“Hazardous Waste Control Recodification Act”).

1 **Note.** In another recently completed recodification project, the Commission included a section
2 similar to proposed Section 83050 that addresses Attorney General opinions, rather than judicial
3 decisions. The Commission considered whether such a provision should be included in this project,
4 as well. The Commission searched for Attorney General opinions related to Chapter 6.5 and found
5 a couple. See 70 Cal. Ops. Atty. Gen. 130, 70 Cal. Ops. Atty. Gen. 183. Given that there are very
6 few Attorney General opinions, it is not clear whether it would be worthwhile to include a provision
7 about the effect of the recodification on Attorney General opinions.

8 **The Commission welcomes comment on this issue.**

9 **§ 83055. Constitutionality**

10 83055. (a) A judicial decision on the constitutionality of a previously existing
11 provision is relevant in determining the constitutionality of any provision of this
12 division that restates and continues that previously existing provision.

13 (b) However, in enacting the Hazardous Waste Control Recodification Act, the
14 Legislature has not evaluated the constitutionality of any provision affected by the
15 act, or the correctness of any judicial decision on the constitutionality of any
16 provision affected by the act.

17 (c) The Hazardous Waste Control Recodification Act is not intended to, and does
18 not, reflect any determination of the constitutionality of any provision affected by
19 the act.

20 **Comment.** Section 83055 is new. It is modeled on Penal Code Section 16025.

21 Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision is
22 relevant in determining the constitutionality of its successor in this division.

23 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.5 (commencing with
24 Section 25100) of Division 20, the Legislature has not taken any position on the constitutionality
25 of any of those provisions.

26 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
27 provision in this division, see Section 83050. For general guidance on the nonsubstantive effect of
28 the Hazardous Waste Control Recodification Act, see Section 83040.

29 See Section 83035 (“Hazardous Waste Control Recodification Act”).

30 **§ 83060. Conforming rule change**

31 83060. (a) The department or another state agency may make a conforming rule
32 change without complying with the rulemaking procedure specified in Article 5
33 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2
34 of the Government Code, if the rule change meets all of the requirements of this
35 section.

36 (b) To proceed under this section, the department or agency shall submit all of the
37 following to the Office of Administrative Law:

38 (1) A completed and signed form STD 400.

39 (2) A statement declaring that each proposed rule change in the submission is a
40 conforming rule change.

41 (3) A copy of the text of each regulation to be changed, with strikeout and
42 underscore showing the changes.

1 (c) On receipt of a submission described in subdivision (b), the Office of
 2 Administrative Law shall file the changed regulations with the Secretary of State
 3 and have them published in the California Code of Regulations.

4 (d) For the purposes of this section, a “conforming rule change” means a rule
 5 change that deletes a reference to a provision of former Chapter 6.5 (commencing
 6 with Section 25100) of Division 20 and replaces it with a reference to the provision
 7 of this division that continues or restates the former provision. A “rule change”
 8 includes a change to the text of a regulation in the California Code of Regulations,
 9 a regulation’s citation of authority, or a regulation’s reference.

10 **Comment.** Section 83060 is new. It is modeled on Section 78030.
 11 See Section 83160 (“department”).

12 CHAPTER 3. DEFINITIONS

13 **Note.** The following existing definitions appear to be obsolete or otherwise unnecessary, as
 14 described below:

15 “Authorized local health officer” (Section 25110.2) – this defined term is not used in any other
 16 provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California
 17 codes). In addition, the cross-referenced provision pursuant to which the department would
 18 authorize a local health officer (Section 25187.7) has been repealed.

19 “Consolidated transporter” (Section 25110.10.1) - this defined term is not used in any other
 20 provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California
 21 codes).

22 “Designated local public officer” (Section 25111.1) – this defined term is not used in any other
 23 provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California
 24 codes).

25 “State operational costs” (Section 25122.8) – this defined term is not used in any other provisions
 26 of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California codes).

27 **Absent comment indicating that these definitions have ongoing utility, the definitions**
 28 **would not be continued in the proposed recodification.**

29 **§ 83075. Applicable definitions**

30 83075. (a) Unless expressly incorporated by reference by another statute, the
 31 definitions in this chapter govern only the construction of this division.

32 (b) Until terms used in this division are defined in either this division or in
 33 regulations adopted to implement this division, the corresponding definitions found
 34 in the federal act and the regulations adopted pursuant to that act, shall apply to the
 35 terms used in this division.

36 **Comment.** Section 83075 continues former Section 25110 without substantive change. A
 37 reference to the “Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec.
 38 6901 et seq.)” was replaced with the defined term “federal act.” See Section 83200.

39 See Section 83200 (“federal act”).

40 **Notes.** Subdivision (b) of proposed Section 83075 provides for the application of definitions
 41 contained in the federal act (42 U.S.C. Sec. 6901 et seq.) if the terms are not defined either in

Chapter 6.5 or the associated state regulations. In preparing this recodification, the Commission has not exhaustively evaluated the application of definitions in the state regulation, federal law, or federal regulations to the use of those terms in this division. Assessing the applicability of the numerous definitions to uses of the defined terms in this law would be a significant undertaking. And, importantly, the potential benefits of doing such work in this nonsubstantive study are limited. That said, the Commission has identified issues that may be appropriate for future attention:

(1) Subdivision (b) implies that, for a term that is not defined in this division but is defined in the state regulations adopted pursuant to this division, the regulatory definition would apply to uses of the term in this division. If that is the intended outcome, the rule should be stated more directly.

More broadly, Section 66260.10 of Title 22 of the California Code of Regulations appears to be the key regulatory section defining terms related to hazardous waste management. That section defines over 400 terms (although some definitions are simply cross-references, e.g., “‘Acute hazardous waste’ see ‘Acutely hazardous waste.’”). The regulations include definitions for a number of terms that are also defined in this proposed division (e.g., “acutely hazardous waste,” “applicant,” “buffer zone,” “business”); the same term may be defined differently in this proposed division and the regulations (see, e.g., “disposal site” definitions in proposed Section 83180 and 22 C.C.R. § 66260.10). While many defined terms are sufficiently technical that they would not be mistakenly used in a more colloquial sense (e.g., “Acute aquatic 96-hour LC₅₀,” “polychlorinated biphenyls”), there are several defined terms that have a more general colloquial meaning (e.g., “activity,” “application,” “assets,” “authorized representative,” “commence,” “component”).

(2) Section 6903 of the federal act defines over 40 terms and the federal act’s regulations define many, many more. See generally <https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations> (over 25 parts of the federal regulations are associated with the federal act; a number of those parts have one or more sections containing numerous definitions); see, e.g., 40 C.F.R. §§ 239.2, 240.101, 256.05, 260.10, 273.9, 280.12.

In general, it is uncertain whether this provision provides sufficient clarity as to when the federal definitions apply. In particular, the federal act regulations cover three general categories: non-hazardous waste, hazardous waste, and other (used oil and storage tanks). Chapter 6.5 primarily deals with hazardous waste. It is unclear whether all of the definitions contained in the non-hazardous waste and storage tank regulations should be applied to Chapter 6.5. See, e.g., Section 25200.15 (using the word “upgrade” in a section about hazardous waste facility improvements), 40 C.F.R. § 280.12 (defining “upgrade” for underground storage tank systems).

At a minimum, it seems worthwhile to consider whether subdivision (b) should expressly limit the application of federal definitions in situations where those definitions were clearly not intended to apply (i.e., definitions apply “unless the context requires otherwise”).

The Commission welcomes comment on the above issues.

(3) Chapter 6.5 contains a number of provisions that apply to DTSC and pertain to programs other than those in Chapter 6.5. In particular, the financial provisions in Chapter 6.5 involve programs and terminology used in Chapter 6.8. See Note to proposed Part 3 of this recodification. In several cases, terms defined in Part 2 of Division 45 are used in Chapter 6.5 without reference to the applicable definitions, although it seems likely that those definitions were intended to apply. It may be worthwhile to include a provision specifying that, unless otherwise provided in this proposed division, the definitions in Part 2 of Division 45 apply to uses of those terms in this law. This is particularly true for the financial provisions (proposed Part 3 of this recodification) but may apply to the whole of Chapter 6.5.

This issue has been added to the list of substantive issues for possible future study.

1 **§ 83080. “Acutely hazardous waste”**

2 83080. “Acutely hazardous waste” means any hazardous waste classified as an
3 acutely hazardous waste in regulations adopted by the department.

4 **Comment.** Section 83080 continues former Section 25110.02 without substantive change.
5 See Sections 83160 (“department”), 83210 (“hazardous waste”).

6 **§ 83085. “Applicant”**

7 83085. “Applicant” means any person seeking an original hazardous waste
8 facilities permit, or an original hazardous waste hauler’s registration from the
9 department to generate, transport, treat, store, recycle, dispose of or handle
10 hazardous waste.

11 **Comment.** Section 83085 continues former Section 25110.1 without substantive change.
12 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste
13 facility”), 83295 (“person”).

14 **§ 83090. “Board”**

15 83090. “Board” means the Board of Environmental Safety established pursuant
16 to **Section 25125**.

17 **Comment.** Section 83090 continues former Section 25110.3 without substantive change.

18 **§ 83095. “Buffer zone”**

19 83095. “Buffer zone” means an area of land that surrounds a hazardous waste
20 facility and on which certain land uses and activities are restricted to protect the
21 public health and safety and the environment from existing or potential hazards
22 caused by the migration of hazardous waste.

23 **Comment.** Section 83095 continues former Section 25110.4 without substantive change.
24 See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

25 **§ 83100. “Business”**

26 83100. “Business” means the conduct of activity and is not limited to a
27 commercial or proprietary activity.

28 **Comment.** Section 83100 continues former Section 25110.5 without substantive change.

29 **§ 83105. “Business concern”**

30 83105. “Business concern” means any sole proprietorship, corporation,
31 association, firm, partnership, trust, or other form of commercial organization.

32 **Comment.** Section 83105 continues former Section 25110.8 without substantive change.

33 **§ 83110. “Certified Unified Program Agency” or “CUPA”**

34 83110. “Certified Unified Program Agency” or “CUPA” means the agency
35 certified by the secretary to implement the unified program specified in Chapter
36 6.11 (commencing with Section 25404) of Division 20 within a jurisdiction.

37 **Comment.** Section 83110 continues former Section 25123.7(b) without substantive change.
38 See Section 83350 (“secretary”).

1 § 83115. “Class I violation”

2 83115. “Class I violation” means any of the following:

3 (a) A deviation from the requirements of this division, or any regulation, standard,
4 requirement, or permit or interim status document condition adopted pursuant to this
5 division, that meets one or more of the following conditions:

6 (1) The deviation represents a significant threat to human health or safety or the
7 environment because of one or more of the following:

8 (A) The volume of the waste.

9 (B) The relative hazardousness of the waste.

10 (C) The proximity of the population at risk.

11 (2) The deviation is significant enough that it could result in a failure to
12 accomplish any of the following:

13 (A) Ensure that hazardous waste is destined for, and delivered to, an authorized
14 hazardous waste facility.

15 (B) Prevent releases of hazardous waste or constituents to the environment during
16 the active or postclosure period of facility operation.

17 (C) Ensure early detection of releases of hazardous waste or constituents.

18 (D) Ensure adequate financial resources in the case of releases of hazardous waste
19 or constituents.

20 (E) Ensure adequate financial resources to pay for facility closure.

21 (F) Perform emergency cleanup operations of, or other corrective actions for,
22 releases.

23 (b) A deviation that is a Class II violation that is a chronic violation or committed
24 by a recalcitrant violator.

25 **Comment.** Section 83115 restates former Section 25110.8.5, with the exception of the second
26 sentence of subdivision (b), without substantive change.

27 See Sections 83120 (“class II violation”), 83210 (“hazardous waste”), 83215 (“hazardous waste
28 facility”), 83395 (“waste”).

29 **Note.** Section 25110.8.5 was restated to ensure grammatical consistency in the section. Minor
30 changes were made to the portion of subdivision (a) preceding the numbered paragraphs and to
31 subdivision (b). Currently, those provisions of Section 25110.8.5 provide:

32 “Class I violation” means any of the following:

33 (a) A deviation from the requirements of this chapter, or any regulation, standard, requirement,
34 or permit or interim status document condition adopted pursuant to this chapter, that is any of the
35 following:

36 ...

37 (b) The deviation is a Class II violation which is a chronic violation or committed by a
38 recalcitrant violator. “Class II Violation” has the same meaning as defined in Section 66260.10 of
39 Title 22 of the California Code of Regulations.

40 The second sentence of subdivision (b) is continued in proposed Section 83120.

1 **Absent comment, the proposed restatement of this provision will be presumed correct.**

2 **§ 83120. “Class II violation”**

3 83120. “Class II violation” has the same meaning as defined in Section 66260.10
4 of Title 22 of the California Code of Regulations.

5 **Comment.** Section 83120 continues the second sentence of former Section 25110.8.5(b) without
6 substantive change.

7 See Section 83115 (“class I violation”).

8 **Note.** The scope of application for that definition is not expressly limited to the section. The term
9 “class II violation” is also used in the provision defining “minor violation.” See proposed Section
10 83255 (“minor violation”). For ease of use, the definition of “class II violation” is continued as a
11 separate section.

12 **Absent comment, the proposed treatment of this provision will be presumed correct.**

13 **§ 83125. “Conditional authorization”**

14 83125. (a) “Conditional authorization” means a provision of this division that
15 provides that a person or activity is deemed to be operating pursuant to a grant of
16 authorization, as required pursuant to **subdivision (a) of Section 25201**, if the
17 person or activity meets the specified requirements.

18 (b) “Conditional authorization” includes, but is not limited to, **Section 25200.3**.

19 **Comment.** Section 83125 restates former Section 25110.9.1(a) without substantive change.

20 See Section 83295 (“person”).

21 **Note.** Section 25110.9.1(a) is restated to improve readability. Section 25110.9.1(a) provides:

22 25110.9.1. (a) “Conditional authorization” means a provision of this chapter, including, but not
23 limited to, Section 25200.3, which provides that a person or activity is deemed to be operating
24 pursuant to a grant of authorization, as required pursuant to subdivision (a) of Section 25201, if the
25 person or activity meets the requirements of that provision.

26 The portion of the definition that identifies the example section (the “included, but not limited
27 to” provision) was placed in a separate subdivision and conforming changes were made. The
28 indefinite reference to “requirements of that provision” was changed to refer to the “specified
29 requirements.”

30 **Absent comment, the proposed restatement of this provision will be presumed correct.**

31 **§ 83130. “Conditional exemption”**

32 83130. (a) “Conditional exemption” means a provision of this division that
33 provides that a person or activity is exempted from, or is otherwise not subject to,
34 the requirement to obtain a hazardous waste facilities permit or other grant of
35 authorization if the person or activity meets the requirements of that provision.

36 (b) “Conditional exemption” includes, but is not limited to, **Sections 25144.6,**
37 **25201.5, 25201.8, and 25201.13.**

38 **Comment.** Section 83130 restates former Section 25110.9.1(b) without substantive change.

39 See Sections 83215 (“hazardous waste facility”), 83295 (“person”).

1 **Notes. (1)** Section 25110.9.1(b) is restated to improve readability. Section 25110.9.1(b)
2 provides:

3 25110.9.1. ... (b) “Conditional exemption” means a provision of this chapter, including, but not
4 limited to, Sections 25144.6, 25201.5, 25201.5.1, 25201.8, and 25201.13, which provides that a
5 person or activity is exempted from, or is otherwise not subject to, the requirement to obtain a
6 hazardous waste facilities permit or other grant of authorization if the person or activity meets the
7 requirements of that provision.

8 The portion of the definition that identifies the example sections (the “included, but not limited
9 to” provision) was placed in a separate subdivision and conforming changes were made.

10 **Absent comment, the proposed restatement of this provision will be presumed correct.**

11 **(2)** Section 25110.9.1(b)(2) lists sections that govern conditional exemptions. One of the listed
12 sections, Section 25201.5.1, has been repealed. Former Section 25201.5.1 related to silver halide-
13 based imaging product processing. See 1994 Cal. Stat. ch. 440, § 1. This material does not appear
14 to have been continued elsewhere in the code. For that reason, the obsolete reference to Section
15 25201.5.1 was continued.

16 **Absent comment, the proposed treatment of this cross-reference will be presumed correct.**

17 **§ 83135. “Conditionally exempt small quantity treatment”**

18 83135. “Conditionally exempt small quantity treatment” means the operations of
19 a generator conditionally exempted pursuant to **subdivision (a) of Section 25201.5.**

20 **Comment.** Section 83135 continues former Section 25110.9(a) without substantive change.

21 **§ 83140. “Conditionally exempt specified waste stream”**

22 83140. “Conditionally exempt specified waste stream” means a waste stream
23 treated by a generator conditionally exempted pursuant to **subdivision (c) of**
24 **Section 25201.5.**

25 **Comment.** Section 83140 continues former Section 25110.9(b) without substantive change.
26 See Section 83395 (“waste”).

27 **§ 83145. “Consolidated manifest”**

28 83145. “Consolidated manifest” means a hazardous waste manifest used by a milk
29 run transporter to combine hazardous waste shipments from multiple generators on
30 one consolidated manifest pursuant to the procedures in **Section 25160.2.**

31 **Comment.** Section 83145 restates former Section 25110.9.3 without substantive change.
32 See Sections 83210 (“hazardous waste”), 83250 (“manifest”).

33 **Note.** Section 25110.9.3 begins with a clause specifying that the definition is “[f]or purposes of
34 this chapter.” This language appears to be redundant. Proposed Section 83075 (Section 25110)
35 provides that the definitions in this proposed chapter govern “only the construction of this division
36 [existing Chapter 6.5].” For this reason, proposed Section 83145 does not continue the “[f]or
37 purposes of this chapter” language.

38 **Absent comment, the proposed restatement of this provision will be presumed correct.**

1 § 83150. “Consolidation site”

2 83150. “Consolidation site” means a site to which hazardous waste initially
3 collected at a remote site is transported.

4 **Comment.** Section 83150 restates former Section 25110.10(a) without substantive change.
5 See Sections 83210 (“hazardous waste”), 83335 (“remote site”).

6 **Notes. (1)** Section 25110.10(a) includes a clause specifying that “remote site” is “as defined in
7 Section 25121.3.” The “as defined in Section 25121.3” language appears to be redundant. “Remote
8 site” is defined in Section 25121.3 and that definition governs this division. See proposed Section
9 83075. For this reason, the clause cross-referencing the remote site definition was not continued.

10 **Absent comment, the proposed restatement of this provision will be presumed correct.**

11 **(2)** Subdivisions (b) to (e) of Section 25110.10 will be recodified with the substantive rules
12 related to hazardous waste transportation and consolidation.

13 § 83155. “Contained gaseous material”

14 83155. (a) “Contained gaseous material” means any gas that is contained in an
15 enclosed cylinder or other enclosed container.

16 (b) Notwithstanding subdivision (a), “contained gaseous material” does not
17 include any exhaust or flue gas, or other vapor stream, or any air or exhaust gas
18 stream that is filtered or otherwise processed to remove particulates, dusts, or other
19 air pollutants, regardless of the source.

20 **Comment.** Section 83155 restates former Section 25110.11 without substantive change.

21 **Notes. (1)** Section 25110.11(a) specifies that the definition of “contained gaseous material” is
22 “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.” This
23 language appears to be redundant. Proposed Section 83075 (Section 25110) provides that the
24 definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].”
25 For this reason, proposed Section 83155 does not continue the language specifying that the
26 definition applies “for purposes of subdivision (a) of Section 25124 or any other provision of this
27 chapter.”

28 **Absent comment, the proposed restatement of this provision will be presumed correct.**

29 **(2)** Currently, Section 25124(a) (defining “waste”) is the only provision that appears to use the
30 term “contained gaseous material” in Chapter 6.5. Given that, it is unclear if there is value to
31 retaining this provision as a separate definition that applies to the whole of Chapter 6.5.

32 **The Commission welcomes comment on whether this definition should be incorporated**
33 **into the definition of “waste.”**

34 § 83160. “Department”

35 83160. “Department” means the Department of Toxic Substances Control.

36 **Comment.** Section 83160 continues former Section 25111 without substantive change.

37 § 83165. “Director”

38 83165. “Director” means the Director of Toxic Substances Control.

39 **Comment.** Section 83165 continues former Section 25112 without substantive change.

1 § 83170. “Disclosure statement”

2 83170. “Disclosure statement” means a statement submitted to the department by
3 an applicant, signed by the applicant under penalty of perjury, that includes all of
4 the information specified in [Section XXXXX].

5 **Comment.** Section 83170 restates the portion of former Section 25112.5(a) that precedes the
6 numbered paragraphs without substantive change.

7 See Sections 83085 (“applicant”), 83160 (“department”).

8 **Notes. (1)** Section 25112.5 contains the definition of “disclosure statement,” along with
9 supporting rules about the contents of the disclosure statement. Proposed Section 83170 recodifies
10 the portion of Section 25112.5 that defines disclosure statement, which provides:

11 “(a) ‘Disclosure statement’ means a statement submitted to the department by an applicant,
12 signed by the applicant under penalty of perjury, which includes all of the following information:
13”

14 Proposed Section 83170 would restate this portion of Section 25112.5(a) to include a
15 (placeholder) cross-reference to the proposed provision(s) that will recodify the remainder of
16 Section 25112.5(a).

17 **(2)** The remaining material in Section 25112.5 — i.e., subdivisions (b)-(d) and the numbered
18 paragraphs of subdivision (a) — will be recodified later in this proposed division.

19 § 83175. “Disposal”

20 83175. (a) “Disposal” means either of the following:

21 (1) The discharge, deposit, injection, dumping, spilling, leaking, or placing of any
22 waste so that the waste or any constituent of the waste is or may be emitted into the
23 air or discharged into or on any land or waters, including groundwaters, or may
24 otherwise enter the environment.

25 (2) The abandonment of any waste.

26 (b) The amendment of former Section 25113 by Section 2 of Chapter 1436 of the
27 Statutes of 1989 does not constitute a change in, but is declaratory of, the existing
28 law.

29 **Comment.** Section 83175 restates former Section 25113 without substantive change.

30 See Section 83395 (“waste”).

31 **Note.** Section 25113(b) is restated to replace the phrase “[t]he amendment of the section made
32 at the 1989-90 Regular Session of the Legislature” with a reference to “[t]he amendment of former
33 Section 25113 by Section 2 of Chapter 1436 of the Statutes of 1989.”

34 **Absent comment, this proposed restatement will be presumed correct.**

35 § 83180. “Disposal site”

36 83180. “Disposal site” means the location where any final deposition of hazardous
37 waste occurs.

38 **Comment.** Section 83180 continues former Section 25114 without substantive change.

39 See Section 83210 (“hazardous waste”).

1 § 83185. “Electronic manifest system” or “e-Manifest system”

2 83185. “Electronic manifest system” or “e-Manifest system” means the United
3 States Environmental Protection Agency’s national information technology system
4 through which an electronic manifest may be obtained, completed, transmitted, and
5 distributed to users of the electronic manifest, and to regulatory agencies.

6 **Comment.** Section 83185 restates former Section 25160(a)(2) without substantive change.
7 See Section 83250 (“manifest”).

8 **Note.** The text preceding the numbered paragraphs in Section 25160(a) provides “[f]or purposes
9 of this chapter, the following definitions apply.” Given the application of these definitions to the
10 entirety of Chapter 6.5, the definitions have been proposed for recodification in this proposed
11 chapter.

12 The prefatory “[f]or purposes of this chapter” text is redundant and therefore is not continued.
13 Proposed Section 83075 (Section 25110) provides that the definitions in this chapter govern “only
14 the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 83185
15 does not continue the “[f]or purposes of this chapter” language.

16 **Absent comment, this proposed restatement will be presumed correct.**

17 § 83190. “Environmental assessor”

18 83190. “Environmental assessor” means an environmental professional as defined
19 in Section 312.10 of Title 40 of the Code of Federal Regulations. Notwithstanding
20 Section 83075, this definition shall apply for all California statutes, unless the
21 context requires otherwise.

22 **Comment.** Section 83190 continues former Section 25114.5 without substantive change.

23 **Note.** Section 25114.5 indicates that the definition of environmental assessor “shall apply for all
24 California statutes, unless the context requires otherwise.” This is a very broad scope of application
25 and raises the question of whether this definition should be relocated to a more general location or
26 reproduced elsewhere.

27 **The Commission welcomes comment on this issue.**

28 § 83195. “Extremely hazardous waste”

29 83195. “Extremely hazardous waste” means any hazardous waste or mixture of
30 hazardous wastes that, if human exposure should occur, may likely result in death,
31 disabling personal injury or serious illness caused by the hazardous waste or mixture
32 of hazardous wastes because of its quantity, concentration, or chemical
33 characteristics.

34 **Comment.** Section 83195 continues former Section 25115 without substantive change.
35 See Section 83210 (“hazardous waste”).

36 § 83200. “Federal act”

37 83200. “Federal act” means the federal Resource Conservation and Recovery Act
38 of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

39 **Comment.** Section 83200 continues former Section 25115.1 without substantive change.

1 § 83205. “Handling”

2 83205. (a) “Handling” means either of the following:

3 (1) The transporting or transferring from one place to another of hazardous waste.

4 (2) The pumping, processing, storing, or packaging of hazardous waste.

5 (b) “Handling” does not include the handling of any substance before it becomes
6 a waste.

7 **Comment.** Section 83205 restates former Section 25116 without substantive change.

8 See Sections 83210 (“hazardous waste”), 83300 (“processing”), 83395 (“waste”).

9 **Note.** Section 25116 has been restated for clarity. Section 25116 provides:

10 “Handling” means the transporting or transferring from one place to another, or pumping,
11 processing, storing, or packaging of hazardous waste, but does not include the handling of any
12 substance before it becomes a waste.”

13 **Absent comment, the proposed restatement of this section will be presumed correct.**

14 § 83210. “Hazardous waste”

15 83210. (a)(1) Except as provided in **subdivision (d) [of Section 25117]**,
16 “hazardous waste” means a waste that meets any of the criteria for the identification
17 of a hazardous waste adopted by the department pursuant to **Section 25141**.

18 (2) “Hazardous waste” includes, but is not limited to, RCRA hazardous waste.

19 (3) Unless expressly provided otherwise, “hazardous waste” also includes
20 extremely hazardous waste and acutely hazardous waste.

21 (b)(1) Waste that is hazardous only because it is medical waste, as defined in the
22 Medical Waste Management Act (Part 14 (commencing with Section 117600) of
23 Division 104), shall not be governed by, subject to fees assessed by, or otherwise
24 subject to, the requirements of this division or regulations adopted pursuant to this
25 division.

26 (2) Biohazardous waste that meets the conditions specified in **subdivision (f) or**
27 **(g) of Section 117635** is not subject to this division.

28 **Comment.** Subdivision (a) of Section 83210 continues former Section 25117(a)-(c) without
29 substantive change.

30 Subdivision (b) continues former Section 25117.5 without substantive change.

31 See Sections 83080 (“acutely hazardous waste”), 83160 (“department”), 83195 (“extremely
32 hazardous waste”), 83310 (“RCRA hazardous waste”), 83395 (“waste”).

33 **Notes.** (1) Subdivision (d) of Section 25117 contains a rule about satisfying “the element of proof
34 that the waste is hazardous waste” in a criminal or civil prosecution for violations of Chapter 6.5.
35 That subdivision will be recodified with the enforcement provisions in this proposed division.

36 (2) Section 25117.5 is missing a comma at the end of the citation to the Medical Waste
37 Management Act. A comma has been added in this proposed section.

38 (3) Section 25117.5(b) (which will be recodified as paragraph (b)(2) of this proposed section)
39 provides:

40 “(b) Biohazardous waste that meets the conditions specified in subdivision (f) or (g) of Section
41 117635 is not subject to this chapter.”

1 Section 117635 has been repealed. See 2014 Cal. Stat. ch. 564, § 5. Former Section 117635(f)
2 and (g) related to biological waste that was only hazardous due to the presence of chemical
3 fixatives, chemotherapeutic agents, or pharmaceuticals. See 1996 Cal. Stat. ch. 536, § 1. Former
4 Section 117635 also specified that these types of waste “are not subject to” Chapter 6.5.

5 The definition of biohazardous waste was moved to Section 117690 and no longer has separate
6 provisions about the types of waste addressed by former subdivisions (f) and (g). In the current
7 provision, medical waste as a whole is defined as certain types of waste “not regulated by RCRA.”
8 It is unclear how this cross-reference should be updated (i.e., by referring to former law or to refer
9 to a different provision in the current law).

10 More generally, it is unclear whether this exclusion for biohazardous waste is intended to be
11 different in scope than the exclusion for medical waste in paragraph (b)(1) of this proposed section
12 (existing Section 25117.5(a)).

13 **The Commission welcomes comment on these issues.**

14 **§ 83215. “Hazardous waste facility”**

15 83215. (a) “Hazardous waste facility” means all contiguous land and structures,
16 other appurtenances, and improvements on the land used for the treatment, transfer,
17 storage, resource recovery, disposal, or recycling of hazardous waste.

18 (b) A hazardous waste facility may consist of one or more treatment, transfer,
19 storage, resource recovery, disposal, or recycling hazardous waste management
20 units, or combinations of these units.

21 **Comment.** Section 83215 continues former Section 25117.1 without substantive change.

22 See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83220 (“hazardous waste
23 management” or “management”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

24 **§ 83220. “Hazardous waste management” or “management”**

25 83220. “Hazardous waste management” or “management” means the
26 transportation, transfer, recycling, recovery, disposal, handling, processing, storage,
27 and treatment of hazardous waste.

28 **Comment.** Section 83220 continues former Section 25117.2 without substantive change.

29 See Sections 83175 (“disposal”), 83205 (“handling”), 83210 (“hazardous waste”), 83300
30 (“processing”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

31 **§ 83225. “Intermediate manufacturing process stream”**

32 83225. (a) “Intermediate manufacturing process stream” means a material, or
33 combination of materials, that meets all of the following conditions:

34 (1) It is produced as part of the manufacturing process.

35 (2) It is used onsite on a batch or continuous basis, in either the same or in a
36 different manufacturing process to produce a commercial product.

37 (3) It is not a recyclable material.

38 (4) The person who produced the material or combination of materials is able to
39 demonstrate all of the following:

40 (A) The material, or combination of materials, is used, alone or in combination
41 with other materials, in a manufacturing process that is designed for its use.

1 (B) The material, or combination of materials, is not accumulated or stored in
2 amounts greater than can be used in the manufacturing process.

3 (C) The material, or combination of materials, is not handled, stored, or processed
4 in a manner that is inconsistent with its intended use or the operating requirements
5 of the manufacturing process.

6 (D) The material, or combination of materials, is not burned or incinerated for the
7 purpose of abandoning or relinquishing the material or combination of materials,
8 except as may otherwise be allowed under both this division and the federal act.

9 (b) Notwithstanding subdivision (a), a material is not an intermediate
10 manufacturing process stream if it has been released in violation of this division, or
11 any other applicable law, or an order issued pursuant to this division or other
12 applicable law, unless it has been released into an appropriate containment area or
13 structure and has been promptly recovered and returned to the manufacturing
14 process, without prior treatment, for use in the originally intended manufacturing
15 process.

16 **Comment.** Section 83225 continues former Section 25116.5 without substantive change.
17 See Sections 83200 (“federal act”), 83295 (“person”), 83315 (“recyclable material”), 83370
18 (“treatment”).

19 **§ 83230. “Land use restriction”**

20 83230. “Land use restriction” means any limitation regarding the uses of property
21 which may be provided by, but is not limited to, a written instrument that imposes
22 an easement, covenant, restriction, or servitude, or a combination thereof, as
23 appropriate, upon the present and future uses of all, or part of, the land, pursuant to
24 Section 25202.5 or 79055 or former Section 25222.1 or 25230.

25 **Comment.** Section 83230 continues former Section 25117.13 without substantive change.

26 **Notes.** (1) Section 25117.13 specifies that a “land use restriction” is a limitation on the use of
27 property that is imposed pursuant to specified sections. The phrasing of this provision is a bit
28 ambiguous. Specifically, it is unclear whether the list of sections is intended to be an exclusive list.

29 The Commission identified certain sections that are not listed here that provide for restrictions
30 on land use. It is not clear whether those omissions were intentional. For instance, Section 25221
31 discusses agreements between the property owner and the department that provide for restricting
32 property uses. The section provides that such an agreement “shall be recorded... as a hazardous
33 waste easement, covenant, restriction, or servitude, or any combination of those servitudes.” It is
34 unclear why this section is not a listed land use restriction. See also Section 25220(a) (citing the
35 land use restrictions imposed pursuant to former Sections 25229, 25230, and 25398.7, and current
36 Sections 25202.5, 25221, and 25355.5).

37 **The Commission welcomes comment on these issues and whether this definition has caused
38 problems in practice.**

39 **Depending on the comment received, the Commission may add clarification of this
40 definition to the list of substantive issues for possible future study.**

41 (2) Section 25117.13 lists two sections that have been repealed, Sections 25222.1 and 25230.
42 See 2012 Cal. Stat. ch. 39, § 38. Since the land use restrictions enacted under these repealed laws
43 may still be in effect, proposed Section 83230 has been drafted to continue to refer to land use
44 restrictions pursuant to those “former” sections. For these references, no statutory citation was

1 provided to avoid an implication that only certain restrictions under these former sections are “land
2 use restrictions” for the purpose of this definition (i.e., those restrictions adopted when a specified
3 version of the section was in effect).

4 **§ 83235. “License”**

5 83235. “License” includes, but is not limited to any, permit, registration, or
6 certification issued by any local, state, or federal agency for the generation,
7 transportation, treatment, storage, recycling, disposal, or handling of hazardous
8 waste.

9 **Comment.** Section 83235 continues former Section 25117.10 without substantive change.

10 See Sections 83175 (“disposal”), 83205 (“handling”), 83210 (“hazardous waste”), 83325
11 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

12 **§ 83240. “Local health officer”**

13 83240. “Local health officer” means county health officers, city health officers,
14 and district health officers, as defined in this code.

15 **Comment.** Section 83240 continues former Section 25117.4.1(a) without substantive change.

16 **Notes. (1)** The definition of “local health officer” includes three specified types of officers
17 (county, city, and district health officers) “as defined in this code.”

18 The Commission conducted a quick search to identify the provision(s) defining each type of
19 health officer.

20 • “County health officer” – “County health officer” does not appear to be a defined term in this
21 code. However, Section 101000 requires the board of supervisors to “appoint a health officer who
22 is a county officer.” Presumably, this would be the “county health officer.” See also Section 111015
23 (defining “health officer” to include a health officer “appointed by a county board of supervisors
24 pursuant to Section 101000”).

25 • “City health officer” – Similarly, “city health officer” does not appear to be a defined term in
26 the code. Section 101460 specifies that the governing body of a city “shall appoint a health officer”
27 See also Section 111015 (defining “health officer” to include a health officer appointed “by the
28 governing body of a city pursuant to Section 101460.”).

29 • “District health officer” – The Commission has not found a section of the Health and Safety
30 Code that provides for the appointment of a district health officer (aside from one permitting a
31 sanitary district board to authorize the county health officer to act as a health officer for a sanitary
32 district; see Section 6492.5). Section 111015 defines “health officer” to include a health officer
33 appointed by “by a local health district board pursuant to former Section 940, that is continued in
34 effect as to any existing district by Section 3 of Chapter 380 of the Statutes of 1959.” It is unclear
35 whether these are the district health officers intended here.

36 **The Commission welcomes comment on whether it would be helpful to specify where**
37 **exactly these different officers are defined in the code.**

38 **(2)** More broadly, it appears that a “local health officer” under this section may be the same as a
39 “health officer” under Section 111015. If so, the definition in this section could either cite to Section
40 111015 (or duplicate the text of that definition).

41 **The Commission welcomes comment on whether these two definitions have an identical**
42 **scope.**

1 § 83245. “Local officer”

2 83245. “Local officer” means a local public officer authorized to implement this
3 division pursuant to **subdivision (a) of Section 25180**.

4 **Comment.** Section 83245 continues former Section 25117.4.1(b) without substantive change.

5 **Notes. (1)** Section 25117.4.1(b) defines “local officer” as a “local public officer authorized to
6 implement [Chapter 6.5] pursuant to” Section 25180(a). This definition differs from that of a
7 “designated local public officer,” which is defined in Section 25111.1 as “a local public officer
8 designated by the director pursuant to subdivision (a) of Section 25180.” The definition of
9 “designated local public officer” is not proposed for continuation, as the term is not used in Chapter
10 6.5. However, given that both of these defined terms rely on authority in Section 25180, it is helpful
11 to consider them together in assessing who would be a “local officer” under this proposed section.

12 Section 25180 describes three categories of local agencies/officers with a role in enforcing or
13 implementing Chapter 6.5 and its regulations. Those three categories are as follows:

14 (1) For provisions of this chapter that are part of the unified program (see Section 25404(c)(1))
15 and where there is a Certified Unified Program Agency (CUPA), the unified program agencies are
16 “authorized to enforce” the chapter’s requirements that are part of the unified program. (Section
17 25180(a)(2)(B)). See proposed Section 83375 (defining “unified program agency”).

18 (2) For provisions of this chapter that are part of the unified program and where there is no
19 CUPA, an officer or agency “authorized, pursuant to [Section 25404.3(f)], to implement and
20 enforce the provisions that are part of the unified program.” (Section 25180(a)(2)(A)).

21 (3) For provisions of this chapter that are not part of the unified program, “any local health officer
22 or any local public officer designated by the director” may enforce this chapter’s standards. (Section
23 25180(a)(1)).

24 It appears that a “local officer” is an officer *authorized* as described in paragraph (2), while a
25 “designated local public officer” is a local public officer *designated* as described in paragraph (3).
26 If this is the case, it would seem to be helpful to offer a pinpoint cite to the relevant provision of
27 Section 25180. Otherwise, it may not be clear whether “local officer” includes *any* local officer
28 that is either designated or authorized pursuant to Section 25180(a), particularly in the absence of
29 the contrasting definition of “designated local public health officer.”

30 This provision defines “local officer” by referring specifically to a “local public officer.” This
31 terminology differs from that in Section 25180, which refers to “any officer.” It is not clear whether
32 any officer authorized under Section 25180 would necessarily be a “local public officer” (in which
33 case, consistent terminology would be preferable). Alternatively, it may be that “local public
34 officers” are only a subset of those officers authorized under Section 25180 (in which case, the
35 Commission would recommend adjusting the language of the provision to make this clear).

36 **The Commission welcomes comment on these issues.**

37 (2) More broadly, this defined term does not appear to be the most useful term for Chapter 6.5.

38 First, it is not clear why this defined term includes only officers (and not agencies). As indicated
39 above, Section 25180(a)(2)(A) provides for authorizing either “an officer or agency.” In Chapter
40 6.5, the term “local officer” is consistently used in combination with a reference to an “agency
41 authorized ... pursuant to Section 25180(a).” See, e.g., proposed Section 83255(b)(2), Sections
42 25110.10(e), 25150(b), 25201.8(b). Given that, defining a term for an “authorized local officer or
43 agency” would provide significant drafting convenience, as it better reflects how these
44 agencies/officers are referenced in the statutes.

1 And, in fact, some sections use this shorthand term after first referring to “local officer or agency
 2 authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.” See, e.g., Section
 3 25187.8 (numerous references to an “authorized local officer or agency”).

4 **The Commission also welcomes comment on these issues.**

5 **§ 83250. “Manifest”**

6 83250. (a) “Manifest” means a shipping document originated and signed by a
 7 generator of hazardous waste that contains all of the information required by the
 8 department and that complies with all applicable federal and state regulations, and
 9 includes any of the following:

10 (1) A California Uniform Hazardous Waste Manifest, which was a manifest
 11 document printed and supplied by the state for a shipment initiated on or before
 12 September 4, 2006.

13 (2) A Uniform Hazardous Waste Manifest, which is United States Environmental
 14 Protection Agency Form 8700-22 (Manifest) and includes, if necessary, Form 8700-
 15 22A (Manifest Continuation Sheet), printed by a source registered with the United
 16 States Environmental Protection Agency for a shipment initiated on or after
 17 September 5, 2006.

18 (3)(A) An electronic manifest, which is the electronic format of a hazardous waste
 19 manifest, that is obtained from the electronic manifest system and transmitted
 20 electronically to the system, that is the legal equivalent of United States
 21 Environmental Protection Agency Forms 8700-22 and 8700-22A, as specified in
 22 **Section 25160.01.**

23 (B) A printed copy of the manifest from the e-Manifest system.

24 (b) For purposes of **this section [Section 25160]**, a shipment is initiated on the
 25 date when the manifest is signed by the first transporter and the hazardous waste
 26 leaves the site where it is generated.

27 **Comment.** Section 83250 restates former Section 25160(a)(1) and (a)(3) without substantive
 28 change.

29 See Sections 83160 (“department”), 83185 (“electronic manifest system,” “e-manifest system”),
 30 83210 (“hazardous waste”).

31 **Notes. (1)** The text preceding the numbered paragraphs in Section 25160(a) provides “[f]or
 32 purposes of this chapter, the following definitions apply.” Given the application of these definitions
 33 to the entirety of Chapter 6.5, the definitions have been proposed for recodification in this proposed
 34 chapter.

35 The prefatory “for the purposes of this chapter” text is redundant and therefore is not continued.
 36 Proposed Section 83075 (Section 25110) provides that the definitions in this chapter govern “only
 37 the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 83250
 38 does not continue the “[f]or purposes of this chapter” language.

39 **Absent comment, this proposed restatement will be presumed correct.**

40 (2) Subdivision (b) of this proposed section continues Section 25160(a)(3). That paragraph
 41 provides a rule for the date of shipment initiation. That rule applies specifically for the purposes of
 42 “this section” (Section 25160). The cross-reference to this section will be updated when the
 43 remainder of Section 25160 is proposed for recodification.

1 (3) Another definition from Section 25160 is included in this draft but is not proposed for
2 inclusion in the cross-reference as it does not pertain to the date of shipment initiation. See proposed
3 Section 83185.

4 **§ 83255. “Minor violation”**

5 83255. (a) “Minor violation” means a deviation from the requirements of this
6 division, or any regulation, standard, requirement, or permit or interim status
7 document condition adopted pursuant to this division, that is not a class I violation.

8 (b)(1) A minor violation does not include any of the following:

9 (A) Any knowing, willful, or intentional violation of this division.

10 (B) Any violation of this division that enables the violator to benefit economically
11 from noncompliance, either by reduced costs or competitive advantage.

12 (C) Any class II violation that is a chronic violation or that is committed by a
13 recalcitrant violator.

14 (2) In determining whether a violation is chronic or a violator is recalcitrant, for
15 purposes of subparagraph (C) of paragraph (1), the department, or the local officer
16 or agency authorized to enforce this division pursuant to **subdivision (a) of Section**
17 **25180**, shall consider whether there is evidence indicating that the violator has
18 engaged in a pattern of neglect or disregard with respect to the requirements of this
19 division.

20 **Comment.** Section 83255 continues former Section 25117.6 without substantive change.

21 See Sections 83115 (“class I violation”), 83120 (“class II violation”), 83160 (“department”),
22 83245 (“local officer”).

23 **Note.** Section 25117.6(a) specifies that a “minor violation” does not include a “class I violation.”
24 A “class I violation” is defined to include “a class II violation that is a chronic violation or
25 committed by a recalcitrant violator” (hereafter, a chronic class II violation). See proposed Section
26 83115. Thus, a chronic class II violation is not a minor violation.

27 Even so, Section 25117.6(b)(1)(C) separately and specifically excludes a “class II violation that
28 is a chronic violation or that is committed by a recalcitrant violation” from the definition of “minor
29 violation.” This appears to be redundant, as a chronic class II violation would already be excluded
30 from “minor violation” as it is a class I violation.

31 Further, Section 25117.6(b)(2) includes a rule for assessing when a class II violation is a chronic
32 class II violation. That rule, however, applies only for the purposes of the (redundant) exclusion
33 described above. It appears that this rule should be generalized to apply when assessing whether a
34 class II violation should be considered a class I violation (i.e., whether the class II violation is
35 chronic).

36 **This issue has been added to the list of substantive issues for possible future study.**

37 **§ 83260. “Natural resources”**

38 83260. “Natural resources” includes, but is not limited to, disposal site capacity
39 and substances that are hazardous waste, or that are in hazardous waste, the reuse of
40 which is technologically and economically feasible.

41 **Comment.** Section 83260 continues former Section 25117.8 without substantive change.

42 See Sections 83180 (“disposal site”), 83210 (“hazardous waste”).

1 § 83265. “Non-RCRA hazardous waste”

2 83265. (a) “Non-RCRA hazardous waste” means all hazardous waste regulated in
3 the state, other than RCRA hazardous waste.

4 (b) A hazardous waste regulated in the state is presumed to be RCRA hazardous
5 waste, unless it is determined, pursuant to regulations adopted by the department,
6 that the hazardous waste is a non-RCRA hazardous waste.

7 **Comment.** Section 83265 restates former Section 25117.9 without substantive change.

8 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83310 (“RCRA hazardous
9 waste”).

10 **Note.** Section 25117.9 is restated to add subdivision designators and delete redundant language
11 at the end of the first sentence specifying that RCRA hazardous waste is “as defined in Section
12 25120.2 [proposed Section 83310].” Proposed Section 83075 (Section 25110) provides that the
13 definitions in this chapter govern “the construction of this division [existing Chapter 6.5].”

14 **Absent comment, the proposed restatement of this section will be presumed correct.**

15 § 83270. “Notice to comply”

16 83270. “Notice to comply” means a written method of alleging a minor violation
17 that is in compliance with all of the following requirements:

18 (a) The notice to comply is written in the course of conducting an inspection of a
19 facility by an authorized representative of the department or by a local officer or
20 agency authorized to enforce this division pursuant to **subdivision (a) of Section**
21 **25180**.

22 (b) A copy of the notice to comply is presented to a person who is an owner or
23 employee of the facility being inspected at the time that the notice to comply is
24 written.

25 (c) The notice to comply clearly states the nature of the alleged minor violation, a
26 means by which compliance with the permit conditions, rule, regulation, standard,
27 or other requirement cited by the inspector may be achieved, and a time limit in
28 which to comply, which shall not exceed 30 days.

29 (d) The notice to comply shall contain the information specified in **subdivision**
30 **(h) of Section 25187.8** with regard to inspection of the facility.

31 **Comment.** Section 83270 continues former Section 25117.9.1 without substantive change.

32 See Sections 83160 (“department”), 83245 (“local officer”), 83255 (“minor violation”), 83295
33 (“person”).

34 § 83275. “Offsite facility”

35 83275. “Offsite facility” means a hazardous waste facility that is not an onsite
36 facility.

37 **Comment.** Section 83275 continues former Section 25117.11 without substantive change.

38 See Sections 83215 (“hazardous waste facility”), 83280 (“onsite facility”).

1 **§ 83280. “Onsite facility”**

2 83280. “Onsite facility” means a hazardous waste facility at which a hazardous
3 waste is produced and that is owned by, leased to, or under the control of, the
4 producer of the waste.

5 **Comment.** Section 83280 continues former Section 25117.12 without substantive change.
6 See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83305
7 (“producer”), 83395 (“waste”).

8 **§ 83285. “Participating agency” or “PA”**

9 83285. “Participating agency” or “PA” means an agency that has a written
10 agreement with the CUPA pursuant to **subdivision (d) of Section 25404.3**, and is
11 approved by the secretary, to implement or enforce one or more of the unified
12 program elements specified in **paragraph (1) of subdivision (c) of Section 25404**,
13 in accordance with the provisions of **Sections 25404.1 and 25404.2**.

14 **Comment.** Section 83285 continues former Section 25123.7(c) without substantive change.
15 See Section 83110 (“certified unified program agency” or “CUPA”), 83350 (“secretary”).

16 **§ 83288. “Permit”**

17 83288. “Permit” includes matters deemed to be permits pursuant to **subdivision**
18 **(c) of Section 25198.6**.

19 **Comment.** Section 83288 continues former Section 25180.1 without substantive change.

20 **§ 83290. “Permit-by-rule”**

21 83290. “Permit-by-rule” means a provision of the regulations adopted pursuant to
22 this division stating that a facility or activity is deemed to have a hazardous waste
23 facilities permit if it meets the requirements of that provision.

24 **Comment.** Section 83290 continues former Section 25117.14 without substantive change.
25 See Section 83215 (“hazardous waste facility”).

26 **§ 83295. “Person”**

27 83295. “Person” means an individual, trust, firm, joint stock company, business
28 concern, partnership, limited liability company, association, and corporation,
29 including, but not limited to, a government corporation. “Person” also includes any
30 city, county, district, commission, the state or any department, agency, or political
31 subdivision thereof, any interstate body, and the federal government or any
32 department or agency thereof to the extent permitted by law.

33 **Comment.** Section 83295 continues former Section 25118 without substantive change.
34 See Sections 83105 (“business concern”), 83160 (“department”).

35 **§ 83300. “Processing”**

36 83300. “Processing” means treatment.

37 **Comment.** Section 83300 restates former Section 25119 without substantive change.
38 See Section 83370 (“treatment”).

1 **Note.** Section 25119 is restated to delete redundant language at the end of the sentence specifying
2 that treatment is “as defined in Section 25123.5 [proposed Section 83370].” Proposed Section
3 83075 (Section 25110) provides that the definitions in this chapter govern “the construction of this
4 division [existing Chapter 6.5].”

5 **§ 83305. “Producer”**

6 83305. “Producer” means any person who generates a waste material.

7 **Comment.** Section 83305 continues former Section 25120 without substantive change.

8 See Sections 83295 (“person”), 83395 (“waste”).

9 **§ 83310. “RCRA hazardous waste”**

10 83310. “RCRA hazardous waste” means all waste identified as a hazardous waste
11 in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter I of Title
12 40 of the Code of Federal Regulations and appendixes thereto.

13 **Comment.** Section 83310 continues former Section 25120.2 without substantive change. The
14 reference to the Code of Federal Regulations was revised to use roman numerals for the chapter
15 designation, consistent with the numbering practice used in the federal regulations.

16 See Sections 83210 (“hazardous waste”), 83395 (“waste”).

17 **Note.** Section 25150.2 refers to a part of the Code of Federal Regulations. The reference refers
18 to “Chapter 1.” This has been adjusted to refer to “Chapter I,” as the relevant chapter is numbered
19 using a roman numeral in the federal regulations. See 1 C.F.R. § 21.11. The subchapters are lettered
20 consecutively in capital letters. *Id.*

21 **§ 83315. “Recyclable material”**

22 83315. “Recyclable material” means a hazardous waste that is capable of being
23 recycled, including, but not limited to, any of the following:

24 (a) A residue.

25 (b) A spent material, including, but not limited to, a used or spent stripping or
26 plating solution or etchant.

27 (c) A material that is contaminated to such an extent that it can no longer be used
28 for the purpose for which it was originally purchased or manufactured.

29 (d) A byproduct listed in the regulations adopted by the department as “hazardous
30 waste from specific sources” or “hazardous waste from nonspecific sources.”

31 (e) Any retrograde material that has not been used, distributed, or reclaimed
32 through treatment by the original manufacturer or owner by the later of the
33 following dates:

34 (1) One year after the date when the material became a retrograde material.

35 (2) If the material has been returned to the original manufacturer, one year after
36 the material is returned to the original manufacturer.

37 **Comment.** Section 83315 continues former Section 25120.5 without substantive change.

38 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83340 (“retrograde material”),
39 83370 (“treatment”).

1 § 83320. “Recycled material”

2 83320. (a) “Recycled material” means a recyclable material that has been used or
3 reused, or reclaimed.

4 (b) “Recycled material” does not include an intermediate manufacturing process
5 stream.

6 **Comment.** Section 83320 continues former Section 25121 without substantive change.

7 See Sections 83225 (“intermediate manufacturing process stream”), 83315 (“recyclable
8 material”).

9 § 83325. “Recycling”

10 83325. (a) “Recycling” means using, reusing, or reclaiming a recyclable material.

11 (b) Notwithstanding subdivision (a), for purposes of the fees, taxes, and charges
12 imposed pursuant to **Article 7 (commencing with Section 25170)**, “recycling”
13 means the collecting, transporting, storing, transferring, handling, segregating,
14 processing, using or reusing, or reclaiming of recyclable material to produce
15 recycled material.

16 **Comment.** Section 83325 continues former Section 25121.1 without substantive change.

17 See Sections 83205 (“handling”), 83300 (“processing”), 83315 (“recyclable material”), 83320
18 (“recycled material”).

19 **Note.** Section 25121.1(b) refers to fees, taxes, and charges imposed “pursuant to Article 7
20 (commencing with Section 25170).” The recodified provisions of Article 7 that impose fees, taxes,
21 and charges are proposed to be located in parts of this recodification that have not yet been drafted.

22 **However, once recodification of those provisions from Article 7 are proposed, the**
23 **Commission welcomes comment on whether the proposed recodification of Section**
24 **25121.1(b) should be moved from this location, and relocated to appear with those recodified**
25 **provisions from Article 7.**

26 § 83330. “Release”

27 83330. “Release” has the same definition as in Section 78105.

28 **Comment.** Section 83330 continues former Section 25121.2 without substantive change.

29 § 83335. “Remote site”

30 83335. (a) “Remote site” means a site operated by the generator that meets all of
31 the following conditions:

32 (1) Initial collection of hazardous waste occurs at the site.

33 (2) Generator staff, other than security staff, is not routinely located at the site.

34 (3) The site is not contiguous to a staffed site operated by the generator of the
35 hazardous waste or does not have access to a staffed site without the use of public
36 roads.

37 (b) Generator staff who visit a remote location to perform inspection, monitoring,
38 or maintenance activities on a periodic scheduled or random basis, less frequently
39 than daily, are not considered to be routinely located at the remote location.

40 **Comment.** Section 83335 restates former Section 25121.3(a) without substantive change.

41 See Section 83210 (“hazardous waste”).

1 **Notes. (1)** Section 25121.3(a) is restated for clarity. Currently, Section 25121.3(a) provides:

2 “‘Remote site’ means a site operated by the generator where hazardous waste is initially
3 collected, at which generator staff, other than security staff, is not routinely located, and that is not
4 contiguous to a staffed site operated by the generator of the hazardous waste or that does not have
5 access to a staffed site without the use of public roads. Generator staff who visit a remote location
6 to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random
7 basis, less frequently than daily, are not considered to be routinely located at the remote location.”

8 **Absent comment, this proposed restatement of this provision will be presumed correct.**

9 **(2)** Subdivisions (b) and (c) of Section 25121.3 will be recodified with the substantive rules
10 related to hazardous waste transportation and consolidation.

11 **§ 83340. “Retrograde material”**

12 83340. (a) “Retrograde material” means any hazardous material that is not to be
13 used, sold, or distributed for use in an originally intended or prescribed manner or
14 for an originally intended or prescribed purpose and that meets any one or more of
15 the following criteria:

16 (1) Has undergone chemical, biochemical, physical, or other changes due to the
17 passage of time or the environmental conditions under which it was stored.

18 (2) Has exceeded a specified or recommended shelf life.

19 (3) Is banned by law, regulation, ordinance, or decree.

20 (4) Cannot be used for reasons of economics, health or safety, or environmental
21 hazard.

22 (b) “Retrograde material” does not include material designated in regulations
23 adopted by the department as included in a category that the department shall title
24 “Discarded commercial chemical products, off-specification species, container
25 residues, and spill residues thereof”, if either of the following conditions is met:

26 (1) The material is used in a manner constituting disposal and the material is not
27 normally used in a manner constituting disposal.

28 (2) The material is burned for energy recovery and the material is not normally
29 burned for energy recovery.

30 **Comment.** Section 83340 continues former Section 25121.5 without substantive change.

31 See Sections 83160 (“department”), 83175 (“disposal”).

32 **§ 83345. “Restricted hazardous waste”**

33 83345. “Restricted hazardous waste” includes both of the following:

34 (a) Any hazardous waste subject to land disposal restrictions pursuant to **Section**
35 **25179.6** and the regulations adopted by the department pursuant to that section.

36 (b) Any hazardous waste that contains any of the following substances, in the
37 following concentrations, as determined without considering any dilution that may
38 occur, unless the dilution is a normal part of a manufacturing process:

39 (1) Liquid hazardous wastes containing free cyanides at concentrations greater
40 than, or equal to, 1,000 milligrams per liter.

1 (2) Liquid hazardous wastes containing any of the following metals or elements,
 2 or compounds of these metals or elements, at concentrations greater than, or equal
 3 to, any of the following:

Arsenic	500 milligrams per liter
Cadmium	100 milligrams per liter
Chromium (VI)	500 milligrams per liter
Lead	500 milligrams per liter
Mercury	20 milligrams per liter
Nickel	134 milligrams per liter
Selenium	100 milligrams per liter
Thallium	130 milligrams per liter

4 (3) Liquid hazardous wastes having a pH less than or equal to two.

5 (4) Liquid hazardous wastes containing polychlorinated biphenyls at
 6 concentrations greater than, or equal to, 50 milligrams per liter.

7 (5) Hazardous wastes containing halogenated organic compounds in total
 8 concentration greater than, or equal to, 1,000 milligrams per kilogram.

9 **Comment.** Section 83345 continues former Section 25122.7 without substantive change.
 10 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”).

11 **§ 83350. “Secretary”**

12 83350. “Secretary” means the Secretary for Environmental Protection.

13 **Comment.** Section 83350 continues former Section 25122.9 without substantive change.

14 **§ 83355. “Storage”**

15 83355. “Storage” means the holding of hazardous wastes, for a temporary period.

16 **Comment.** Section 83355 continues former Section 25123 without substantive change.
 17 See Section 83210 (“hazardous waste”).

18 **§ 83360. “Storage facility”**

19 83360. “Storage facility” means a hazardous waste facility that is identified as a
 20 storage facility pursuant to **Article ZZZ of Chapter ZZZ**.

21 **Comment.** Section 83360 continues the initial clause of former Section 25123.3(b) without
 22 substantive change.

23 See Section 83215 (“hazardous waste facility”).

24 **Notes. (1)** Proposed Section 83360 continues only the initial clause of Section 25123.3(b). The
 25 remainder of this section contains substantive requirements for hazardous waste storage, as well as
 26 supporting definitions (that only apply for the purposes of the section).

27 **(2)** The remainder of Section 25123.3 will be recodified later in this proposed division, with
 28 substantive provisions regarding hazardous waste facilities.

1 § 83365. “Transportable hazardous waste treatment unit” or “transportable treatment
2 unit”

3 83365. “Transportable hazardous waste treatment unit” or “transportable
4 treatment unit” means mobile equipment that performs treatment, is transported
5 onto a facility to perform treatment, and is not permanently stationed at a single
6 facility.

7 **Comment.** Section 83365 continues former Section 25123.4 without substantive change.
8 See Section 83370 (“treatment”).

9 § 83370. “Treatment”

10 83370. (a) Except as provided in subdivisions (b) and (c), “treatment” means any
11 method, technique, or process that is not otherwise excluded from the definition of
12 treatment by this division and that is designed to change the physical, chemical, or
13 biological character or composition of any hazardous waste or any material
14 contained therein, or that removes or reduces its harmful properties or
15 characteristics for any purpose.

16 (b)(1) “Treatment” does not include any of the activities listed in paragraph (2),
17 if one of the following requirements is met:

18 (A) The activity is conducted onsite in accordance with the requirements of this
19 division and the department’s regulations adopted pursuant to this division
20 governing the generation and accumulation of hazardous waste.

21 (B) The activity is conducted in accordance with the conditions specified in a
22 permit issued by the department for the storage of hazardous waste.

23 (2) The activities subject to the exemption specified in paragraph (1) include all
24 of the following:

25 (A) Sieving or filtering liquid hazardous waste to remove solid fractions, without
26 added heat, chemicals, or pressure, as the waste is added to or removed from a
27 storage or accumulation tank or container. For purposes of this subparagraph,
28 sieving or filtering does not include adsorption, reverse osmosis, or ultrafiltration.

29 (B) Phase separation of hazardous waste during storage or accumulation in tanks
30 or containers, if the separation is unaided by the addition of heat or chemicals. If the
31 phase separation occurs at a commercial offsite permitted storage facility, all phases
32 of the hazardous waste shall be managed as hazardous waste after separation.

33 (C) Combining two or more waste streams that are not incompatible into a single
34 tank or container if both of the following conditions apply:

35 (i) The waste streams are being combined solely for the purpose of consolidated
36 accumulation or storage or consolidated offsite shipment, and they are not being
37 combined to meet a fuel specification or to otherwise be chemically or physically
38 prepared to be treated, burned for energy value, or incinerated.

39 (ii) The combined waste stream is managed in compliance with the most stringent
40 of the regulatory requirements applicable to each individual waste stream.

1 (D) Evaporation of water from hazardous wastes in tanks or containers, such as
2 breathing and evaporation through vents and floating roofs, without the addition of
3 pressure, chemicals, or heat other than sunlight or ambient room lighting or heating.

4 (3) This subdivision does not apply to any activity for which a hazardous waste
5 facilities permit for treatment is required under the federal act.

6 (c) “Treatment” does not include the combination of glutaraldehyde or
7 orthophthalaldehyde, which is used by medical facilities to disinfect medical
8 devices, with formulations containing glycine as the sole active chemical, if the
9 process is carried out onsite.

10 **Comment.** Section 83370 continues former Section 25123.5 without substantive change.

11 See Sections 83160 (“department”), 83200 (“federal act”), 83210 (“hazardous waste”), 83215
12 (“hazardous waste facility”), 83355 (“storage”), 83395 (“waste”).

13 **Note.** Section 25123.5 would appear to benefit from a restatement for clarity. However, given
14 the current state of this provision, the degree of restatement that would be needed, and the strictly
15 nonsubstantive constraints in this study, the Commission believes that it would be best to address
16 any restatement of this provision as an issue for future work.

17 **This issue has been added to the list of substantive issues for possible future study.**

18 **§ 83375. “Unified program agency” or “UPA”**

19 83375. (a) “Unified program agency” or “UPA” means the CUPA, or its
20 participating agencies to the extent each PA has been designated by the CUPA,
21 pursuant to a written agreement, to implement or enforce a particular unified
22 program element specified in **paragraph (1) of subdivision (c) of Section 25404.**

23 (b)(1) For purposes of this division, the UPAs have the responsibility and
24 authority, to the extent provided by this division and **Sections 25404.1 and 25404.2,**
25 to implement and enforce only those requirements of this division listed in
26 **paragraph (1) of subdivision (c) of Section 25404.** The UPAs also have the
27 responsibility and authority, to the extent provided by this division and **Sections**
28 **25404.1 and 25404.2,** to implement and enforce the regulations adopted to
29 implement the requirements of this division listed in **paragraph (1) of subdivision**
30 **(c) of Section 25404.**

31 (2) After a CUPA has been certified by the secretary, the unified program agencies
32 shall be the only local agencies authorized to enforce the requirements of this
33 division listed in **paragraph (1) of subdivision (c) of Section 25404** within the
34 jurisdiction of the CUPA.

35 (c) This section shall not be construed to limit the authority or responsibility
36 granted to the department by this division to implement and enforce this division
37 and the regulations adopted pursuant thereto.

38 **Comment.** Section 83375 continues former Section 25123.7(d) without substantive change.

39 See Sections 83110 (“certified unified program agency” or “CUPA”), 83160 (“department”),
40 83285 (“participating agency” or “PA”), 83350 (“secretary”).

41 **Notes. (1)** The language of Section 25123.7 was continued unchanged, but subdivision and
42 paragraph designators were added.

1 The language in proposed subdivision (d) references “this section” (Section 25123.7). It appears
 2 that all of the material relevant to this reference is contained in this proposed section. The other
 3 proposed provisions continuing the language of Section 25123.7 simply define terms and do not
 4 appear to place any limits or restrictions on the authority to implement and enforce Chapter 6.5.
 5 For this reason, the proposed language only refers to “this section,” which continues Section
 6 25123.7(d).

7 **Absent comment, this proposed treatment of the reference to “this section” will be**
 8 **presumed correct.**

9 (2) Section 25123.7(d) defines “unified program agency” or “UPA” as the “CUPA or its
 10 participating agencies to the extent that each PA has been designated by the CUPA ... to implement
 11 or enforce a particular unified program element.” Where a particular program element of the unified
 12 program is at issue, the term “UPA” is presumably intended to refer to whichever agency is
 13 authorized to enforce and implement that program element within the relevant jurisdiction (either
 14 the CUPA or an authorized PA).

15 However, this proposed section also uses the plural term “unified program agencies” or “UPAs.”
 16 In these cases, the term seems to be used to refer to *all* CUPAs, as well as *all* PAs throughout the
 17 state. The use of the disjunctive “or” in the definition of “UPA” is inconsistent with this apparent
 18 intent. More broadly, it seems to be unclear whether a reference to the plural “UPAs” is referring
 19 to all the CUPAs/PAs throughout the state, the CUPA and all the PAs within a particular
 20 jurisdiction, or, with respect to a particular requirement, the CUPA or PA authorized to enforce that
 21 requirement within every jurisdiction.

22 It is unclear whether this issue is causing problems in practice, or whether the references to
 23 “unified program agencies” or “UPAs” are sufficiently clear in context.

24 **The Commission welcomes comment this issue.**

25 (3) The Commission noticed that the disjunctive is also used in the definition of “UPA” in
 26 Section 25404, which is in the law establishing the unified program. “UPA” is also similarly
 27 defined in other sections. See Sections 25270.2(c)(3), 25281(d)(3), 25501(e)(3). There seems to be
 28 value in preserving consistency across these definitions of “UPA.”

29 **The Commission also welcomes comment on this issue. Depending on the comment**
 30 **received, the Commission may consider adding the issue to the list of substantive issues for**
 31 **possible future study.**

32 **§ 83380. “Unified program facility”**

33 83380. “Unified program facility” means all contiguous land and structures, other
 34 appurtenances, and improvements on the land that are subject to the requirements
 35 of **paragraph (1) of subdivision (c) of Section 25404.**

36 **Comment.** Section 83380 continues former Section 25123.7(a) without substantive change.

37 **§ 83385. “Universal waste”**

38 83385. “Universal waste” means a hazardous waste identified as a universal waste
 39 in Section 66273.9 of Title 22 of the California Code of Regulations, or as that
 40 regulation may be further amended pursuant to this division, or a hazardous waste
 41 designated as a universal waste pursuant to this division.

42 **Comment.** Section 83385 continues former Section 25123.8 without substantive change.
 43 See Section 83210 (“hazardous waste”).

1 **Note.** Section 25123.8 defines “universal waste” by referring to a waste “identified as a universal
 2 waste” in a specified section of the California Code of Regulations. The referenced section of the
 3 regulations defines a large number of terms, including “universal waste.” In that section, the
 4 definition of “universal waste” does not provide a list of wastes, but instead simply defines the term
 5 by cross-referencing a list of wastes in a separate section of the regulations (22 C.C.R. § 66261.9).

6 It is unclear why the cross-reference in this section does not simply refer to the regulatory
 7 provision that actually lists universal wastes.

8 **The Commission welcomes comment on whether the cross-reference to the regulations
 9 should instead refer to 22 C.C.R. § 66261.9, which actually lists universal wastes.**

10 **§ 83390. “Volatile organic compound”**

11 83390. “Volatile organic compound” means a compound that is a volatile organic
 12 compound according to Method No. 8240 in the United States Environmental
 13 Protection Agency Document No. Solid Waste 846 (1982) or any equivalent,
 14 alternative method acceptable to the department.

15 **Comment.** Section 83390 continues former Section 25123.6 without substantive change.
 16 See Section 83160 (“department”).

17 **Note.** Section 25123.6 defines “volatile organic compound” by reference to what appears to be
 18 a scientific test, “Method No. 8240 in the Environmental Protection Agency Document No. Solid
 19 Waste 846 (1982).”

20 In proposed Section 83390, “United States” was added to indicate that this section is referring to
 21 the federal agency, as opposed to the state Environmental Protection Agency.

22 More significantly, it appears that the referenced method, Method 8240, may be obsolete. This
 23 method is not listed in the SW-846 compendium posted on the U.S. Environmental Protection
 24 Agency website. See <https://www.epa.gov/hw-sw846/sw-846-compendium>; see also
 25 [https://www.epa.gov/hw-sw846/status-table-test-methods-evaluating-solid-waste-](https://www.epa.gov/hw-sw846/status-table-test-methods-evaluating-solid-waste-physicalchemical-methods-compendium-sw-846)
 26 [physicalchemical-methods-compendium-sw-846](https://www.epa.gov/hw-sw846/status-table-test-methods-evaluating-solid-waste-physicalchemical-methods-compendium-sw-846) (Method 8240 not listed on status table
 27 identifying historical and latest versions of SW-846 methods).

28 The compendium includes a variety of other methods specifically related to the class of volatile
 29 organic compounds, including, for example, Methods 8260D (“Volatile Organic Compounds by
 30 Gas Chromatography/Mass Spectrometry (GC/MS)”) and 8261 (“Volatile Organic Compounds by
 31 Vacuum [Distillation] in Combination with Gas Chromatography/Mass Spectrometry
 32 (VD/GC/MS)”).

33 **The Commission welcomes comment on whether the reference to Method No. 8240 needs
 34 to be updated and, if so, how this provision should be revised.**

35 **§ 83395. “Waste”**

36 83395. (a) Except as provided in subdivision (c), “waste” means any discarded
 37 material, including solid, liquid, semisolid, or contained gaseous material, that is not
 38 excluded by this division or by regulations adopted pursuant to this division.

39 (b) For purposes of subdivision (a), a discarded material is a material that is any
 40 of the following:

41 (1) Relinquished by being any of the following:

42 (A) Disposed of.

43 (B) Burned or incinerated.

1 (C)(i) Accumulated, stored, or treated before, or in lieu of, being relinquished by
2 being disposed of, burned, or incinerated.

3 (ii) This subparagraph does not apply to materials that are recycled before, or in
4 lieu of, being relinquished by being disposed of, burned, or incinerated.

5 (2) Recycled, or accumulated, stored, or treated before recycling, except as
6 provided in **Section 25143.2**.

7 (3) Poses a threat to public health or the environment and meets either, or both, of
8 the following conditions:

9 (A) The material is mislabeled or not adequately labeled and the label is not
10 corrected or made adequate within 10 days after the discovery of the mislabeling or
11 inadequate labeling.

12 (B) The material is packaged in deteriorated or damaged containers and the
13 material not packaged in sound or undamaged containers within 96 hours after the
14 discovery of the deterioration or damage.

15 (4) Considered inherently wastelike, as specified in regulations adopted by the
16 department.

17 (c) Notwithstanding subdivision (a), a material is not a discarded material if it is
18 either of the following:

19 (1) An intermediate manufacturing process stream.

20 (2)(A) Except as specified in subparagraph (B) and to the extent consistent with
21 the federal act, a coolant, lubricant, or cutting fluid necessary to the operation of
22 manufacturing equipment, that is processed to extend the life of the material for
23 continued use, and is processed in the same manufacturing equipment in which the
24 material is used or in connected equipment that returns the material to the
25 originating manufacturing equipment for continued use.

26 (B) Subparagraph (A) does not apply to any of the following material:

27 (i) Material that is processed in connected equipment that is not directly and
28 permanently connected to the originating manufacturing equipment or that is
29 constructed or operated in a manner that may allow the release of any material or
30 constituent of the material into the environment.

31 (ii) Material that is a hazardous waste prior to being introduced into the
32 manufacturing equipment or connected equipment.

33 (iii) Material that is removed from the manufacturing equipment or connected
34 equipment for storage, treatment, disposal, or burning for energy recovery outside
35 that equipment.

36 (iv) Material that remains in the manufacturing equipment or connected
37 equipment more than 90 days after that equipment ceases to be operated.

38 (v) Material that is processed using methods other than physical procedures.

39 **Comment.** Section 83395 restates former Section 25124 without substantive change.

40 See Sections 83155 (“contained gaseous material”), 83160 (“department”), 83175 (“disposal”),
41 83200 (“federal act”), 83210 (“hazardous waste”), 83225 (“intermediate manufacturing process
42 stream”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

43 **Note.** Section 25124 is restated for clarity and to make a grammatical correction, as follows:

1 Subdivision (a) is restated to make clear that the provision is using the defined terms “contained
2 gaseous material” and “discarded material.” See proposed subdivisions (b), (c) of this section
3 (specifying materials that are and are not “discarded materials”) and Commission Note to proposed
4 Section 83155 (the definition for “contained gaseous material” specifically provides that it applies
5 to this provision).

6 In the introductory clause to subdivision (b), “any material” was replaced with “a material.” The
7 portions of subdivision (b) that were restated for clarity are noted below.

8 Subparagraph(b)(1)(C) currently provides:

9 “[A discarded material includes a material that is] [a]ccumulated, stored, or treated, but not
10 recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.”

11 This subparagraph has been proposed for restatement as two clauses.

12 Subparagraphs (A) and (B) of paragraph (b)(3) currently provide:

13 “[A material that poses a threat to public health or the environment and meets one or both of the
14 following conditions is considered discarded]:

15 (A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or
16 adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately
17 labeled.

18 (B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound
19 or undamaged containers within 96 hours after the containers are discovered to be deteriorated or
20 damaged.”

21 These subparagraphs were restated to make clear that the failure to correct the deficiency within
22 the specified time frame is necessary to satisfy the condition.

23 **Absent comment, this proposed restatement will be presumed correct.**

24 PART 2. DEPARTMENT OF TOXIC SUBSTANCES
25 CONTROL

26 CHAPTER 1. GENERAL POWERS AND DUTIES

27 Article 1. Preliminary Provisions

28 **§ 83420. Department obligations**

29 83420. The department, in performing its duties under this division, shall do all
30 of the following:

31 (a) Coordinate research and development regarding methods of hazardous waste
32 handling, storage, use, processing, and disposal and may conduct appropriate
33 studies relating to hazardous wastes.

34 (b) Maintain a technical reference center on hazardous waste management
35 practices, including, but not limited to, hazardous waste disposal, recycling
36 practices, and related information for public and private use.

1 (c) Establish and maintain a toll-free Toxic Substances Hotline, operating during
2 the regular working hours of the department, to provide information on hazardous
3 waste or appropriate referrals on other toxic substances to the regulated community
4 and the public. The department shall coordinate the Toxic Substances Hotline
5 program with other programs that provide information on hazardous wastes and
6 other toxic substances, including, but not limited to, the technical reference center
7 established pursuant to subdivision (b).

8 (d) Provide statewide planning for hazardous waste facility site identification and
9 assessment and render technical assistance to state and local agencies in the
10 planning and operation of hazardous waste programs.

11 (e) Provide for appropriate surveillance of hazardous waste processing, use,
12 handling, storage, and disposal practices in the state.

13 (f) Coordinate research and study in the technical and managerial aspects of
14 management and use of hazardous wastes, and recycling and recovery of resources
15 from hazardous wastes.

16 (g) Determine existing and expected rates of production of hazardous waste.

17 (h) Investigate market potential and feasibility of use of hazardous wastes and
18 recovery of resources from hazardous wastes.

19 (i) Promote recycling and recovery of resources from hazardous wastes.

20 (j) Conduct studies for the purpose of improving departmental operations.

21 (k) Encourage the reduction or exchange, or both, of hazardous waste, including,
22 but not limited to, publishing and distributing both of the following:

23 (1) Lists of hazardous wastes for the purpose of enabling persons to match the
24 constituents of hazardous waste streams with needs for hazardous materials
25 resources.

26 (2) Directories of known and permitted commercial hazardous waste recyclers in
27 the state.

28 (l) Establish and maintain an information clearinghouse, which shall consist of a
29 record of wastes that may be recyclable. Every producer of hazardous waste shall
30 supply the department with information for the clearinghouse. Each producer shall
31 not be required to supply any more information than is required by the manifests
32 provided for in **Section 25160**. The department shall make this information
33 available to persons who desire to recycle the wastes. The information shall be made
34 available in such a way that the trade secrets of the producer are protected.

35 (m) Conduct pilot projects, as appropriate, to document the technical performance
36 of emerging technologies that offer potential for ameliorating California's
37 hazardous waste disposal problems.

38 (n) Develop and implement an industry education program that shall emphasize
39 small business education and shall include, but not be limited to, all of the following
40 elements:

41 (1) Preparation of a synopsis of laws and regulations relating to hazardous waste,
42 which the department shall publish by January 1 of each year.

1 (2) Publication of educational pamphlets for selected types of business explaining
2 selected areas of the law, regulations, or programs concerning hazardous waste.

3 (3) Audio-visual training programs, as needed.

4 (4) An annual California Hazardous Waste Management Symposium.

5 **Comment.** Section 83420 continues former Section 25170 without substantive change.

6 See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205
7 (“handling”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220 (“hazardous
8 waste management” or “management”), 60250 (“manifest”), 60295 (“person”), 60300
9 (“processing”), 60305 (“producer”), 60325 (“recycling”), 60350 (“storage”), 60390 (“waste”).

10 **Note.** Section 25170(l) cross-refers to Section 25160 for the purpose of identifying the required
11 contents of manifests under that section. The definitions contained in Section 25160 have been
12 proposed for recodification in this draft, but those proposed sections do not include the substantive
13 information about the manifest’s required contents. This cross-reference will be updated when the
14 remainder of Section 25160 is proposed for recodification.

15 Article 2. Regulations and Standards

16 § 83450. Hazardous waste management to protect against hazards to public health, to 17 domestic livestock, to wildlife, or to the environment

18 83450. (a) The department shall adopt, and revise when appropriate, standards
19 and regulations for the management of hazardous wastes to protect against hazards
20 to the public health, to domestic livestock, to wildlife, or to the environment.

21 (b) The department and the local officers and agencies authorized to enforce this
22 division pursuant to **subdivision (a) of Section 25180** shall apply the standards and
23 regulations adopted pursuant to subdivision (a) to the management of hazardous
24 waste.

25 (c) Except as provided in subdivision (d), the department may limit the application
26 of the standards and regulations adopted or revised pursuant to subdivision (a) at
27 facilities operating pursuant to a hazardous waste facilities permit or other grant of
28 authorization issued by the department in any manner that the department
29 determines to be appropriate, including, but not limited to, requiring these facilities
30 to apply for, and receive, a permit modification prior to the application of the
31 standards and regulations.

32 (d) The department shall not adopt or revise standards and regulations that result
33 in the imposition of any requirement for the management of a RCRA waste that is
34 less stringent than a corresponding requirement adopted by the United States
35 Environmental Protection Agency pursuant to the federal act.

36 (e) The department shall adopt, and revise when appropriate, regulations for the
37 recycling of hazardous waste to protect against hazards to the public health,
38 domestic livestock, wildlife, or to the environment, and to encourage the best use of
39 natural resources.

40 (f) Before the adoption of regulations, the department shall notify all agencies of
41 interested local governments, including, but not limited to, certified unified program

1 agencies, local governing bodies, local planning agencies, local health authorities,
 2 local building inspection departments, the Department of Pesticide Regulation, the
 3 Department of the California Highway Patrol, the Department of Fish and Wildlife,
 4 the Department of Industrial Relations, the Division of Occupational Safety and
 5 Health, the State Air Resources Board, the State Water Resources Control Board,
 6 the Office of the State Fire Marshal, regional water quality control boards, the
 7 California Building Standards Commission, the Office of Environmental Health
 8 Hazard Assessment, and the Department of Resources Recycling and Recovery.

9 **Comment.** Section 83450 continues former Section 25150 without substantive change. Several
 10 of the listed state agency names were outdated and have been corrected to refer to the current name
 11 of the relevant agency. See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920;
 12 Lab. Code § 56; Pub. Res. Code § 40400.

13 See Sections 60105 (“certified unified program agency” or “CUPA”), 60160 (“department”),
 14 60200 (“federal act”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220
 15 (“hazardous waste management” or “management”), 60245 (“local officer”), 60260 (“natural
 16 resources”), 60325 (“recycling”), 60390 (“waste”).

17 **Notes. (1)** Section 25150(d) refers to a requirement for the management of a “RCRA waste” that
 18 is less stringent than a requirement adopted by the “Environmental Protection Agency pursuant to
 19 the federal act.”

20 For clarity, this proposed section specifies that the relevant agency is the “*United States*
 21 *Environmental Protection Agency*.”

22 The term “RCRA waste” is similar to the defined term “RCRA hazardous waste.” See proposed
 23 Section 60310. However, it is unclear whether this provision is intended to be limited to only
 24 hazardous wastes that are regulated by RCRA (RCRA also governs non-hazardous solid waste).
 25 “RCRA” is not itself a defined term, so, if any waste governed by RCRA was intended, the
 26 Commission would recommend restating this provision to refer to a “waste regulated by the federal
 27 act.” If only RCRA hazardous wastes are intended, the defined term, “RCRA hazardous waste,”
 28 could be substituted here.

29 **The Commission welcomes comment on this issue.**

30 **(2)** Section 25150(f) refers to a number of local and state agencies. Several of the state agency
 31 names were outdated and have been corrected to refer to the current name of the relevant agency.
 32 See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920; Lab. Code § 56; Pub. Res.
 33 Code § 40400.

34 **Absent comment, these proposed corrections will be presumed correct.**

35 **(3)** Section 25150(f) appears to state a general rule about the adoption of regulations (i.e., not
 36 limited to regulations adopted pursuant to this section). If that is the case, subdivision (f) should be
 37 recodified in a separate section. If not, the provision should specify that it applies before the
 38 adoption of regulations “pursuant to this section.”

39 **The Commission welcomes comment on this issue.**

40 **§ 83455. Authority to adopt varying regulations**

41 83455. (a) The department, when adopting regulations pursuant to Section 83450,
 42 may adopt varying regulations for different areas of the state depending on
 43 population density, climate, geology, types and volumes of hazardous waste
 44 generated in the area, types of waste treatment technology available in the area, and

1 other factors relevant to hazardous waste handling, processing, storing, recycling,
2 and disposal.

3 (b) This section does not apply to building standards.

4 **Comment.** Section 83455 continues former Section 25151 without substantive change.

5 See Sections 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous
6 waste”), 60300 (“processing”), 60325 (“recycling”), 60365 (“treatment”), 60390 (“waste”).

7 **Note.** Section 25151 is restated for clarity. Currently, Section 25151 provides:

8 The department may adopt varying regulations pursuant to Section 25150, other than building
9 standards for different areas of the state depending on population density, climate, geology, types
10 and volumes of hazardous waste generated in the area, types of waste treatment technology
11 available in the area, and other factors relevant to hazardous waste handling, processing, storing,
12 recycling, and disposal.

13 **Absent comment, the proposed restatement of this section will be presumed correct.**

14 **§ 83460. Regulations adopted prior to January 1, 2008**

15 83460. Any regulation adopted prior to January 1, 2008, pursuant to former
16 Section 25150.6, that exempts a hazardous waste management activity from one or
17 more of the requirements of this division shall remain valid unless repealed.

18 **Comment.** Section 83460 restates former Section 25150.65 without substantive change.

19 See Section 60220 (“hazardous waste management” or “management”).

20 **Notes. (1)** Section 25150.65 is restated to improve readability. Currently, Section 25150.65
21 provides:

22 “Any regulation that was adopted prior to January 1, 2008, pursuant to former Section 25150.6,
23 exempting a hazardous waste management activity from one or more of the requirements of this
24 chapter, shall remain valid unless repealed.”

25 **Absent comment, the proposed restatement of this provision will be presumed correct.**

26 **(2)** Section 25150.65 refers to a regulation adopted prior to January 1, 2008, pursuant to former
27 Section 25150.6. Former Section 25150.6 was added in 1998 and amended twice prior to 2008. See
28 1998 Cal. Stat. ch. 676, § 1; 2001 Cal. Stat. ch. 605, § 4; 2004 Cal. Stat. ch. 175, § 1. For this
29 reference, no statutory citation was provided to avoid an implication that only certain regulations
30 are covered by this provision (i.e., those regulations adopted when a specified version of the section
31 was in effect).

32 **§ 83465. Public hearing on proposed regulations**

33 83465. (a) Before adopting building standards or adopting or revising other
34 standards and regulations for the handling, processing, storing, use, recycling, and
35 disposal of hazardous and extremely hazardous wastes, the department shall hold at
36 least one public hearing in Sacramento, or in a city within the area of the state to be
37 affected by the proposed regulations.

38 (b) Except as provided in Section 18930, the department shall adopt the proposed
39 regulations after making changes or additions that are appropriate in view of the
40 evidence and testimony presented at the public hearing or hearings.

41 **Comment.** Section 83465 continues former Section 25152 without substantive change.

1 See Sections 60160 (“department”), 60175 (“disposal”), 60195 (“extremely hazardous waste”),
2 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”).

3 **§ 83470. Permissible format for contingency plan**

4 83470. On or before July 1, 1995, the department shall revise any standard or
5 regulation it has adopted that requires the preparation of a contingency plan, as that
6 term is defined in Section 66260.10 of Title 22 of the California Code of
7 Regulations, to allow the person preparing the contingency plan to use the format
8 adopted pursuant to former Section 25503.4, if that person elects to use that format.

9 **Comment.** Section 83470 continues former Section 25150.5 without substantive change.
10 See Sections 60160 (“department”), 60295 (“person”).

11 **Notes. (1)** Section 25150.5 involves an obligation of the department that was supposed to occur
12 in 1995. It is unclear whether this provision has any continuing effect.

13 **The Commission welcomes comment on this issue.**

14 **(2)** Assuming this section has continuing effect, it is unclear how the reference to Section
15 25503.4 should be updated. This section requires the department to permit use of a contingency plan
16 format adopted pursuant to “Section 25503.4.” Section 25503.4 has been repealed. 2013 Cal. Stat.
17 ch. 419, § 2.

18 In proposed Section 83470, the reference has been adjusted to refer to “former” Section 25503.4.
19 The Commission considered whether to provide a statutory cite, but was unsure whether the
20 relevant version of Section 25503.4 should have been the one in effect on July 1, 1995 (the date
21 specified in the statute) or the last amended version. See 1993 Cal. Stat. ch. 630, § 6; 2013 Cal.
22 Stat. ch. 352, § 359.

23 More broadly, it is unclear whether the contingency plan format adopted pursuant to former
24 Section 25503.4 has any ongoing validity (i.e., can contingency plans being prepared now use the
25 format adopted pursuant to former law?). If so, is there a current regulatory provision that describes
26 this format that could be referenced here (as opposed to former law)?

27 **If this section has continuing effect, the Commission welcomes comment on how the**
28 **reference to the repealed section, “Section 25503.4,” should be updated.**

29 **Article 3. Information Distribution**

30 **§ 83500. Reporting and distribution of information**

31 83500. (a) The department may report findings and results of an investigation that
32 the department undertakes pertaining to subject matter governed by this division,
33 except for trade secrets as provided in Section 83505.

34 (b) The department may distribute such information as it considers necessary for
35 the protection of the public or for the protection of human health, domestic
36 livestock, wildlife, and the environment and to ensure the best use of natural
37 resources.

38 (c) The department may publish reports summarizing or containing any order of
39 the director or any judgment or court order that has been rendered pursuant to this
40 division, including the nature of the charge and its disposition.

41 **Comment.** Section 83500 continues former Section 25177 without substantive change.

1 See Sections 60160 (“department”), 60165 (“director”), 60260 (“natural resources”).

2 **§ 83505. Protection of trade secrets**

3 83505. (a)(1) The department shall establish procedures to ensure that trade
4 secrets used by a person regarding methods of hazardous waste handling and
5 disposal are utilized by the director, the department, or any authorized representative
6 of the department only in connection with the responsibilities of the department
7 pursuant to this division.

8 (2) The procedures established pursuant to paragraph (1) shall also ensure that
9 trade secrets are not otherwise disseminated by the director, the department, or any
10 authorized representative of the department without the consent of the person.

11 (3) Notwithstanding paragraphs (1) and (2), any information shall be made
12 available to governmental agencies for use in making studies and for use in judicial
13 review or enforcement proceedings involving the person furnishing the information.

14 (b) “Trade secrets,” as used in this section, may include, but are not limited to,
15 any formula, plan, pattern, process, tool, mechanism, compound, procedure,
16 production data, or compilation of information that meets all of the following
17 criteria:

18 (1) It is not patented.

19 (2) It is known only to certain individuals within a commercial concern who are
20 using it to fabricate, produce, or compound an article of trade or a service having
21 commercial value.

22 (3) It gives its user an opportunity to obtain a business advantage over competitors
23 who do not know or use it.

24 **Comment.** Section 83505 restates former Section 25173 without substantive change.

25 See Sections 60095 (“business”), 60160 (“department”), 60165 (“director”), 60175 (“disposal”),
26 60205 (“handling”), 60210 (“hazardous waste”), 60295 (“person”).

27 **Note.** Section 25173 is restated to improve consistency and readability and eliminate the word
28 “such,” which is disfavored in legislative drafting.

29 Currently, Section 25173 provides:

30 “The department shall establish procedures to ensure that trade secrets used by a person regarding
31 methods of hazardous waste handling and disposal are utilized by the director, the department, or
32 any authorized representative of the department only in connection with the responsibilities of the
33 department pursuant to this chapter and that such trade secrets are not otherwise disseminated by
34 the director, the department, or any authorized representative of the department without the consent
35 of the person. However, any information shall be made available to governmental agencies for use
36 in making studies and for use in judicial review or enforcement proceedings involving the person
37 furnishing the information.

38 “Trade secrets,” as used in this section, may include, but are not limited to, any formula, plan,
39 pattern, process, tool, mechanism, compound, procedure, production data, or compilation of
40 information which is not patented, which is known only to certain individuals within a commercial
41 concern who are using it to fabricate, produce, or compound an article of trade or a service having
42 commercial value, and which gives its user an opportunity to obtain a business advantage over
43 competitors who do not know or use it.”

1 In addition to these changes, subdivision and paragraph designators were added and uses of the
2 word “which” were corrected to “that.”

3 **Absent comment, the proposed restatement of this section will be presumed correct.**

4 Article 4. Reporting

5 **§ 83550. Information to be posted online**

6 83550. On or before January 1 of each odd-numbered year, the department shall
7 post on its internet website, at a minimum, all of the following:

8 (a) The status of the regulatory and program developments required pursuant to
9 legislative mandates.

10 (b)(1) The status of the hazardous waste facilities permit program that shall
11 include all of the following information:

12 (A) A description of the final hazardous waste facilities permit applications
13 received.

14 (B) The number of final hazardous waste facilities permits issued to date.

15 (C) The number of final hazardous waste facilities permits yet to be issued.

16 (D) A complete description of the reasons why the final hazardous waste facilities
17 permits yet to be issued have not been issued.

18 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that
19 uses a land disposal method, as defined in **subdivision (d) of Section 25179.2**, and
20 that disposes of wastes regulated as hazardous waste pursuant to the federal act.

21 (c) The status of the hazardous waste facilities siting program.

22 (d) The status of the hazardous waste abandoned sites program.

23 (e) A summary of enforcement actions taken by the department pursuant to this
24 division and any other actions relating to hazardous waste management.

25 (f) Summary data on annual quantities and types of hazardous waste generated,
26 transported, treated, stored, and disposed.

27 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

28 (h) Research activity initiated by the department.

29 (i) Regulatory action by other agencies relating to hazardous waste management.

30 (j) A revised listing of recyclable materials showing any additions or deletions to
31 the list prepared pursuant to **Section 25175** that have occurred since the last report.

32 (k) Any other data considered pertinent by the department to hazardous waste
33 management.

34 (l) The information specified in **subdivision (c) of Section 25161, paragraph (4)**
35 **of subdivision (b) of Section 25197.1**, and Article 9 (commencing with Section
36 78575) of Chapter 3 of Part 2 of Division 45.

37 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site
38 in Orange County.

39 **Comment.** Section 83550 continues former Section 25178 without substantive change. An
40 erroneous reference to “paragraph (4) of subdivision (a) of Section 25197.1” was corrected to refer
41 to Section [XXXXX], which continues Section 25197.1(b)(4).

1 See Sections 60160 (“department”), 60175 (“disposal”), 60200 (“federal act”), 60210
2 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220 (“hazardous waste management”
3 or “management”), 60315 (“recyclable material”), 60390 (“waste”).

4 **Notes. (1)** Section 25178(b)(2) specifies that a “hazardous waste facility,” which is a defined
5 term for this division, means “a facility that uses a land disposal method, as defined in subdivision
6 (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the
7 federal act.”

8 The main definition of “hazardous waste facility” seems to be much broader. It is defined to
9 mean “all contiguous land and structures, other appurtenances, and improvements on the land used
10 for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.”

11 It is unclear whether these competing definitions cause problems in practice.

12 **The Commission welcomes comment on this issue.**

13 **(2)** Section 25178(l) refers to the information specified in “paragraph (4) of subdivision (a) of
14 Section 25197.1.” That reference appears to be an error, as Section 25197.1(a) does not contain
15 paragraphs. However, Section 25197.1(b)(4) identifies information that should be included “in the
16 biennial report specified in Section 25178.” In this proposed section, the reference has been
17 corrected to refer to paragraph (4) of subdivision (b).

18 **(3)** The Independent Review Panel (“IRP”) concluded that this section appears to be at least
19 partially obsolete. See DTSC Independent Review Panel Recommendations to the Governor and
20 the Legislature Pursuant to Health and Safety Code Section 57014(f) 31 (January 8, 2018),
21 *available at* [https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-8-218.pdf)
22 [8-218.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-8-218.pdf). Specifically, the IRP Report notes that this section “requires the posting of numerous
23 reports on the DTSC website that were considered important to post thirteen years ago and which,
24 in [subdivision (l)], refers to a non-existent code section.”

25 **This issue has been added to the list of substantive issues for possible future study (with**
26 **attribution to the IRP).**

27 Article 5. Contracting

28 § 83575. Contracts for specialized training programs

29 83575. The department shall enter into contracts or agreements with educational,
30 professional, or trade associations, using a competitive bidding process, to establish
31 specialized training programs with a statewide focus to instruct businesses and other
32 entities on compliance with statutes and regulations governing the handling,
33 disposal, transportation, and storage of hazardous waste.

34 **Comment.** Section 83575 continues former Section 25172.6 without substantive change.

35 See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205
36 (“handling”), 60210 (“hazardous waste”), 60350 (“storage”).

37 CHAPTER 2. BOARD OF ENVIRONMENTAL SAFETY

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Article 1. Establishment of Board

§ 83650. Appointment of board members

83650. (a) The Board of Environmental Safety is hereby established in the department consisting of five voting members as follows:

(1) Three members shall be appointed by the Governor subject to confirmation by the Senate.

(2) One member shall be appointed by the Senate Committee on Rules.

(3) One member shall be appointed by the Speaker of the Assembly.

(b) The members of the board shall be appointed on the basis of their demonstrated interest in the fields of hazardous waste management, site remediation, or pollution prevention and reduction, shall possess understanding of the needs of the general public in connection with the risks posed by hazardous materials and the management of hazardous waste, and shall possess experience in at least one of the following:

(1) Environmental law.

(2) Environmental science, including toxicology, chemistry, geology, industrial hygiene, or engineering.

(3) Public health.

(4) Cumulative impact assessment and management.

(5) Regulatory permitting.

(c) No more than two members of the board may represent a single category of qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any one time.

Comment. Section 83650 continues former Section 25125(a)-(c) without substantive change.

See Sections 83090 (“board”), 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”).

§ 83655. Role of board members

83655. The board members shall represent the general public interest and act to protect public health and reduce risks of toxic exposure with a particular focus on disproportionately burdened and vulnerable communities.

Comment. Section 83655 continues former Section 25125(d) without substantive change.

See Section 83090 (“board”).

§ 83660. Terms

83660. (a) Except as provided in subdivision (c), a board member shall be appointed for a term of four years.

(b) A vacancy in the board shall be immediately filled by the appointing authority for the unexpired portion of the term in which the vacancy occurs.

(c) The terms of the board members shall be staggered, as follows:

1 (1) One of the initial members appointed by the Governor and the initial member
2 appointed by the Speaker of the Assembly shall serve a two-year term and the
3 remaining three initial members shall serve a four-year term.

4 (2) The chairperson of the board, appointed by the Governor pursuant to Section
5 83665, shall serve a four-year term.

6 (3) The Governor shall determine which of the initial members appointed by the
7 Governor shall serve a two-year term and which shall serve a four-year term.

8 **Comment.** Section 83660 restates former Section 25125(f) without substantive change.
9 See Section 83090 (“board”).

10 **Note.** Proposed Section 83660 would restate Section 25125(f), which presently reads as follows,
11 to improve readability:

12 “(f)(1) Except as provided in paragraph (2), a board member shall be appointed for a term of four
13 years. A vacancy in the board shall be immediately filled by the appointing authority for the
14 unexpired portion of the term in which the vacancy occurs.

15 (2) The terms of the board members shall be staggered. One of the initial members appointed by
16 the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-
17 year term and the remaining three initial members shall serve a four-year term. The chairperson of
18 the board, appointed by the Governor pursuant to subdivision (m), shall serve a four-year term. The
19 Governor shall determine which of the initial members appointed by the Governor shall serve a
20 two-year term and which shall serve a four-year term.”

21 **Absent comment, the proposed restatement will be presumed correct.**

22 **§ 83665. Appointment of chair, workload and compensation of members**

23 83665. (a) The chairperson of the board, who is appointed by the Governor, shall
24 serve full time and shall receive the salary provided for in Section 11553 of the
25 Government Code.

26 (b) All other members of the board shall serve half time and shall receive one-half
27 of the salary provided for in Section 11553.5 of the Government Code.

28 **Comment.** Section 83665 continues former Section 25125(m) without substantive change.
29 See Section 83090 (“board”).

30 **§ 83670. Liaison with United States Department of Defense**

31 83670. Due to the unique nature of permitting federal facilities, the chairperson
32 of the board shall designate one board member to serve as the liaison between the
33 board and the United States Department of Defense.

34 **Comment.** Section 83670 continues former Section 25125(o) without substantive change.
35 See Section 83090 (“board”).

36 **§ 83675. Litigation counsel**

37 83675. (a) The Attorney General shall represent the board in litigation concerning
38 the affairs of the board unless the Attorney General represents another state agency
39 that is a party to the action, in which case, the Attorney General may represent the
40 board with the written consent of the board and the other state agency.

1 (b) If the Attorney General is not representing the board, the board may contract
2 for the service of outside counsel to represent the board or in-house counsel of the
3 board may represent the board, subject to Section 11040 of the Government Code.

4 **Comment.** Section 83675 continues former Section 25125(l) without substantive change.
5 See Section 83090 (“board”).

6 Article 2. Conducting of Business

7 § 83700. Voting and quorum requirements

8 83700. (a) Three board members constitute a quorum for the transaction of
9 business of the board.

10 (b) An affirmative vote of a majority of board members present at a meeting of
11 the board shall be required for the board to take any action or pass any motion.

12 **Comment.** Section 83700 continues former Section 25125(e) without substantive change.
13 See Sections 83090 (“board”), 83100 (“business”).

14 § 83705. Compliance with other acts

15 83705. (a) The board shall conduct its business, including adjourning to, or
16 meeting solely in, closed session, pursuant to the Bagley-Keene Open Meeting Act
17 (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of
18 Title 2 of the Government Code).

19 (b) The board shall conduct administrative adjudications, including, but not
20 limited to, appeals of hazardous waste facility permit decisions pursuant to Section
21 83780, in accordance with the Administrative Procedure Act (Chapter ~~3.5~~ 4.5
22 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the
23 Government Code), including the prohibition against ex parte communications, and
24 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
25 the Government Code).

26 **Comment.** Subdivision (a) of Section 83705 continues former Section 25125(i) without
27 substantive change.

28 Subdivision (b) restates former Section 25125(k) without substantive change.

29 See Sections 83090 (“board”), 83100 (“business”).

30 **Notes. (1)** Proposed Section 83705(b) would nonsubstantively revise a shorthand reference in
31 existing Section 25125(k) to “permit appeals pursuant to paragraph (2) of subdivision (b) of Section
32 25125.2,” for clarity.

33 **(2)** Proposed Section 83705(b) would also make a nonsubstantive technical correction of what
34 the Commission believes was an inadvertent drafting error in existing Section 25125(k), which
35 presently reads in its entirety as follows:

36 “(k) The board shall conduct administrative adjudications, including, but not limited to, permit
37 appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2, in accordance with the
38 Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
39 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.”

1 The revision is proposed because the currently referenced Chapter 3.5 of the Administrative
2 Procedure Act governs rulemaking, while Chapters 4.5 and 5 govern administrative adjudications.
3 See also Government Code Section 11501.

4 **Absent comment, the proposed restatement will be presumed correct.**

5 **§ 83710. Adoption of rules relating to conduct**

6 83710. (a) The board shall adopt rules for the conduct of its affairs.

7 (b) The rules for conduct adopted by the board shall require, at a minimum, that a
8 board member adhere to all of the following principles:

9 (1) A board member shall faithfully discharge the duties, responsibilities, and
10 quasi-judicial actions of the board.

11 (2) A board member shall conduct their affairs in the public's best interest,
12 following principles of fundamental fairness and due process of law.

13 (3) A board member shall conduct their affairs in an open, objective, and impartial
14 manner, free of undue influence and the abuse of power and authority.

15 (4) A board member shall understand that the programs implemented by the
16 department require public awareness, understanding, and support of, and
17 participation and confidence in, the board and its practices and procedures.

18 (5) A board member shall preserve the public's welfare and the integrity of the
19 board, and act to maintain the public's trust in the board and the implementation of
20 its regulations and policies.

21 (6) A board member shall not conduct themselves in a manner that reflects discredit
22 upon state laws, policies, or regulations, or principles of the board.

23 (c) The rules adopted pursuant to this section are exempt from the requirements
24 of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
25 of the Government Code.

26 **Comment.** Section 83710 continues former Section 25125(j) without substantive change.
27 See Section 83090 ("board").

28 **§ 83715. External interactions relating to board matters**

29 83715. (a) Members of the board, or representatives authorized by the board to do
30 so, may hold, attend, or otherwise participate in conferences or hearings, official or
31 unofficial, within or out of the state, with interested persons, agencies, or officers,
32 of this or any other state, or with Congress, congressional committees, or officers of
33 the federal government, concerning any matter within the scope of the power and
34 duties of the board.

35 (b) This section does not create an exception to the Bagley-Keene Open Meeting
36 Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division
37 3 of Title 2 of the Government Code).

38 **Comment.** Section 83715 continues former Section 25125(n) without substantive change.
39 See Sections 83090 ("board"), 83295 ("person").

1 **§ 83720. Conflict of interest**

2 83720. A board member shall not make, participate in making, or in any way
3 attempt to use the board member’s official position to influence a board decision in
4 which the board member knows or has reason to know they have a financial interest
5 within the meaning of Section 87103 of the Government Code.

6 **Comment.** Section 83720 continues former Section 25125(h) without substantive change.
7 See Section 83090 (“board”).

8 **§ 83725. Removal of board member**

9 83725. (a) A board member appointed by the Governor may be removed by the
10 Governor for neglect of duty, misconduct, or malfeasance in office. Before removal
11 from office, a member shall be provided with a written statement of the charges and
12 an opportunity to be heard.

13 (b) A board member appointed by the Governor or the Legislature may be
14 removed after trial for knowingly violating a provision of this chapter based on a
15 complaint filed in a county superior court by the Attorney General alleging that the
16 board member knowingly violated a provision of this chapter and asking that the
17 board member be removed from the board. Further proceedings shall be in
18 accordance as near as may be with rules governing civil actions.

19 (c) A board member shall not miss three consecutive meetings as unexcused
20 absences. Missing three consecutive meetings as unexcused absences shall
21 constitute grounds for removal under subdivision (a) or (b).

22 **Comment.** Section 83725 continues former Section 25125(g) without substantive change.
23 See Section 83090 (“board”).

24 **Article 3. Meeting Process**

25 **§ 83750. Number and location of meetings**

26 83750. (a) Beginning January 1, 2022, the board shall conduct no fewer than six
27 public meetings per year, at least three of which shall be held outside the greater
28 Sacramento area.

29 (b) For those meetings held outside the greater Sacramento area, the board shall
30 meet in different geographic areas within the state to facilitate the participation by
31 the businesses and sites regulated by the department, as well as members of the
32 communities impacted by the businesses and sites regulated by the department.

33 **Comment.** Section 83750 continues former Section 25125.2(a) without substantive change.
34 See Sections 83090 (“board”), 83100 (“business”), 83160 (“department”).

35 **§ 83755. Use of advisory subcommittees**

36 83755. (a) The board may form advisory subcommittees of its membership to
37 work on any topic within the board’s jurisdiction, including, but not limited to,
38 environmental justice and fee structure.

1 (b) Subcommittees formed pursuant to this section are authorized to do both of
2 the following:

3 (1) Seek information and feedback from any stakeholder or constituencies subject
4 to the authorities implemented by the department or impacted by the department’s
5 implementation of its authorities.

6 (2) Present recommendations of the subcommittee to the full board for its
7 consideration and action.

8 (c) The full board is not required to act on any recommendation presented by a
9 subcommittee of the board.

10 **Comment.** Section 83755 continues former Section 25125.3 without substantive change.
11 See Sections 83090 (“board”), 83160 (“department”).

12 **§ 83760. Director participation**

13 83760. The director, or a designee, shall present and respond to the board, if
14 requested by the board, on any issue or item brought forward by a member of the
15 public, the ombudsperson, or a board member.

16 **Comment.** Section 83760 continues former Section 25125.6 without substantive change.
17 See Sections 83090 (“board”), 83165 (“director”).

18 **Article 4. Board Responsibilities**

19 **§ 83775. Setting of fees**

20 83775. The board shall set fees pursuant to Sections **25205.2.1, 25205.5.01, and**
21 **25205.6.1.**

22 **Comment.** Section 83775 continues former Section 25125.2(b)(1) without substantive change.
23 See Section 83090 (“board”).

24 **§ 83780. Hazardous waste facility permit appeals**

25 83780. The board shall hear and decide appeals of hazardous waste facility permit
26 decisions.

27 **Comment.** Section 83780 continues former Section 25125.2(b)(2) without substantive change.
28 See Sections 83090 (“board”), 83215 (“hazardous waste facility”).

29 **§ 83785. Public hearings**

30 83785. The board shall provide opportunities for public hearings on individual
31 permitted or remediation sites.

32 **Comment.** Section 83785 continues former Section 25125.2(b)(3) without substantive change.
33 See Section 83090 (“board”).

34 **§ 83790. Evaluation of director priorities and adoption of performance metrics**

35 83790. (a) The board shall review and consider for approval the director’s annual
36 priorities for each program under the department and, after consulting with the

1 director, adopt clear performance metrics for the department and each of the
2 department’s programs.

3 (b) The board’s responsibilities under this section shall be conducted at a public
4 hearing.

5 (c) The director shall provide annual updates on progress toward meeting the
6 priorities and performance metrics.

7 **Comment.** Section 83790 continues former Section 25125.2(b)(4) without substantive change.
8 See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”).

9 **§ 83795. Fee structure analysis and development of recommendations for specified**
10 **department activity**

11 83795. (a) The board shall conduct an analysis of the fee structure supporting the
12 department’s activities funded by the Hazardous Waste Control Account, the
13 Hazardous Waste Facilities Account, and the Toxic Substances Control Account.
14 ~~and, to~~

15 (b) To the extent necessary, the board shall develop recommendations for funding
16 the department’s activities that accomplish all of the following:

17 (1) Provides for protection for public health and safety and the environment.

18 (2) Provides adequate funding to ensure the timely remediation of contaminated
19 sites, including the remediation of orphan sites.

20 (3) Provides adequate funding for the enforcement of this division and Part 2
21 (commencing with Section 78000) of Division 45.

22 (4) Provides adequate funding for the programs and regulatory efforts that protect
23 consumers from potentially harmful chemicals in products or workplaces.

24 (5) Provides for a reasonable distribution of costs among the businesses that
25 contribute to the need for management of hazardous waste in the state.

26 (6) Provides a level of funding that will enable the department and the board to
27 implement and carry out their duties and responsibilities, including the department’s
28 performance metrics approved by the board pursuant to this section.

29 (7) Considers increasing fee rates, decreasing fee rates, consolidating fees,
30 eliminating fees, or creating new fees, as appropriate, as well as the option to
31 identify any other funding sources that may be appropriate for use by the department
32 in performing its duties and responsibilities. The board may consider where tiered
33 rates may be appropriate to align the department’s regulatory costs with different
34 volumes or types of hazardous waste.

35 (8) Considers the creation of graduated fee rates that could be used to encourage
36 or discourage waste generation or specific higher risk or hazard waste management
37 activities.

38 (9) Considers additional funding amounts that may be needed for the department
39 to implement the responsibilities identified in **Article 11.8 (commencing with**
40 **Section 25244) and Article 11.9 (commencing with Section 25244.12)**, in whole
41 or in part.

1 (10) Considers additional funding amounts that may be needed for the department
2 to implement programs that further support the collection and appropriate
3 management of hazardous wastes that may pose a higher risk of being illegally
4 disposed.

5 **Comment.** Section 83795 continues former Section 25125.2(b)(5) without substantive change.
6 See Sections 83090 (“board”), 83160 (“department”), 83210 (“hazardous waste”), 83395
7 (“waste”).

8 **§ 83800. Evaluation of department programs and development of recommendations**

9 83800. The board shall conduct an analysis of the department’s programs, the
10 relationship between those programs and related programs in other regulatory
11 agencies, including, but not limited to, the State Water Resources Control Board,
12 the California regional water quality control boards, and the Department of
13 Resources Recycling and Recovery, and, to the extent necessary, develop
14 recommendations to improve coordination between programs, and to reduce or
15 eliminate duplication or overlap.

16 **Comment.** Section 83800 continues former Section 25125.2(b)(6) without substantive change.
17 See Sections 83090 (“board”), 83160 (“department”).

18 **§ 83805. Development of long-term goals for departmental activities**

19 83805. The board shall develop, in consultation with the director and with
20 consideration of available resources, a multiyear schedule for the discussion of long-
21 term goals for the following departmental activities:

22 (a) The department’s processing of hazardous waste facility permits and proposals
23 to improve the efficiency of the permitting process, the relationship between the
24 efficiency of the process and the time needed to review permit applications and
25 reach permit decisions, and the amount of reimbursement required of permit
26 applicants in the course of the permitting process.

27 (b) The department’s duties and responsibilities in law and proposals to improve
28 the department’s ability to meet those duties and responsibilities.

29 (c) The site mitigation program and proposals for the prioritization of the cleanup
30 of contaminated properties.

31 (d) The department’s implementation of its enforcement activities.

32 **Comment.** Section 83805 continues former Section 25125.2(b)(7) without substantive change.
33 See Sections 83085 (“applicant”), 83090 (“board”), 83160 (“department”), 83165 (“director”),
34 83215 (hazardous waste facility), 83300 (“processing”).

35 **§ 83810. Annual review of department and director performance**

36 83810. The board shall annually prepare and transmit to the secretary an annual
37 review of the department’s performance as compared to its objectives, including,
38 but not limited to, the performance of the director.

39 **Comment.** Section 83810 continues former Section 25125.7 without substantive change.
40 See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”), 83350 (“secretary”).

1 **§ 83815. Appearance before legislative policy committees**

2 83815. The director and the chairperson of the board shall, when requested, but
3 no less than annually, appear before the appropriate policy committees in the
4 Assembly and Senate to provide an update on the department’s performance as
5 compared to its objectives, including, but not limited to, metrics established
6 pursuant to Section 83790, the department’s progress in implementing any reform
7 measures, and any other information the committees request.

8 **Comment.** Section 83815 continues former Section 25125.9 without substantive change.
9 See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”).

10 Article 5. Authority of Board

11 **§ 83835. Adoption of regulations**

12 83835. (a) The board shall have the authority to adopt, amend, or repeal, in
13 accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with
14 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code),
15 regulations as may be necessary to enable it to carry into effect this part, including
16 the authority to adopt regulations establishing fees as required pursuant to Section
17 83775.

18 (b) Except as provided in Section 83710, a regulation adopted pursuant to this part
19 may be adopted as an emergency regulation in accordance with Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
21 Government Code, and for purposes of that chapter, including Section 11349.6 of
22 the Government Code, the adoption of regulations is an emergency and shall be
23 considered by the Office of Administrative Law as necessary for the immediate
24 preservation of the public peace, health, and safety, and general welfare.

25 (c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
26 Division 3 of Title 2 of the Government Code, an emergency regulation adopted by
27 the board pursuant to this section shall be filed with, but not be repealed by, the
28 Office of Administrative Law, and shall remain in effect until repealed by the board.

29 **Comment.** Section 83835 continues former Section 25125.4 without substantive change.
30 See Section 83090 (“board”).

31 Article 6. Ombudsperson

32 **§ 83845. Establishment of office**

33 83845. There is established within the board an office of the ombudsperson.

34 **Comment.** Section 83845 continues the first sentence of former Section 25125.8(a) without
35 substantive change.

36 See Section 83090 (“board”).

1 **§ 83850. Appointment**

2 83850. The board shall appoint an ombudsperson who shall serve full time at the
3 pleasure of the board.

4 **Comment.** Section 83850 continues the second sentence of former Section 25125.8(a) without
5 substantive change.

6 See Section 83090 (“board”).

7 **§ 83855. Responsibilities**

8 83855. The office of the ombudsperson shall serve as an impartial resource to the
9 public, including stakeholders, by doing the following:

10 (a) Receive complaints and suggestions from the public.

11 (b) Evaluate complaints.

12 (c) Report findings and make recommendations to the director and the board.

13 (d) Render assistance to the public, when appropriate.

14 **Comment.** Section 83855 continues former Section 25125.8(b) without substantive change.

15 See Sections 83090 (“board”), 83165 (“director”).

16 **§ 83860. Determination of responsibilities**

17 83860. The board, in consultation with the director, may determine the activities,
18 in addition to those specified in Section 83855, the ombudsperson can undertake.

19 **Comment.** Section 83860 continues former Section 25125.8(c) without substantive change.

20 See Sections 83090 (“board”), 83165 (“director”).

21 **§ 83865. Establishment of procedures**

22 83865. The board shall establish procedures governing the exercise of the
23 ombudsperson’s duties, including all of the following:

24 (a) Methods to encourage the submission of complaints or suggestions and
25 safeguards to ensure confidentiality.

26 (b) Forms to submit complaints and suggestions to the ombudsperson.

27 (c) Criteria for prioritization of complaints and suggestions submitted to the
28 ombudsperson.

29 (d) Access to information and resources to improve understanding of the
30 department’s activities and opportunities for involvement in the department’s
31 regulatory processes.

32 **Comment.** Section 83865 continues former Section 25125.8(d) without substantive change.

33 See Sections 83090 (“board”), 83160 (“department”).

34 **§ 83870. Submission of complaint or suggestion**

35 83870. Any person may submit a complaint or make a suggestion to the
36 ombudsperson regarding any action, program, or policy of the department.

37 **Comment.** Section 83870 continues former Section 25125.8(e) without substantive change.

38 See Sections 83160 (“department”), 83295 (“person”).

1

PART 3. FINANCIAL PROVISIONS

2

Staff Note. This proposed Part contains a number of provisions that relate to laws other than Chapter 6.5. In particular, proposed Chapter 2, relating to the Toxic Substance Control Account, governs funds related to laws other than Chapter 6.5. In some cases, these provisions use terminology from and appear to be discussing legal concepts contained in provisions outside of Chapter 6.5, without cross-referencing the relevant provisions. In particular, several provisions in this proposed chapter use defined terms from Part 2 of Division 45 without citing to those definitions. See, e.g., proposed Section 84000 (Note #2), proposed Section 84005 (Note #2).

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It may be helpful to include a provision in this chapter making clear that certain terms used in the chapter have the meaning provided in Part 2 of Division 45, including, for example, “responsible party,” “remedial action,” “removal,” and “hazardous substance.”

This issue has been added to the list of substantive issues for possible future study.

13

CHAPTER 1. HAZARDOUS WASTE CONTROL ACCOUNT

14

Article 1. General Provisions

15

§ 83900. Funds to be deposited in account

16

83900. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director.

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(b) In addition to any other money that may be deposited into the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited into the account:

21

(1) The fees collected pursuant to Sections **25205.5** and **25205.5.2**, or described in Section **25205.25**.

22

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(2) The funds collected pursuant to Section **25187.2**, to the extent that those funds are payments for the costs incurred by the department in overseeing corrective action taken under this division.

26

27

(3) Any interest earned upon the money deposited into the Hazardous Waste Control Account.

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(4) Any money received from the federal government pursuant to the federal act to pay for department costs at sites or activities at sites other than those operated by a hazardous waste facility authorized to operate under this division.

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(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this division at a site other than a site operated by a hazardous waste facility authorized to operate under this division, including, but not limited to, the reimbursements required pursuant to Sections **25201.9** and **25205.7**.

36

Comment. Section 83900 restates former Sections 25174(a) without substantive change.

37

See Sections 60160 (“department”), 60165 (“director”), 60200 (“federal act”), 60215 (“hazardous waste facility”).

38

1 **Note.** Section 25174(a)(2) has been restated to improve consistency with the referenced
 2 provision. Section 25174(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent
 3 that those fees are for the oversight of corrective action taken under this chapter.” Section 25187.2
 4 provides for the payment of “the department’s *costs* incurred in overseeing or carrying out the
 5 corrective action.”

6 To improve consistency with Section 25187.2, proposed Section 83900 restates this paragraph
 7 to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for the
 8 costs incurred in overseeing corrective action.

9 **Absent comment, this proposed restatement will be presumed correct.**

10 **§ 83905. Appropriations from account**

11 83905. The funds deposited into the Hazardous Waste Control Account may be
 12 appropriated by the Legislature, for expenditure as follows:

13 (a) To the department for the costs to administer and implement this division, but
 14 not including the costs of regulatory activities at sites operated by a hazardous waste
 15 facility authorized to operate under this division, and not including regulatory
 16 activities authorized under **Article 10 (commencing with Section 25210), Article**
 17 **10.01 (commencing with Section 25210.5), Article 10.02 (commencing with**
 18 **Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article**
 19 **10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with**
 20 **Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article**
 21 **10.5 (commencing with Section 25215), Article 10.5.1 (commencing with**
 22 **Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14**
 23 **(commencing with Section 25251), and Section 25214.10.**

24 (b) To the department for allocation to the California Department of Tax and Fee
 25 Administration to pay refunds of fees collected pursuant to Section 43053 of the
 26 Revenue and Taxation Code and for the administration and collection of the fees
 27 collected pursuant to **Sections 25205.5 and 25205.5.2**, or described in Section
 28 **25205.25**, that are deposited into the Hazardous Waste Control Account.

29 (c)(1) To the department for allocation to the office of the Attorney General for
 30 the support of the Toxic Substance Enforcement Program in the office of the
 31 Attorney General in carrying out investigations, inspections, and audits, and the
 32 administrative enforcement and adjudication thereof, for purposes of this division,
 33 but not for purposes related to a site operated by a hazardous waste facility
 34 authorized to operate under this division or related to the owner or operator of a
 35 hazardous waste facility authorized to operate under this division, and not for
 36 regulatory activities authorized under **Article 10 (commencing with Section**
 37 **25210), Article 10.01 (commencing with Section 25210.5), Article 10.02**
 38 **(commencing with Section 25210.9), Article 10.1.1 (commencing with Section**
 39 **25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1**
 40 **(commencing with Section 25214.8.1), Article 10.4 (commencing with Section**
 41 **25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1**
 42 **(commencing with Section 25215.8), Article 13.5 (commencing with Section**
 43 **25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.**

1 (2) On or before October 1 of each year, the Attorney General shall report to the
2 Legislature on the expenditure of any funds allocated to the office of the Attorney
3 General for the preceding fiscal year pursuant to this paragraph. The report shall
4 include all of the following:

5 (A) A description of cases resolved by the office of the Attorney General through
6 settlement or court order, including the monetary benefit to the department and the
7 state.

8 (B) A description of injunctions or other court orders benefiting the people of the
9 state.

10 (C) A description of any cases in which the Attorney General’s Toxic Substance
11 Enforcement Program is representing the department or the state against claims by
12 defendants or responsible parties.

13 (D) A description of other pending litigation handled by the Attorney General’s
14 Toxic Substance Enforcement Program.

15 (3) Paragraph (2) does not require the Attorney General to report on any
16 confidential or investigatory matter.

17 (d) To the department for administration and implementation of Chapter 6.11
18 (commencing with Section 25404) of Division 20.

19 (e) To the department for costs incurred by the board in the administration and
20 implementation of its duties and responsibilities established in **Article 2.1**
21 **(commencing with Section 25125)**.

22 **Comment.** Section 83905 restates former Section 25174(b) without substantive change.
23 See Sections 60088 (“board”), 60160 (“department”), 60215 (“hazardous waste facility”).

24 **Note.** Section 25174(b)(5) refers to the “Board of Environmental Safety.” Proposed Section
25 83905(e) replaces that reference with the defined term “board.” See proposed Section 60088
26 (“board”).

27 **§ 83910. Loans from general fund to account**

28 83910. (a) The Director of Finance, upon the request of the director, may make a
29 loan from the General Fund to the Hazardous Waste Control Account to meet cash
30 needs.

31 (b) The loan shall be subject to the repayment provisions of Section 16351 of the
32 Government Code and the interest provisions of Section 16314 of the Government
33 Code.

34 **Comment.** Section 83910 continues former Section 25174(d) without substantive change.
35 See Section 60165 (“director”).

36 **§ 83915. Successor fund to Federal Receipts Account**

37 83915. (a) The Hazardous Waste Control Account is the successor fund of the
38 Federal Receipts Account that was established pursuant to Section 25174.8, as that
39 section read on January 1, 1999.

1 (b) All assets, liabilities, and surplus of the Federal Receipts Account shall, as of
2 June 30, 1999, be transferred to, and become a part of the Hazardous Waste Control
3 Account, as provided by Section 16346 of the Government Code.

4 (c) All existing appropriations from the Federal Receipts Account, to the extent
5 encumbered, and also those that had been made for particular projects from the
6 Federal Receipts Account, shall continue to be available for the same purposes and
7 periods from the Hazardous Waste Control Account.

8 **Comment.** Section 83915 continues former Section 25174.9 without substantive change.

9 Article 2. Hazardous Waste Facilities Account (*Section 25174.01*)

10 CHAPTER 2. TOXIC SUBSTANCES CONTROL ACCOUNT

11 **§ 84000. Funds to be deposited in account**

12 84000. (a) There is in the General Fund the Toxic Substances Control Account,
13 which shall be administered by the director.

14 (b) In addition to any other money that may be appropriated by the Legislature to
15 the Toxic Substances Control Account, all of the following shall be deposited in the
16 account:

17 (1) The fees collected pursuant to **Section 25205.6**.

18 (2) The funds collected pursuant to **Section 25187.2**, to the extent that those funds
19 are payments for the costs incurred overseeing a removal or remedial action taken
20 under Chapter 6.86 (commencing with Section 25396) of Division 20 or Part 2
21 (commencing with Section 78000) of Division 45.

22 (3) Except as directed otherwise by **Section 25192**, fines or penalties collected
23 pursuant to this division, including, but not limited to, fines or penalties recovered
24 pursuant to **Section 25214.3, 25214.22.1, and 25215.82**.

25 (4) Interest earned upon money deposited in the Toxic Substances Control
26 Account.

27 (5) All money recovered pursuant to Section 79650, except any amount recovered
28 on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup
29 Fund.

30 (6) All money recovered pursuant to Article 7 (commencing with Section 81030)
31 of Chapter 12 of Part 2 of Division 45.

32 (7) Fines or penalties collected pursuant to Chapter 6.86 (commencing with
33 Section 25396) of Division 20, or Part 2 (commencing with Section 78000) of
34 Division 45.

35 (8) Reimbursements for funds expended from the Toxic Substances Control
36 Account for services provided by the department, including, but not limited to,
37 reimbursements required pursuant to Sections **25201.9** and 79105.

1 (9) Money received from the federal government pursuant to the federal
2 Comprehensive Environmental Response, Compensation, and Liability Act of
3 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

4 (10) Money received from responsible parties for remedial action or removal at a
5 specific site, except as otherwise provided by law.

6 **Comment.** Section 84000 restates former Section 25173.6(a) without substantive change.
7 See Sections 60160 (“department”), 60165 (“director”).

8 **Notes.** (1) Section 25173.6(a) is restated to eliminate redundancy, group similar types of funds,
9 and improve consistency and clarity.

10 When restating this provision, the following changes were made:

11 (A) Section 25173.6(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that
12 those fees are for oversight of a removal or remedial action taken under Chapter 6.86 (commencing
13 with Section 25396), or Part 2 (commencing with Section 78000) of Division 45.” As described in
14 the Note to proposed Section 83900, Section 25187.2 provides for the payment of “the department’s
15 costs incurred in overseeing or carrying out the corrective action.” To improve consistency with
16 Section 25187.2, proposed Section 84000(a)(2) restates existing language to refer to “funds”
17 collected pursuant to Section 25187.2, where those funds are payments for oversight costs.

18 **Absent comment, the proposed restatement of this provision will be presumed correct.**

19 Section 25173.6(a)(2) also refers to oversight of a “removal or remedial action,” whereas Section
20 25187.2 refers to oversight of “corrective action.” While making this terminology consistent would
21 be preferable, it is not clear whether the terms “corrective action” and “removal or remedial action”
22 are equivalent (i.e., does this provision only apply to a subset of funds collected under Section
23 25187.2 for oversight of actions under Chapter 6.8?)

24 **The Commission welcomes comment on this issue.**

25 (B) Section 25173.6 contains several redundant provisions. Section 25173.6(a) provides, in part:

26 [The following funds shall be deposited into the Toxic Substances Control Account]:

27 ...

28 (3) Fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section
29 25300) or Chapter 6.86 (commencing with Section 25396), except as directed otherwise by Section
30 25192.

31 ...

32 (7) All penalties recovered pursuant to Section 25214.3, except as provided by Section 25192.

33 (8) All penalties recovered pursuant to Section 25214.22.1, except as provided by Section 25192.

34 (9) All penalties recovered pursuant to Section 25215.82, except as provided by Section 25192.

35 The penalties referred to in paragraphs (7)-(9) are all penalties provided for in sections found in
36 Chapter 6.5. Given that, these penalties would also be required to be deposited into the account
37 pursuant to paragraph (3). Section 25192 contains a rule for apportioning all “penalties collected
38 pursuant to [Chapter 6.5].” For this reason, Section 25192 does not appear to be relevant to the
39 penalties collected pursuant to Chapter 6.8 or Chapter 6.86. These quoted fine and penalty
40 provisions have been consolidated and restated in proposed paragraphs (b)(3) and (b)(7).

41 (2) Section 25173.6(a)(12) refers to “[m]oney received from responsible parties for remedial
42 action or removal at a specific site.” This provision appears to be referring to remedial or removal

1 actions conducted pursuant to Part 2 of Division 45. Assuming that is the case, it would be helpful
2 to specify that the definitions of the relevant terms (“responsible party,” “remedial action,”
3 “removal”) in Part 2 of Division 45 apply to this provision. See Note to Heading for this proposed
4 chapter.

5 **The Commission welcomes comment on this issue.**

6 **§ 84005. Appropriations from account**

7 84005. (a) The funds deposited in the Toxic Substances Control Account may be
8 appropriated to the department for the following purposes:

9 (1) The administration and implementation of the following:

10 (A) Part 2 (commencing with Section 78000) of Division 45, except that funds
11 shall not be expended from the Toxic Substances Control Account for purposes of
12 Article 16 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

13 (B) Chapter 6.86 (commencing with Section 25396) of Division 20.

14 (C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the
15 Public Utilities Code, to the extent the department has been delegated
16 responsibilities by the secretary for implementing that article.

17 (D) **Article 10 (commencing with Section 25210), Article 10.01 (commencing**
18 **with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article**
19 **10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with**
20 **Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article**
21 **10.4 (commencing with Section 25214.11), Article 10.5 (commencing with**
22 **Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5**
23 **(commencing with Section 25250.50), Article 14 (commencing with Section**
24 **25251), and Section 25214.10.**

25 (E) Green chemistry (**Article 14 (commencing with Section 25251)**).

26 (2) The administration of the following units, and successor organizations of those
27 units, within the department, and the implementation of programs administered by
28 those units or successor organizations:

29 (A) The Human and Ecological Risk Office.

30 (B) The Environmental Chemistry Laboratory.

31 (C) The Office of Pollution Prevention and Technology Development.

32 (D) The Safer Consumer Products Program.

33 (3) For allocation to the Office of Environmental Health Hazard Assessment,
34 pursuant to an interagency agreement, to assist the department as needed in
35 administering the programs described in subparagraphs (A) and (B) of paragraph
36 (1).

37 (4) For allocation to the California Department of Tax and Fee Administration to
38 pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation
39 Code.

40 (5) For the state share mandated pursuant to paragraph (3) of subsection (c) of
41 Section 104 of the federal Comprehensive Environmental Response, Compensation,
42 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

1 (6) For the purchase by the state, or by a local agency with the prior approval of
2 the director, of hazardous substance response equipment and other preparations for
3 response to a release of hazardous substances. However, all equipment shall be
4 purchased in a cost-effective manner after consideration of the adequacy of existing
5 equipment owned by the state or the local agency, and the availability of equipment
6 owned by private contractors.

7 (7) For payment of all costs of removal and remedial action incurred by the state,
8 or by a local agency with the approval of the director, in response to a release or
9 threatened release of a hazardous substance, to the extent the costs are not
10 reimbursed by the federal Comprehensive Environmental Response, Compensation,
11 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

12 (8) For payment of all costs of actions taken pursuant to Section 78650, to the
13 extent that these costs are not paid by the federal Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
15 9601 et seq.).

16 (9) For all costs incurred by the department in cooperation with the Agency for
17 Toxic Substances and Disease Registry established pursuant to subsection (i) of
18 Section 104 of the federal Comprehensive Environmental Response, Compensation,
19 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of
20 health effects studies undertaken regarding specific sites or specific substances at
21 specific sites. Funds appropriated for this purpose shall not exceed five hundred
22 thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not
23 duplicate reasonably available federal actions and studies.

24 (10) For repayment of the principal of, and interest on, bonds sold pursuant to
25 Article 5 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

26 (11) Direct site remediation costs.

27 (12) For the department's expenses for staff to perform oversight of
28 investigations, characterizations, removals, remediations, or long-term operation
29 and maintenance.

30 (13) For the administration and collection of the fees imposed pursuant to **Section**
31 **25205.6**.

32 (14) For allocation to the office of the Attorney General, pursuant to an
33 interagency agreement or similar mechanism, for the support of the Toxic Substance
34 Enforcement Program in the office of the Attorney General, in carrying out the
35 purposes of Part 2 (commencing with Section 78000) of Division 45, Chapter 6.86
36 (commencing with Section 25396) of Division 20, **Article 10 (commencing with**
37 **Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02**
38 **(commencing with Section 25210.9), Article 10.1.1 (commencing with Section**
39 **25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1**
40 **(commencing with Section 25214.8.1), Article 10.4 (commencing with Section**
41 **25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1**
42 **(commencing with Section 25215.8), Article 13.5 (commencing with Section**
43 **25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.**

1 (15) For funding the California Environmental Contaminant Biomonitoring
2 Program established pursuant to Chapter 8 (commencing with Section 105440) of
3 Part 5 of Division 103.

4 (16) As provided in **Sections 25214.3 and 25215.82** and, with regard to penalties
5 recovered pursuant to **Section 25214.22.1**, to implement and enforce **Article 10.4**
6 **(commencing with Section 25214.11)**.

7 (17) For the costs of performance or review of analyses of past, present, or
8 potential environmental public health effects related to extremely hazardous waste,
9 as defined in Section 60210, and hazardous waste, as defined in Section 60345.

10 (18) For costs incurred by the board in the administration and implementation of
11 its duties and responsibilities established in **Article 2.1 (commencing with Section**
12 **25125)**.

13 (b) The funds deposited in the Toxic Substances Control Account may be
14 appropriated by the Legislature to the Office of Environmental Health Hazard
15 Assessment and the State Department of Public Health for the purposes of carrying
16 out their duties pursuant to the California Environmental Contaminant
17 Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of
18 Division 103).

19 **Comment.** Section 84005 continues former Section 25173.6(b) and (c) without substantive
20 change.

21 An obsolete cross-reference to Section 25215.7 in former Section 25173.6(b)(16) was corrected
22 in Section 84005(a)(16) to refer to Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164.

23 See Sections 60088 (“board”); 60160 (“department”), 60165 (“director”), 60195 (“extremely
24 hazardous waste”), 60210 (“hazardous waste”), 60345 (“secretary”).

25 **Notes. (1)** Section 25173.6(b)(18) refers to the “Board of Environmental Safety.” Proposed
26 Section 84005(a)(18) replaces that reference with the defined term “board.” See proposed Section
27 60088 (“board”).

28 **(2)** Section 25173.6(b) and (c) use a number of terms that are defined in Part 2 of Division 45
29 without reference to those definitions. In many cases, it seems very likely that the meaning provided
30 in Part 2 of Division 45 is intended.

31 For example, Section 25173.6(b)(11) allows appropriations for “direct site remediation costs.”
32 This is a defined term used in Part 2 of Division 45. It appears likely that the defined meaning was
33 intended here. See Section 25173.7(a)(2) (referring to direct site remediation costs “as defined in
34 Section 78260.”)

35 **This issue has been added to the list of substantive issues for possible future study. See Note**
36 **to the heading for this proposed chapter.**

37 **(3)** Section 25173.6 cross-references Section 25215.7. Former Section 25215.7 was renumbered
38 as Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164. The cross-reference has been updated
39 accordingly.

40 **(4)** Section 25173.6(b)(16) appears to allow appropriations to implement and enforce the Toxics
41 in Packaging Prevention Act (existing Article 10.4). However, this provision cross-refers to two
42 sections that are not located in that article (Sections 25214.3 and 25215.82). It appears that this
43 provision is erroneous and needs to be corrected. Both of the referenced sections provide penalties
44 for violations of their respective articles and specify that any penalties collected should be used to

1 implement and enforce only those respective articles. See Sections 25214.3(c) (from Article 10.1.1.
2 Metal-Containing Jewelry) and 25215.82 (from Article 10.5.1. Lead Wheel Weights).

3 **The Commission welcomes comment on this issue.**

4 **§ 84010. Expenditures**

5 84010. (a) The director shall expend federal funds in the Toxic Substances Control
6 Account consistent with the requirements specified in Section 104 of the federal
7 Comprehensive Environmental Response, Compensation, and Liability Act of
8 1980, as amended (42 U.S.C. Sec. 9604), upon appropriation by the Legislature, for
9 the purposes for which they were provided to the state.

10 (b) Money in the Toxic Substances Control Account shall not be expended to
11 conduct removal or remedial actions if a significant portion of the hazardous
12 substances to be removed or remedied originated from a source outside the state.

13 **Comment.** Section 84010 continues former Section 25173.6(d) and (e) without substantive
14 change. An erroneous reference to “Section 114 of the federal Comprehensive Environmental
15 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614)” was
16 corrected to refer to “Section 104 of the federal Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604).”

18 See Section 60165 (“director”).

19 **Note.** Section 25173.6(d) refers to requirements for expending federal funds in Section 114 of
20 the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
21 This reference appears to be erroneous, as CERCLA Section 114 does not appear to place
22 requirements on the expenditures of federal funds.

23 In proposed Section 84010, this reference was adjusted to refer instead to Section 104 of
24 CERCLA. CERCLA Section 104(c)(3) precludes federal cleanup actions, unless a state pays a
25 specified share of the cleanup costs.

26 In the course of the Commission’s work on Chapter 6.8, the Commission encountered an
27 erroneous reference to Section 114(c) of CERCLA, which was corrected to refer to Section 104(c)
28 of CERCLA. Two other provisions in this draft also refer to Section 104 of CERCLA. See proposed
29 Sections 84005, 84050.

30 For these reasons, Section 104 of CERCLA appears to be the appropriate reference for this
31 provision.

32 **Absent comment, this proposed cross-reference correction will be presumed correct.**

33 **§ 84015. Loans to account**

34 84015. The Director of Finance, upon request of the director, may make a loan
35 from the General Fund to the Toxic Substances Control Account to meet cash needs.
36 The loan shall be subject to the repayment provisions of Section 16351 of the
37 Government Code and the interest provisions of Section 16314 of the Government
38 Code.

39 **Comment.** Section 84015 continues former Section 25173.6(f) without substantive change.
40 See Section 60165 (“director”).

1 **§ 84020. Account as successor fund**

2 84020. (a) The Toxic Substances Control Account established pursuant to Section
3 84000 is the successor fund of all of the following:

4 (1) The Hazardous Substance Account established pursuant to Section 25330, as
5 that section read on June 30, 2006.

6 (2) The Hazardous Substance Clearing Account established pursuant to Section
7 25334, as that section read on June 30, 2006.

8 (3) The Hazardous Substance Cleanup Fund established pursuant to Section
9 25385.3, as that section read on June 30, 2006.

10 (4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as
11 that section read on June 30, 2006.

12 (b) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and
13 funds listed in subdivision (a), shall be transferred to, and become a part of, the
14 Toxic Substances Control Account, as provided by Section 16346 of the
15 Government Code. All existing appropriations from these accounts, to the extent
16 encumbered, shall continue to be available for the same purposes and periods from
17 the Toxic Substances Control Account.

18 **Comment.** Section 84020 continues former Section 25173.6(g) and (h) without substantive
19 change.

20 **§ 84025. Legislative intent regarding appropriations to account**

21 84025. It is the intent of the Legislature that funds deposited in the Toxic
22 Substances Control Account shall be appropriated in the annual Budget Act each
23 year in the following manner:

24 (a) An amount sufficient to pay for the estimated costs identified by the
25 department in the report submitted pursuant to Section 84050 to the Site
26 Remediation Account in the General Fund for direct site remediation costs, as
27 defined in Section 78260.

28 (b) Not less than ten million seven hundred fifty thousand dollars (\$10,750,000)
29 to the Site Remediation Account in the General Fund for direct site remediation
30 costs, as defined in Section 78260.

31 (c) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site
32 Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)
33 of former Section 25399.1, as added by Section 2 of Chapter 435 of the Statutes of
34 1994, for purposes of paying the orphan share of response costs pursuant to Chapter
35 6.86 (commencing with Section 25396) of Division 20.

36 (d) An amount that does not exceed the costs incurred by the State Board of
37 Equalization, a private party, or other public agency, to administer and collect the
38 fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** and
39 deposited into the Toxic Substances Control Account, for the purpose of
40 reimbursing the State Board of Equalization, public agency, or private party, for
41 those costs.

1 (e) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of
2 establishing and implementing a program pursuant to **Sections 25244.15.1,**
3 **25244.17.1, 25244.17.2, and 25244.22** to encourage hazardous waste generators to
4 implement pollution prevention measures.

5 (f) Funds not appropriated as specified in subdivisions (a) to (e), inclusive, may
6 be appropriated for any of the purposes specified in subdivision (a) of Section
7 84005, except the purposes specified in subparagraph (C) of paragraph (1) of, and
8 paragraph (13) of, subdivision (a) of Section 84005.

9 **Comment.** Section 84025 continues former Section 25173.7(a) without substantive change.
10 See Sections 60160 (“department”), 60210 (“hazardous waste”).

11 **§ 84030. Annual adjustments for cost of living**

12 84030. (a) The amounts specified in subdivisions (b) to (e), inclusive, of Section
13 84025 shall be adjusted annually to reflect increases or decreases in the cost of living
14 during the prior fiscal year, as measured by the Consumer Price Index issued by the
15 Department of Industrial Relations or by a successor agency.

16 (b) Notwithstanding subdivision (a), the department may, upon the approval of
17 the Legislature in a statute or the annual Budget Act, take either of the following
18 actions:

19 (1) Reduce the amounts specified in subdivisions (a) to (e), inclusive, of Section
20 84025, if there are insufficient funds in the Toxic Substances Control Account.

21 (2) Suspend the transfer specified in subdivision (c) of Section 84025, if there are
22 no orphan shares pending payment pursuant to Chapter 6.86 (commencing with
23 Section 25396) of Division 20.

24 **Comment.** Section 84030 continues former Section 25173.7(b) without substantive change.
25 See Section 60160 (“department”).

26 CHAPTER 3. DEPARTMENT RESPONSIBILITIES AND AUTHORITY

27 Article 1. Reporting on Budget

28 **§ 84045. Reporting on specified budget amounts**

29 84045. (a) The department shall, at the time of the release of the annual
30 Governor’s Budget, describe the budgetary amounts proposed to be allocated to the
31 California Department of Tax and Fee Administration, as specified in subdivision
32 (b) of Section 83905.

33 (b) It is the intent of the Legislature that moneys appropriated in the annual Budget
34 Act each year for the purpose of reimbursing the California Department of Tax and
35 Fee Administration, a private party, or other public agency, for the administration
36 and collection of the fees collected pursuant to **Sections 25205.5 and 25205.5.2,** or
37 described in Section **25205.25,** and deposited into the Hazardous Waste Control
38 Account, shall not exceed the costs incurred by the California Department of Tax

1 and Fee Administration, the private party, or other public agency, for the
2 administration and collection of those fees.

3 **Comment.** Section 84045 continues former Section 25174(c) without substantive change.
4 See Section 60160 (“department”).

5 **§ 84050. Report regarding estimated funding for direct site remediation costs**

6 84050. (a) The department shall submit to the Legislature with the Governor’s
7 Budget each year a report that includes an estimate of the funding needed to fund
8 direct site remediation costs at state orphan sites and meet the state’s obligation to
9 pay for direct site remediation costs at federal Superfund orphan sites pursuant to
10 paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive
11 Environmental Response, Compensation, and Liability Act of 1980, as amended (42
12 U.S.C. Sec. 9604(c)(3)).

13 (b) The estimate shall include projected costs for the current budget year and the
14 two following budget years, including, but not limited to, the state’s 10-percent
15 funding obligation for remedial actions at federal Superfund orphan sites, the state’s
16 100-percent funding obligation for ongoing operation and maintenance at federal
17 Superfund orphan sites, and ongoing operation and maintenance costs at state
18 orphan sites.

19 **Comment.** Section 84050 continues former Section 25173.7(c) without substantive change.
20 See Section 60160 (“department”).

21 **Note.** Section 25173.7(c) relates to funding used for activities that are governed by Part 2 of
22 Division 45. This provision uses several terms that are defined in Part 2 of Division 45 without
23 citation to the relevant definitions (e.g., “direct site remediation costs,” “operation and
24 maintenance,” “orphan site,” “remedial action”). It appears that the definitions for these terms in
25 Part 2 of Division 45 were intended to apply to their use in this provision. See Note to the heading
26 of this proposed chapter.

27 **Article 2. Assumption of Administration of Contracts**

28 **§ 84075. Authority relating to required payments generally**

29 84075. (a) Notwithstanding anything to the contrary in this division or Part 22
30 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code,
31 the department, with the approval of the secretary, may take either of the following
32 actions relating to fees, surcharges, fines, penalties, or funds required to be
33 deposited in the Hazardous Waste Control Account, the Hazardous Waste Facilities
34 Account, or the Toxic Substances Control Account:

35 (1) Assume responsibility, or contract with a private party or another public
36 agency other than the California Department of Tax and Fee Administration, for the
37 collection of any fees, surcharges, fines, penalties or funds described in Part 2
38 (commencing with Section 78000) of Division 45 for deposit in the Toxic
39 Substances Control Account.

1 (2) Administer, or contract with a private party or another public agency for,
2 determinations and functions for which the California Department of Tax and Fee
3 Administration is responsible pursuant to Part 2 (commencing with Section 78000)
4 of Division 45, or pursuant to Part 22 (commencing with Section 43001) of Division
5 2 of the Revenue and Taxation Code, if those determinations and functions become
6 the responsibility of either the department or, by mutual agreement, a contractor
7 selected by the department.

8 (b) Notwithstanding subdivision (a), final responsibility for the administrative
9 adjustment of fee rates or the administrative appeal of any fees or penalty
10 assessments made pursuant to this article may be assigned by the department only
11 to a public agency.

12 **Comment.** Subdivision (a) of Section 84075 restates former Section 25174.02(a) without
13 substantive change.

14 Subdivision (b) restates the second sentence of former Section 25174.02(b) without substantive
15 change.

16 See Sections 83160 (“department”), 83350 (“secretary”).

17 **Staff Note.** Proposed Section 84075 would restate and combine existing Section 25174.02(a)
18 and the final sentence of Section 25174.02(b), for clarity. Those existing provisions read as follows:

19 25174.02. (a) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of
20 Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds
21 that are required to be deposited into the Hazardous Waste Control Account, the Hazardous Waste
22 Facilities Account, or the Toxic Substances Control Account, the department, with the approval of
23 the secretary, may take either of the following actions:

24 (1) Assume responsibility for, or enter into a contract with a private party or with another public
25 agency, other than the California Department of Tax and Fee Administration, for the collection of
26 any fees, surcharges, fines, penalties and funds described in Part 2 (commencing with Section
27 78000) of Division 45, for deposit into the Toxic Substances Control Account.

28 (2) Administer, or by mutual agreement, contract with a private party or another public agency,
29 for the making of those determinations and the performance of functions that would otherwise be
30 the responsibility of the California Department of Tax and Fee Administration pursuant to Part 2
31 (commencing with Section 78000) of Division 45, or Part 22 (commencing with Section 43001) of
32 Division 2 of the Revenue and Taxation Code, if those activities and functions for which the
33 California Department of Tax and Fee Administration would otherwise be responsible become the
34 responsibility of the department or, by mutual agreement, the contractor selected by the
35 department.”

36 (b)... Final responsibility for the administrative adjustment of fee rates and the administrative
37 appeal of any fees or penalty assessments made pursuant to this section may only be assigned by
38 the department to a public agency.

39 **The staff welcomes comment on whether this restatement of these provisions of existing**
40 **Section 25174.02 improves the clarity of the provisions without substantively changing their**
41 **meaning.**

42 § 84080. Due process rights

43 84080. If, pursuant to Section 84075, the department, or a private party or another
44 public agency, pursuant to a contract with the department, performs the

1 determinations and functions that would otherwise be the responsibility of the
2 California Department of Tax and Fee Administration, the department shall be
3 responsible for ensuring that persons subject to the fees specified in Section 84075
4 have equivalent rights to public notice and comment, and procedural and substantive
5 rights of appeal, as afforded by the procedures of the California Department of Tax
6 and Fee Administration pursuant to Part 22 (commencing with Section 43001) of
7 Division 2 of the Revenue and Taxation Code.

8 **Comment.** Section 84080 continues the first sentence of former Section 25174.02(b) without
9 substantive change.

10 See Section 83160 (“department”).

11 **§ 84085. Authority to make collections and enforce judgments**

12 84085. (a) If, pursuant to Section 84075, the department, or a private party or
13 another public agency, pursuant to a contract with the department, performs the
14 determinations and functions that would otherwise be the responsibility of the
15 California Department of Tax and Fee Administration, the department shall have
16 equivalent authority to make collections and enforce judgments as provided to the
17 California Department of Tax and Fee Administration pursuant to Part 22
18 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

19 (b) Unpaid amounts, including penalties and interest, shall be a perfected and
20 enforceable state tax lien in accordance with Section 43413 of the Revenue and
21 Taxation Code.

22 **Comment.** Section 84085 continues former Section 25174.02(c) without substantive change.

23 See Section 83160 (“department”).

24 **§ 84090. Assignment of administrative functions**

25 84090. The department, with the concurrence of the secretary, shall determine
26 which administrative functions should be retained by the California Department of
27 Tax and Fee Administration, administered by the department, or assigned to another
28 public agency or private party pursuant to Sections 84075, 84080, and
29 84085.

30 **Comment.** Section 84090 continues former Section 25174.02(d) without substantive change.

31 See Sections 83160 (“department”), 83350 (“secretary”).

32 **§ 84095. Adoption of regulations**

33 84095. The department may adopt regulations to implement this article.

34 **Comment.** Section 84095 continues former Section 25174.02(e) without substantive change.

35 See Section 83160 (“department”).

CHAPTER 4. FACILITY AND GENERATOR FEES

Article 1. Definitions

§ 84150. Application of definitions

84150. For purposes of this chapter, the definitions in this article shall apply.

Comment. Section 84150 continues the introductory clause of former Section 25205.1 without substantive change.

Staff Note. Proposed Section 84150 would restate the introductory clause of existing Section 25205.1 for clarity. The existing clause reads as follows:

25205.1. For purposes of this article, the following definitions apply:

The staff welcomes comment on whether this restatement of this clause improves its clarity without substantively changing its meaning.

§ 84155. “Board”

84155. “Board” means the State Board of Equalization.

Comment. Section 84155 continues former Section 25205.1(a) without substantive change.

Staff Note. The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that the definition of the term “Board” in subdivision (a) of that section is intended to apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section 25110.3 provides a different definition of the term “Board,” and existing Section 25110 provides that different definition is intended to govern the entirety of Chapter 6.5.

The staff welcomes public comment on whether statutory text should be added to proposed Section 84155, clarifying that the definition of the term “Board” in proposed Section 84155 is intended to apply to the proposed chapter in which Section 84155 appears, notwithstanding the overarching definition of the term in existing Section 25110.3.

§ 84160. “Class 1 modification”

84160. “Class 1 modification” has the meaning provided in regulations adopted by the department.

Comment. Section 84160 continues the part of former Section 25205.1(l) applicable to Class 1 modifications without substantive change.

See Section 83160 (“department”).

Staff Note. Proposed Section 84160 would restate the part of existing Section 25205.1(l) applicable to the term “class 1 modification” for clarity. Existing Section 25205.1(l) reads as follows:

25205.1(l) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the meanings provided in regulations adopted by the department.

The staff welcomes comment on whether this restatement of this provision improves its clarity without substantively changing its meaning.

1 § 84165. “Class 2 modification”

2 84165. “Class 2 modification” has the meaning provided in regulations adopted
3 by the department.

4 **Comment.** Section 84165 continues the part of former Section 25205.1(*l*) applicable to Class 2
5 modifications without substantive change.

6 See Section 83160 (“department”).

7 **Staff Note.** Proposed Section 84165 would restate the part of existing Section 25205.1(*l*)
8 applicable to the term “class 2 modification” for clarity. Existing Section 25205.1(*l*) reads as
9 follows:

10 25205.1(*l*) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the
11 meanings provided in regulations adopted by the department.

12 **The staff welcomes comment on whether this restatement of this provision improves its**
13 **clarity without substantively changing its meaning.**

14 § 84170. “Class 3 modification”

15 84170. “Class 3 modification” has the meaning provided in regulations adopted
16 by the department.

17 **Comment.** Section 84170 continues the part of former Section 25205.1(*l*) applicable to Class 3
18 modifications without substantive change.

19 See Section 83160 (“department”).

20 **Staff Note.** Proposed Section 84170 would restate the part of existing Section 25205.1(*l*)
21 applicable to the term “class 3 modification” for clarity. Existing Section 25205.1(*l*) reads as
22 follows:

23 25205.1(*l*) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the
24 meanings provided in regulations adopted by the department.

25 **The staff welcomes comment on whether this restatement of this provision improves its**
26 **clarity without substantively changing its meaning.**

27 § 84175. “Disposal”

28 84175. “Disposal” means only the placement of hazardous waste satisfying all of
29 the following criteria:

30 (1) The placement is engaged in at a facility pursuant to and requiring a permit or
31 grant of interim status issued by the department pursuant to **Article 9 (commencing**
32 **with Section 25200).**

33 (2) The placement is onto or into the ground for permanent disposition.

34 (3) The placement is not onto or into the ground solely for purposes of land
35 treatment.

36 (4) The placement is not in surface impoundments, as defined in regulations
37 adopted by the department.

38 **Comment.** Section 84175 restates the part of former Section 25205.1(*o*) applicable to the
39 definition of “disposal” without substantive change.

40 See Sections 83160 (“department”), 84180 (“facility”), 84190 (“hazardous waste”), 84240
41 (“treatment”).

1 **Staff Notes. (1)** Proposed Section 84240 would restate the part of existing Section 25214.12(o)
2 applicable to the definition of “disposal” for clarity. Existing Section 25214.12(o) reads as follows:

3 25205.1(o) ”Treatment,” “storage,” and “disposal” mean only that treatment, storage, or
4 disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status
5 issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment,
6 storage, or disposal that does not require this permit or grant of interim status shall not be considered
7 treatment, storage, or disposal for purposes of this article.

8 (1) ”Disposal” includes only the placement of hazardous waste onto or into the ground for
9 permanent disposition and does not include the placement of hazardous waste in surface
10 impoundments, as defined in regulations adopted by the department, or the placement of hazardous
11 waste onto or into the ground solely for purposes of land treatment.

12 (2) ”Storage” does not include the ongoing presence of hazardous wastes in the ground or in
13 surface impoundments after the facility has permanently discontinued accepting new hazardous
14 wastes for placement into the ground or into surface impoundments. **The staff welcomes comment**
15 **on whether this restatement of the part of existing Section 25214.12(o) applicable to the**
16 **definition of “disposal” improves its clarity without substantively changing its meaning.**

17
18 (2) The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that
19 the definition of the term “disposal” in existing Section 25205.1(o) is intended to apply “for
20 purposes of” the article in which Section 25205.1 appears. However, existing Section 25113
21 provides a different definition of the term “disposal,” and existing Section 25110 provides that
22 definition in Section 25113 is intended to govern the entirety of Chapter 6.5.

23 **The staff welcomes public comment on whether statutory text should be added to proposed**
24 **Section 84175, or perhaps to Section 84150, clarifying that the definition of the term**
25 **“disposal” in proposed Section 84175 is intended to apply to the proposed chapter in which**
26 **Section 84175 appears, notwithstanding the overarching definition of the term that presently**
27 **appears in existing Section 25113.**

28 **§ 84180. “Facility”**

29 84180, “Facility” means any units or other structures, and all contiguous land,
30 used for the treatment, storage, disposal, or recycling of hazardous waste, for which
31 a permit or a grant of interim status has been issued by the department for that
32 activity pursuant to **Article 9 (commencing with Section 25200)**.

33 **Comment.** Section 84180 continues former Section 25205.1(b) without substantive change.
34 See Sections 83160 (“department”) 84175 (“disposal”), 84190 (“hazardous waste”), 84235
35 (“storage”), 84240 (“treatment”).

36 **§ 84185. “Generator”**

37 84185. “Generator” means a person who generates hazardous waste at an
38 individual site commencing on or after July 1, 1988, including but not limited to a
39 person identified on a manifest as the generator and whose identification number is
40 listed on that manifest, if that identifying information was provided by that person
41 or by an agent or employee of that person.

42 **Comment.** Section 84185 continues former Section 25205.1(e) without substantive change.
43 See Sections 83160 (“department”), 83295 (“person”), 84190 (“hazardous waste”).

1 § 84190. “Hazardous waste”

2 84190. (a) “Hazardous waste” has the meaning provided in **Section 25117**.

3 (b) The total tonnage of hazardous waste, unless otherwise provided by law,
4 includes the hazardous substance as well as any soil or other substance that is
5 commingled with the hazardous substance.

6 **Comment.** Section 84190 continues former Section 25205.1(m) without substantive change.

7 **Staff Note.** The second sentence of existing Section 25205.1(m), which would be continued as
8 subdivision (b) of proposed Section 84190, appears to be out of place as a substantive provision
9 within a statutory section or article otherwise containing only broadly applicable definitional
10 provisions.

11 In addition, the intended application of this substantive provision, disconnected from provisions
12 in which “the total tonnage of hazardous waste” is relevant, is also less than clear.

13 **The staff welcomes comment on the application of this substantive provision, as well as**
14 **whether its application might be clarified if recodified in a different location than in this**
15 **article of the proposed recodification.**

16 § 84195. “Land treat”

17 84195. “Land treat” means to apply hazardous waste onto or incorporate it into
18 the soil surface for the sole and express purpose of degrading, transforming, or
19 immobilizing the hazardous constituents.

20 **Comment.** Section 84195 continues former Section 25205.1(n) without substantive change.

21 See Section 84190 (“hazardous waste”).

22 § 84200. “Large storage facility”

23 84200. “Large storage facility” means the following:

24 (a) In those cases in which total storage capacity is provided in a permit, interim
25 status document, or federal Part A application for the facility, “large storage facility”
26 means a storage facility with capacity to store 1,000 or more tons of hazardous
27 waste.

28 (b) In those cases in which total storage capacity is not provided in a permit,
29 interim status document, or federal Part A application for the facility, “large storage
30 facility” means a storage facility that stores 1,000 or more tons of hazardous waste
31 during any one month of the current reporting period commencing on or after July
32 1, 1991.

33 **Comment.** Section 84200 restates former Section 25205.1(c) without substantive change.

34 See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235
35 (“storage”).

36 **Staff Note.** Proposed Section 84200 would restate existing Section 25205.1(c) for clarity. The
37 existing provision reads as follows:

38 25205.1. (c) “Large storage facility,” in those cases in which total storage capacity is provided
39 in a permit, interim status document, or federal Part A application for the facility, means a storage
40 facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is
41 not so provided, “large storage facility” means a storage facility that stores 1,000 or more tons of

1 hazardous waste during any one month of the current reporting period commencing on or after July
2 1, 1991.

3 **The staff welcomes comment on whether this restatement of existing Section 25205.1(c)**
4 **improves its clarity without substantively changing its meaning.**

5 **§ 84205. “Large treatment facility”**

6 84205. “Large treatment facility” means the following:

7 (a) In those cases in which total treatment capacity is provided in a permit, interim
8 status document, or federal Part A application for the facility, “large treatment
9 facility” means a treatment facility with capacity to treat, land treat, or recycle 1,000
10 or more tons of hazardous waste.

11 (b) In those cases in which total treatment capacity is not provided in a permit,
12 interim status document, or federal Part A application for the facility, “large
13 treatment facility” a treatment facility that treats, land treats, or recycles 1,000 or
14 more tons of hazardous waste during any one month of the current reporting period
15 commencing on or after July 1, 1991.

16 **Comment.** Section 84205 restates former Section 25205.1(d) without substantive change.

17 See Sections 84180 (“facility”), 84190 (“hazardous waste”), 84195 (“land treat”), 84240
18 (“treatment”).

19 **Staff Note.** Proposed Section 84205 would restate existing Section 25205.1(d) for clarity. The
20 existing provision reads as follows:

21 25205.1. (d) ”Large treatment facility,” in those cases in which total treatment capacity is
22 provided in a permit, interim status document, or federal Part A application for the facility, means
23 a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous
24 waste. In those cases in which it is not so provided, “large treatment facility” means a treatment
25 facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one
26 month of the current reporting period commencing on or after July 1, 1991.

27 **The staff welcomes comment on whether this restatement of existing Section 25205.1(d)**
28 **improves its clarity without substantively changing its meaning.**

29 **§ 84210. “Mini-storage facility”**

30 84210. “Mini-storage facility” means the following:

31 (a) In those cases in in those cases in which total storage capacity is provided in a
32 permit, interim status document, or federal Part A application for the facility, a
33 storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous
34 waste.

35 (b) In those cases in which total storage capacity is not provided in a permit,
36 interim status document, or federal Part A application for the facility, a storage
37 facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any
38 one month of the current reporting period commencing on or after July 1, 1991.

39 **Comment.** Section 84210 restates former Section 25205.1(f) without substantive change.

40 See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235
41 (“storage”).

1 **Staff Note.** Proposed Section 84210 would restate existing Section 25205.1(f) for clarity. The
2 existing provision reads as follows:

3 25205.1. (f) "Ministorage facility," in those cases in which total storage capacity is provided in
4 a permit, interim status document, or federal Part A application for the facility, means a storage
5 facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in
6 which it is not so provided, "ministorage facility" means a storage facility that stores 0.5 tons (1,000
7 pounds) or less of hazardous waste during any one month of the current reporting period
8 commencing on or after July 1, 1991.

9 **The staff welcomes comment on whether this restatement of existing Section 25205.1(f)**
10 **improves its clarity without substantively changing its meaning.**

11 **§ 84215. "Mini-treatment facility"**

12 84215. "Mini-treatment facility" means the following:

13 (a) In those cases in which total treatment capacity is provided in a permit, interim
14 status document, or federal Part A application for the facility, a treatment facility
15 with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of
16 hazardous waste.

17 (b) In those cases in total treatment capacity is not provided in a permit, interim
18 status document, or federal Part A application for the facility, a treatment facility
19 that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste
20 during any one month of the current reporting period commencing on or after July
21 1, 1991.

22 **Comment.** Section 84215 continues former Section 25205.1(g) without substantive change.

23 See Sections 84180 ("facility"), 84190 ("hazardous waste"), 84195 ("land treat"), 84240
24 ("treatment").

25 **Staff Note.** Proposed Section 84215 would restate existing Section 25205.1(g) for clarity. The
26 existing provision reads as follows:

27 25205.1. (g) "Minitreatment facility," in those cases in which total treatment capacity is
28 provided in a permit, interim status document, or federal Part A application for the facility, means
29 a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of
30 hazardous waste. In those cases in which it is not so provided, "minitreatment facility, means a
31 treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous
32 waste during any one month of the current reporting period commencing on or after July 1, 1991.

33 **The staff welcomes comment on whether this restatement of existing Section 25205.1(g)**
34 **improves its clarity without substantively changing its meaning.**

35 **§ 84220. "Site"**

36 84220. "Site" means the location of an operation that generates hazardous wastes
37 and is noncontiguous to any other location of these operations owned by the
38 generator.

39 **Comment.** Section 84220 former Section 25205.1(h) without substantive change.

40 See Sections 84185 ("generator"), 84190 ("hazardous waste").

41 **Staff Note.** Existing Section 25205.1(h), unlike most other provisions in Section 25205.1,
42 expressly refers to "hazardous wastes," rather than "hazardous waste."

1 **The staff welcomes comment on whether the term “hazardous wastes” in this existing**
2 **provision is intended to have a different meaning than the term “hazardous waste,” and if**
3 **not, whether the clarity of the provision could be improved by revising the existing reference**
4 **to instead refer to “hazardous waste.”**

5 **§ 84225. “Small storage facility”**

6 84225. “Small storage facility” means the following:

7 (a) In those cases in which total storage capacity is provided in a permit, interim
8 status document, or federal Part A application for the facility, a storage facility with
9 capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of
10 hazardous waste.

11 (b) In those cases in which total storage capacity is not provided in a permit,
12 interim status document, or federal Part A application for the facility, a storage
13 facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of
14 hazardous waste during any one month of the current reporting period commencing
15 on or after July 1, 1991.

16 **Comment.** Section 84225 continues former Section 25205.1(i) without substantive change.

17 See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235
18 (“storage”).

19 **Staff Note.** Proposed Section 84225 would restate existing Section 25205.1(i) for clarity. The
20 existing provision reads as follows:

21 25205.1. (i) “Small storage facility,” in those cases in which total storage capacity is provided in
22 a permit, interim status document, or federal Part A application for the facility, means a storage
23 facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of
24 hazardous waste. In those cases in which it is not so provided, “small storage facility” means a
25 storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous
26 waste during any one month of the current reporting period commencing on or after July 1, 1991.

27 **The staff welcomes comment on whether this restatement of existing Section 25205.1(i)**
28 **improves its clarity without substantively changing its meaning.**

29 **§ 84230. “Small treatment facility”**

30 84230. “Small treatment facility” means the following:

31 (a) In those cases in which total treatment capacity is provided in a permit, interim
32 status document, or federal Part A application for the facility, a treatment facility
33 with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but
34 less than 1,000 tons of hazardous waste.

35 (b) In those cases in which total treatment capacity is provided in a permit, interim
36 status document, or federal Part A application for the facility, a treatment facility
37 that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than
38 1,000 tons, of hazardous waste during any month of the current reporting period
39 commencing on or after July 1, 1991.

40 **Comment.** Section 84230 continues former Section 25205.1(j) without substantive change.

41 See Sections 84195 (“land treat”), 84180 (“facility”), 84190 (“hazardous waste”), 84240
42 (“treatment”).

1 **Staff Note.** Proposed Section 84230 would restate existing Section 25205.1(j) for clarity. The
2 existing provision reads as follows:

3 25205.1. (j) "Small treatment facility," in those cases in which total treatment capacity is
4 provided in a permit, interim status document, or federal Part A application for the facility, means
5 a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds),
6 but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, "small
7 treatment facility" means a treatment facility that treats, land treats, or recycles more than 0.5 tons
8 (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current
9 reporting period commencing on or after July 1, 1991.

10 **The staff welcomes comment on whether this restatement of existing Section 25205.1(j)**
11 **improves its clarity without substantively changing its meaning.**

12 **§ 84235. "Storage"**

13 84235. "Storage" means only the storage of hazardous waste satisfying both of
14 the following criteria:

15 (1) The storage is engaged in at a facility pursuant to and requiring a permit or
16 grant of interim status issued by the department pursuant to **Article 9 (commencing**
17 **with Section 25200).**

18 (2) The storage does not include the ongoing presence of hazardous wastes in the
19 ground or in surface impoundments after the facility has permanently discontinued
20 accepting new hazardous wastes for placement into the ground or into surface
21 impoundments.

22 **Comment.** Section 84235 restates the part of former Section 25205.1(o) applicable to the
23 definition of "storage" without substantive change.

24 See Sections 83160 ("department"), 84180 ("facility"), 84190 ("hazardous waste").

25 **Staff Notes. (1)** Proposed Section 84235 would restate the part of existing Section 25214.12(o)
26 applicable to the definition of "storage" for clarity. Existing Section 25214.12(o) reads as follows:

27 25205.1.(o) "Treatment," "storage," and "disposal" mean only that treatment, storage, or
28 disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status
29 issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment,
30 storage, or disposal that does not require this permit or grant of interim status shall not be considered
31 treatment, storage, or disposal for purposes of this article.

32 (1) "Disposal" includes only the placement of hazardous waste onto or into the ground for
33 permanent disposition and does not include the placement of hazardous waste in surface
34 impoundments, as defined in regulations adopted by the department, or the placement of hazardous
35 waste onto or into the ground solely for purposes of land treatment.

36 (2) "Storage" does not include the ongoing presence of hazardous wastes in the ground or in
37 surface impoundments after the facility has permanently discontinued accepting new hazardous
38 wastes for placement into the ground or into surface impoundments.

39 **The staff welcomes comment on whether this restatement of the part of existing Section**
40 **25214.12(o) applicable to the definition of "storage" improves its clarity without substantively**
41 **changing its meaning.**

42 (2) Existing Section 25205.1(o), unlike most other provisions in Section 25205.1, expressly
43 refers to "hazardous wastes," rather than "hazardous waste."

1 **The staff welcomes comment on whether the term “hazardous wastes” in this existing**
2 **provision is intended to have a different meaning than the term “hazardous waste,” and if**
3 **not, whether the clarity of the provision could be improved by revising the existing reference**
4 **to instead refer to “hazardous waste.**

5 **(3)** The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that
6 the definition of the term “storage” in existing Section 25205.1(o) is intended to apply “for purposes
7 of” the article in which Section 25205.1 appears. However, existing Section 25123 provides a
8 different definition of the term “storage,” and existing Section 25110 provides that different
9 definition is intended to govern the entirety of Chapter 6.5.

10 **The staff welcomes public comment on whether statutory text should be added to proposed**
11 **Section 84235, or perhaps to Section 84150, clarifying that the definition of the term “storage”**
12 **in proposed Section 84235 is intended to apply to the proposed chapter in which Section 84235**
13 **appears, notwithstanding the overarching definition of the term that presently appears in**
14 **existing Section 25113.**

15 **§ 84240. “Treatment”**

16 84240. “Treatment” means only the treatment of hazardous waste engaged in at a
17 facility pursuant to and requiring a permit or grant of interim status issued by the
18 department pursuant to **Article 9 (commencing with Section 25200).**

19 **Comment.** Section 84240 restates the part of former Section 25205.1(o) applicable to the
20 definition of “treatment” without substantive change.

21 See Sections 83160 (“department”), 84180 (“facility”), 84190 (“hazardous waste”).

22 **Staff Notes. (1)** Proposed Section 84240 would restate the part of existing Section 25214.12(o)
23 applicable to the definition of “treatment” for clarity. Existing Section 25214.12(o) reads as
24 follows:

25 25205.1(o) ”Treatment,” “storage,” and “disposal” mean only that treatment, storage, or
26 disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status
27 issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment,
28 storage, or disposal that does not require this permit or grant of interim status shall not be considered
29 treatment, storage, or disposal for purposes of this article.

30 (1) ”Disposal” includes only the placement of hazardous waste onto or into the ground for
31 permanent disposition and does not include the placement of hazardous waste in surface
32 impoundments, as defined in regulations adopted by the department, or the placement of hazardous
33 waste onto or into the ground solely for purposes of land treatment.

34 (2) ”Storage” does not include the ongoing presence of hazardous wastes in the ground or in
35 surface impoundments after the facility has permanently discontinued accepting new hazardous
36 wastes for placement into the ground or into surface impoundments.

37 **The staff welcomes comment on whether this restatement of the part of existing Section**
38 **25214.12(o) applicable to the definition of “treatment” improves its clarity without**
39 **substantively changing its meaning.**

40 **(2)** The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that
41 the definition of the term “treatment” in existing Section 25205.1(o) is intended to apply “for
42 purposes of” the article in which Section 25205.1 appears. However, existing Section 25123.5
43 provides a different definition of the term “treatment,” and existing Section 25110 provides that
44 different definition is intended to govern the entirety of Chapter 6.5.

1 **The staff welcomes public comment on whether statutory text should be added to proposed**
2 **Section 84240, or perhaps to Section 84150, clarifying that the definition of the term**
3 **“treatment” in proposed Section 84240 is intended to apply to the proposed chapter in which**
4 **Section 84240 appears, notwithstanding the overarching definition of the term that presently**
5 **appears in existing Section 25113.5.**

6 **§ 84245. “Unit”**

7 84245. (a) “Unit” means a hazardous waste management unit, as defined in
8 regulations adopted by the department.

9 (b) If an area is designated as a hazardous waste management unit in a permit, it
10 shall be conclusively presumed that the area is a “unit.”

11 **Comment.** Section 84245 continues former Section 25205.1(k) without substantive change.
12 See Sections 83160 (“department”), 84190 (“hazardous waste”).

13 **Staff Note.** The second sentence of existing Section 25205.1(k), which would be continued by
14 as subdivision (b) of proposed Section 84245, indicates that the designation of an area in a permit
15 as a hazardous waste management unit creates a conclusive presumption that the area is a “unit”
16 for purposes of at least the statutory article in which this provision appears.

17 **The staff welcomes comment on (1) whether the indication of this conclusive presumption**
18 **is intended to convey some different meaning than a much simpler statement that an area**
19 **“designated as a hazardous waste management unit in a permit” is a “unit,” and (2) if there**
20 **is no different meaning intended, whether the provision should be revised to state its intended**
21 **meaning more clearly, without reference to a presumption.**

22 Articles 2–xx [substantive provisions relating to facilities and generator fees]

23 CHAPTER 3. ENVIRONMENTAL FEES

24 CHAPTER 4. METAL SHREDDING FEES

25 CHAPTER 5. OTHER HAZARDOUS WASTE FEES

26 PART 4. TOXICS REDUCTION

27 CHAPTER 1. GREEN CHEMISTRY

28 Article 1. Definitions

29 **84400. Application**

30 84400. The definitions in this article apply for purposes of this chapter.

1 **Comment.** Section 84400 restates the introductory text of former Section 25251 without
2 substantive change.

3 **Note.** The introductory text of Section 25251 is restated by proposed Section 84400 as a distinct
4 code section, to allow the definitions in Section 25251 to be recodified as distinct code sections.
5 The introductory text of Section 25251 currently provides:

6 25251. For purposes of this article, the following definitions apply:

7 **Absent comment, this proposed restatement will be presumed correct.**

8 **84405. “Chemical manufacturer”**

9 84405. “Chemical manufacturer” means a person who manufactures a chemical
10 or chemical ingredient that is used in a consumer product.

11 **Comment.** Section 84405 continues former Section 25251(a) without substantive change.
12 See Sections 83295 (“person”), 84415 (“consumer product”).

13 **84410. “Clearinghouse”**

14 84410. “Clearinghouse” means the Toxics Information Clearinghouse established
15 pursuant to Article 8 (commencing with Section 84630).

16 **Comment.** Section 84410 is new. It is added to enhance the clarity of other provisions of this
17 chapter that refer to the Toxics Information Clearinghouse as “the clearinghouse.”

18 **Note.** This nonsubstantive definitional provision, similar to Section 25251(e) (proposed Section
19 84430) defining the term “panel,” is added for clarity.

20 **84415. “Consumer product”**

21 84415. (a) Except as provided in subdivision (b), “consumer product” means a
22 product or part of the product that is used, brought, or leased for use by a person for
23 any purpose.

24 (b) “Consumer product” does not include any of the following items:

25 (1) A “dangerous drug” or “dangerous device,” as defined in Section 4022 of the
26 Business of Professions Code.

27 (2) “Dental restorative materials,” as defined in subdivision (b) of Section
28 1648.20 of the Business and Professions Code.

29 (3) A “device,” as defined in Section 4023 of the Business of Professions Code.

30 (4) The packaging associated with an item specified in paragraph (1), (2), or (3).

31 (5) “Food,” as defined in subdivision (a) of Section 109935.

32 (6) A “pesticide,” as defined in Section 12753 of the Food and Agricultural Code
33 or as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
34 Sec. 136 et seq.).

35 **Comment.** Section 84415 restates former Section 25251(b) without substantive change.
36 See Section 83295 (“person”).

37 **Note.** Section 25251(b) is restated by proposed Section 84415 for clarity. Section 25251(b)
38 currently provides:

1 25251. (b) "Consumer product" means a product or part of the product that is used, brought, or
2 leased for use by a person for any purposes. "Consumer product" does not include any of the
3 following:

4 (1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of
5 Professions Code.

6 (2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business
7 and Professions Code.

8 (3) A device as defined in Section 4023 of the Business of Professions Code.

9 (4) A food as defined in subdivision (a) of Section 109935.

10 (5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

11 (6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal
12 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

13 **Absent comment, this proposed restatement will be presumed correct.**

14 **84420. "Council"**

15 84420. "Council" means the California Environmental Policy Council established
16 pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

17 **Comment.** Section 84420 continues former Section 25251(c) without substantive change.

18 **84425. "Office"**

19 84425. "Office" means the Office of Environmental Health Hazard Assessment.

20 **Comment.** Section 84425 continues former Section 25251(d) without substantive change.

21 **84430. "Panel"**

22 84430. "Panel" means the Green Ribbon Science Panel established pursuant to
23 Article 4 (commencing with Section 84500).

24 **Comment.** Section 84430 continues former Section 25251(e) without substantive change.

25 **84435. "Product manufacturer"**

26 84435. "Product manufacturer" means a person who manufactures, controls the
27 manufacturing process for, or specifies the use of a chemical to be included in, a
28 consumer product.

29 **Comment.** Section 84435 restates former Section 25251(f) without substantive change.

30 See Sections 83295 ("person"), 84415 ("consumer product").

31 **Note.** Section 25251(f) is restated by proposed Section 84435 for clarity. Section 25251(f)
32 currently provides:

33 25251. (f) "Product manufacturer" means a person who manufactures a consumer product or a
34 person who controls the manufacturing process for, or specifies the use of a chemical to be included
35 in, a consumer product.

36 **Absent comment, this proposed restatement will be presumed correct.**

Article 2. Relationship of Chapter to Other Authority

84455. Authority relating to hazardous materials generally

84455. This chapter does not limit and shall not be construed to limit the existing authority of the department, or the existing authority of any other department or agency, over hazardous materials.

Comment. Section 84455 restates former Section 25257.1(a) without substantive change. See Section 83160 (“department”).

Notes. (1) Section 25257.1(a) is restated by proposed Section 84455 for clarity. Section 25257.1(a) currently provides:

25257.1. (a) This article does not limit and shall not be construed to limit the department’s or any other department’s or agency’s existing authority over hazardous materials.

Absent comment, this proposed restatement will be presumed correct.

(2) Section 25257.1(a) refers to “hazardous materials,” which is not a defined term in Chapter 6.5, although the term is defined in a chapter of Part 2 of Division 45 (formerly Chapter 6.8), “for purposes of [that] chapter.” See Sections 80200, 80235.

The question of whether definitional provisions in Part 2 of Division 45 (formerly Chapter 6.8) should be incorporated to apply when terms are used without definition in proposed Division 46 has already been added to the cumulative list of substantive issues for possible future study.

84460. Regulatory authority of other departments or agencies

84460. This chapter does not authorize the department to supersede the regulatory authority of any other department or agency.

Comment. Section 84460 continues former Section 25257.1(b) without substantive change. See Section 83160 (“department”).

84465. Duplication or adoption of conflicting regulations

84465. The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purposes of this chapter.

Comment. Section 84465 continues former Section 25257.1(c) without substantive change. See Section 83160 (“department”).

Article 3. Priorities

84480. Policy

84480. The Legislature hereby declares that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.

Comment. Section 84480 continues former Section 25253.6 without substantive change. See Section 84415 (consumer product).

1 **84485. Priority Product Work Plan of 2015-17**

2 84485. The department shall revise its 2015–17 Priority Product Work Plan to
3 include lead acid batteries for consideration and evaluation as a potential priority
4 product.

5 **Comment.** Section 84485 continues former Section 25253.5 without substantive change.

6 **Note.** This provision requires that a specific product be addressed in a revision to the 2015-17
7 Priority Product Work Plan. That plan and two subsequent plans have been prepared.
8 See <https://dtsc.ca.gov/scp/priority-product-work-plan/>. It is unclear whether the revision required
9 by this provision was undertaken (and, if so, whether this provision is now obsolete).

10 **Comment on this issue is welcome.**

11 **84490. Priority Product Work Plans**

12 84490. Subject to an appropriation by the Legislature for purposes of this section,
13 the department shall include in each Priority Product Work Plan, commencing with
14 the 2024–26 Priority Product Work Plan, in addition to any other information that
15 the department is required to include pursuant to Section 69503.4 of Title 22 of the
16 California Code of Regulations, or any successor regulation, a brief description of
17 all of the following information:

18 (a) Information that the department has at the time the work plan is issued on the
19 chemicals or chemical ingredients that may be chemicals of concern that are
20 contained in consumer products within each product category or subcategory.

21 (b) Any additional ingredient information that is needed for the department to
22 evaluate the safety of those consumer products, including, but not limited to, the
23 information specified in Article 9 (commencing with Section 84670).

24 (c) Information specifying how the department plans to collect the additional
25 information, if any, described in subdivision (b).

26 (d)(1) Timelines for completion of all of the following with regard to at least five
27 product categories or subcategories in each work plan:

28 (A) The collection of information described in subdivision (b).

29 (B) All actions required pursuant to this chapter for a consumer product that
30 contains a chemical of concern, including, but not limited to, the listing of that
31 product as a priority product, the completion of an alternatives analysis for the
32 product, and the finalization of regulatory response determinations.

33 (2) The length of a timeline pursuant to paragraph (1) shall not exceed seven years
34 from the date of issuance of the work plan.

35 (3) In determining the data needed and actions required pursuant to paragraph (1),
36 the department shall take into account all chemicals that are known to serve or can
37 potentially serve the same function in the product categories or subcategories, such
38 as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one
39 chemical with another chemical on the candidate chemical list.

40 (4) An action to enforce the timelines shall be brought pursuant to Section 1085
41 of the Code of Civil Procedure.

1 **Comment.** Section 84490 continues former Section 25253.9 without substantive change.
2 See Sections 83160 (“department”), 84415 (“consumer product”).

3 Article 4. Green Ribbon Science Panel

4 **84500. Establishment of panel**

5 84500. (a) In implementing this chapter, the department shall establish a Green
6 Ribbon Science Panel. The panel shall be composed of members whose expertise
7 shall encompass all of the following disciplines:

- 8 (1) Chemistry.
- 9 (2) Chemical engineering.
- 10 (3) Environmental law.
- 11 (4) Toxicology.
- 12 (5) Public policy.
- 13 (6) Pollution prevention.
- 14 (7) Cleaner production methods.
- 15 (8) Environmental health.
- 16 (9) Public health.
- 17 (10) Risk analysis.
- 18 (11) Materials science.
- 19 (12) Nanotechnology.
- 20 (13) Chemical synthesis.
- 21 (14) Research.
- 22 (15) Maternal and child health.

23 (b) The department shall appoint all members to the panel on or before July 1,
24 2009.

25 (c) The department shall appoint the members for staggered three-year terms, and
26 may reappoint a member for additional terms, without limitation.

27 (d) The department shall provide for staff and administrative support to the panel.

28 **Comment.** Subdivision (a) of Section 84500 continues former Section 25254(a) without
29 substantive change.

30 Subdivision (b) continues the first sentence of former Section 25254(b) without substantive
31 change.

32 Subdivision (c) continues the second sentence of former Section 25254(b) without substantive
33 change.

34 Subdivision (d) continues the second sentence of former Section 25254(c) without substantive
35 change.

36 See Sections 83160 (“department”), 84430 (“panel”).

37 **Note.** Section 25254(b) (which would be continued by proposed Section 84500(b)) requires that
38 all members of the Green Ribbon Science Panel be appointed by July 1, 2009. It is unclear whether
39 this required appointment has occurred (and, if so, whether this provision is now obsolete).

40 **Comment on this issue is welcome.**

1 **84505. Meetings**

2 84505. (a) The panel shall meet as often as the department deems necessary, with
3 consideration of available resources, but not less than twice each year.

4 (b) The panel meetings shall be open to the public and are subject to the Bagley-
5 Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter
6 1 of Part 1 of Division 3 of Title 2 of the Government Code).

7 **Comment.** Subdivision (a) of Section 84505 continues the first sentence of former Section
8 25254(c) without substantive change.

9 Subdivision (b) continues former Section 25254(d) without substantive change.

10 See Sections 60610 (“department”), 84430 (“panel”).

11 **84510. Authorized action by panel**

12 84510. The panel may take any of the following actions:

13 (a) Advise the department and the council on scientific and technical matters in
14 support of the goals of this chapter of significantly reducing adverse health and
15 environmental impacts of chemicals used in commerce, as well as the overall costs
16 of those impacts to the state’s society, by encouraging the redesign of consumer
17 products, manufacturing processes, and approaches.

18 (b) Assist the department in developing green chemistry and chemicals policy
19 recommendations and implementation strategies and details, and ensure these
20 recommendations are based on a strong scientific foundation.

21 (c) Advise the department and make recommendations for chemicals the panel
22 views as priorities for which hazard traits and toxicological end-point data should
23 be collected.

24 (d) Advise the department in the adoption of regulations required by this chapter.

25 (e) Advise the department on any other pertinent matter in implementing this
26 chapter, as determined by the department.

27 **Comment.** Section 84510 continues former Section 25255 without substantive change.

28 See Sections 60610 (“department”), 84415 (“consumer product”), 84440 (“council”), 84430
29 (“panel”).

30 **Article 5. Regulations Identifying and Prioritizing Chemicals of Concern**

31 **84525. Adoption of regulations**

32 84525. (a) On or before January 1, 2011, the department shall adopt regulations
33 to establish a process to identify and prioritize those chemicals or chemical
34 ingredients in consumer products that may be considered as being a chemical of
35 concern, in accordance with the review process specified in Article 7 (commencing
36 with Section 84595).

37 (b) The department shall adopt these regulations in consultation with the office
38 and all appropriate state agencies and after conducting one or more public
39 workshops for which the department provides public notice and provides an
40 opportunity for all interested parties to comment.

1 **Comment.** Section 84525 continues the first two sentences of former Section 25252(a) without
2 substantive change.

3 See Sections 83160 (“department”), 84415 (“consumer product”), 84425 (“office”).

4 **84530. Identification and prioritization process**

5 84530. The regulations adopted pursuant to this article shall establish an
6 identification and prioritization process that includes, but is not limited to, all of the
7 following considerations:

8 (a) The volume of the chemical in commerce in this state.

9 (b) The potential for exposure to the chemical in a consumer product.

10 (c) Potential effects on sensitive subpopulations, including infants and children.

11 **Comment.** Section 84530 continues the third sentence of former Section 25252(a) without
12 substantive change.

13 See Section 84415 (“consumer product”).

14 **84535. Development of evaluation criteria**

15 84535. (a) In adopting regulations pursuant to this article, the department shall
16 develop criteria by which chemicals and their alternatives may be evaluated.

17 (b) These criteria shall include, but not be limited to, the traits, characteristics, and
18 endpoints that are referenced in Article 8 (commencing with Section 84630).

19 **Comment.** Section 84535 continues former Section 25252(b)(1) without substantive change.

20 See Section 83160 (“department”).

21 **84540. Reference and use of information from other sources**

22 84540. (a) In adopting regulations pursuant to this article, the department shall
23 reference and use, to the maximum extent feasible, available information from other
24 nations, governments, and authoritative bodies that have undertaken similar
25 chemical prioritization processes, so as to leverage the work and costs already
26 incurred by those entities and to minimize costs and maximize benefits for the
27 state’s economy.

28 (b) Subdivision (a) does not require the department, when adopting regulations
29 pursuant to this article, to reference and use only the available information specified
30 in subdivision (a).

31 **Comment.** Section 84540 continues former Section 25252(b)(2) and (b)(3) without substantive
32 change.

33 See Section 83160 (“department”).

34 **Article 6. Regulations Evaluating Chemicals of Concern**

35 **84555. Adoption of regulations**

36 84555. (a) On or before January 1, 2011, the department shall adopt regulations
37 pursuant to this article that establish a process for evaluating chemicals of concern
38 in consumer products, and their potential alternatives, to determine how best to limit
39 exposure or to reduce the level of hazard posed by a chemical of concern, in

1 accordance with the review process specified in Article 9 (commencing with Section
2 84670).

3 (b) The department shall adopt the regulations in consultation with all appropriate
4 state agencies and after conducting one or more public workshops for which the
5 department provides public notice and provides an opportunity for all interested
6 parties to comment.

7 **Comment.** Section 84555 continues former Section 25253(a)(1) without substantive change.
8 See Sections 83160 (“department”), 84415 (“consumer product”).

9 **84560. Process for evaluation**

10 84560. The regulations adopted pursuant to this article shall establish a process
11 that includes all of the following:

12 (a) An evaluation of the availability of potential alternatives and potential hazards
13 posed by those alternatives.

14 (b) An evaluation of critical exposure pathways.

15 (c) Life cycle assessment tools that take into consideration, but shall not be limited
16 to, all of the following:

17 (1) Product function or performance.

18 (2) Useful life.

19 (3) Materials and resource consumption.

20 (4) Water conservation.

21 (5) Water quality impacts.

22 (6) Air emissions.

23 (7) Production, in-use, and transportation energy inputs.

24 (8) Energy efficiency.

25 (9) Greenhouse gas emissions.

26 (10) Waste and end-of-life disposal.

27 (11) Public health impacts, including potential impacts to sensitive
28 subpopulations, including infants and children.

29 (12) Environmental impacts.

30 (13) Economic impacts.

31 **Comment.** Section 84560 continues former Section 25253(a)(2) without substantive change.
32 See Sections 83175 (“disposal”), 83395 (“waste”).

33 **Note.** Section 25253(a)(2) is restated by proposed Section 84560 for clarity. Section 25253(a)(2)
34 currently provides:

35 25253. (a)(2) The regulations adopted pursuant to this section shall establish a process that
36 includes an evaluation of the availability of potential alternatives and potential hazards posed by
37 those alternatives, as well as an evaluation of critical exposure pathways. This process shall include
38 life cycle assessment tools that take into consideration, but shall not be limited to, all of the
39 following:

40 (A) Product function or performance.

41 (B) Useful life.

42 (C) Materials and resource consumption.

43 (D) Water conservation.

- 1 (E) Water quality impacts.
- 2 (F) Air emissions.
- 3 (G) Production, in-use, and transportation energy inputs.
- 4 (H) Energy efficiency.
- 5 (I) Greenhouse gas emissions.
- 6 (J) Waste and end-of-life disposal.
- 7 (K) Public health impacts, including potential impacts to sensitive subpopulations, including
- 8 infants and children.
- 9 (L) Environmental impacts.
- 10 (M) Economic impacts.

11 **Absent comment, this proposed restatement will be presumed correct.**

12 **84565. Use of tools**

13 84565. (a) The department, in developing the processes and regulations pursuant
14 to this article, shall ensure that the tools available are in a form that allows for ease
15 of use and transparency of application.

16 (b) The department shall also make every feasible effort to devise simplified and
17 accessible tools that consumer product manufacturers, consumer product
18 distributors, product retailers, and consumers can use to make consumer product
19 manufacturing, sales, and purchase decisions.

20 **Comment.** Section 84565 continues former Section 25253(c) without substantive change.

21 See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product
22 manufacturers”).

23 **Note.** Are the “tools” referenced in Section 25253(c) intended to be a shorthand reference to the
24 life cycle assessment tools discussed in Section 25253(a)(2)? If not, is the meaning of the term
25 “tools” as used in Section 25253(c) sufficiently clear in practice?

26 **Comment is welcome on this issue. Depending on the comment received, the issue may be**
27 **added to the list of substantive issues for possible future study.**

28 **84570. Range of regulatory responses**

29 84570. The regulations adopted pursuant to this article shall specify the range of
30 regulatory responses that the department may take following the completion of the
31 alternatives analysis, including, but not limited to, any of the following actions:

32 (a) Not requiring any action.

33 (b) Imposing requirements to provide additional information needed to assess a
34 chemical of concern and its potential alternatives.

35 (c) Imposing requirements on the labeling or other type of consumer product
36 information.

37 (d) Imposing a restriction on the use of the chemical of concern in the consumer
38 product.

39 (e) Prohibiting the use of the chemical of concern in the consumer product.

40 (f) Imposing requirements that control access to or limit exposure to the chemical
41 of concern in the consumer product.

1 (g) Imposing requirements for the manufacturer to manage the product at the end
2 of its useful life, including recycling or responsible disposal of the consumer
3 product.

4 (h) Imposing a requirement to fund green chemistry challenge grants where no
5 feasible safer alternative exists.

6 (i) Any other outcome the department determines accomplishes the requirements
7 of this chapter.

8 **Comment.** Section 84570 continues former Section 25253(b) without substantive change.
9 See Sections 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”).

10 **84575. Reliance on studies or evaluations in lieu of alternatives analysis**

11 84575. (a) In lieu of requiring an analysis of alternatives, as specified in Sections
12 84555, 84560, and 84570, the department may instead rely on all or part of one or
13 more applicable publicly available studies or evaluations of alternatives to the
14 chemical of concern under consideration in a consumer product, in existence at the
15 time of consideration, and may proceed directly to a regulatory response.

16 (b) Any study or evaluation that the department proposes to rely on pursuant to
17 this section shall satisfy one of the reliability criteria in paragraphs (1) to (3),
18 inclusive, of subparagraph (A) of paragraph (57) of subdivision (a) of, and also meet
19 the requirements of subparagraph (B) of paragraph (57) of subdivision (a) of,
20 Section 69501.1 of Title 22 of the California Code of Regulations.

21 (c)(1) The department shall provide public notice and an opportunity for comment
22 from the public, including responsible entities, on the proposal to rely on the studies
23 or evaluations.

24 (2) The proposal may be combined with the proposal to list a chemical-product
25 combination as a priority product.

26 (d)(1) The proposal shall address any relevant factors listed in subdivision (c) of
27 Section 69506 of Title 22 of the California Code of Regulations, as that section may
28 be amended, that product manufacturers would be required to address as part of the
29 regulatory response.

30 (2) If the department determines that a study or evaluation upon which it is relying
31 pursuant to this section does not address one or more relevant factors, the
32 department may augment the study or evaluation with additional information that
33 addresses the relevant factors as part of the proposal to rely on the studies or
34 evaluations.

35 (e)(1) Following public notice and comment, the department shall make a formal
36 determination of whether the studies or evaluations are applicable and meet the
37 reliability criteria and requirements specified in subdivision (b), and whether all
38 relevant factors have been addressed.

39 (2) The department shall publish a summary of its determination, including
40 whether the department plans to proceed to regulatory responses. If regulatory
41 responses are planned, the summary shall not be judicially reviewable until
42 regulatory responses are finalized.

1 (f)(1) Following a formal determination pursuant to subdivision (e), the
2 department may issue regulatory responses based on the studies or evaluations, after
3 providing public notice and an opportunity for comment from the public, including
4 responsible entities, on the regulatory responses.

5 (2) The department shall respond to all comments it receives.

6 **Comment.** Section 84575 continues former Section 25253(d) without substantive change.

7 See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product
8 manufacturers”).

9 **84580. Public involvement**

10 84580. (a) The department shall amend Sections 69504 and 69504.1 of Title 22
11 of the California Code of Regulations to allow a person to petition the department
12 for a regulatory response pursuant to Section 84575.

13 (b) The revision of regulations pursuant to subdivision (a) shall be deemed to be
14 a change without regulatory effect.

15 (c) If the department provides public notice of a proposed regulation pursuant to
16 this chapter and an opportunity to comment prior to the adoption of the regulation,
17 the dispute resolution procedures specified in Sections 69507.1 and 69507.2 of Title
18 22 of the California Code of Regulations, as those sections read on January 1, 2021,
19 shall not be available to a person who seeks to dispute the regulation and the
20 requirement to exhaust administrative remedies in subdivision (b) of Section 69507
21 of Title 22 of the California Code of Regulations does not apply.

22 **Comment.** Subdivision (a) of Section 84580 continues former Section 25253(e)(1) without
23 substantive change.

24 Subdivision (b) continues former Section 25253(e)(2) without substantive change.

25 Subdivision (c) continues former Section 25253(f) without substantive change.

26 See Sections 83160 (“department”), 83295 (“person”).

27 Article 7. Multimedia Life Cycle Evaluation

28 **84595. “Multimedia life cycle evaluation”**

29 84595. For the purposes of this article, “multimedia life cycle evaluation” means
30 the identification and evaluation of a significant adverse impact on public health or
31 the environment, including air, water, or soil, that may result from the production,
32 use, or disposal of a consumer product or consumer product ingredient.

33 **Comment.** Section 84595 continues former Section 25252.5(g) without substantive change.

34 See Sections 83175 (“disposal”), 84415 (“consumer product”).

35 **84600. Preparation of evaluation**

36 84600. (a) Except as provided in subdivision (c), the department, in adopting the
37 regulations pursuant to Article 5 (commencing with Section 84525) and Article 6
38 (commencing with Section 84555), shall prepare a multimedia life cycle evaluation
39 conducted by affected agencies and coordinated by the department, and shall submit
40 the regulations and the multimedia life cycle evaluation to the council for review.

1 (b) In coordinating a multimedia life cycle evaluation pursuant to subdivision (a),
2 the department shall consult with other boards and departments within the California
3 Environmental Protection Agency, the State Department of Public Health, the State
4 and Consumer Services Agency, the Department of Homeland Security, the
5 Department of Industrial Relations, and other state agencies with responsibility for,
6 or expertise regarding, impacts that could result from the production, use, or
7 disposal of consumer products and the ingredients they may contain.

8 (c) Notwithstanding subdivision (a), the department may adopt regulations
9 pursuant to Article 5 (commencing with Section 84525) and Article 6 (commencing
10 with Section 84555) without subjecting the proposed regulation to a multimedia life
11 cycle evaluation if the council, following an initial evaluation of the proposed
12 regulation, conclusively determines that the regulation will not have any significant
13 adverse impact on public health or the environment.

14 **Comment.** Subdivision (a) of Section 84600 continues former Section 25252.5(a) without
15 substantive change.

16 Subdivision (b) continues former Section 25252.5(e) without substantive change.

17 Subdivision (c) continues former Section 25252.5(f) without substantive change.

18 See Sections 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”), 84440
19 (“council”), 84595 (“multimedia life cycle evaluation”).

20 **84605. Basis of evaluation**

21 84605. The multimedia life cycle evaluation prepared in accordance with this
22 article shall be based on the best available scientific data, written comments
23 submitted by interested persons, and information collected by the department in
24 preparation for adopting the regulations, and shall address, but is not limited to, the
25 impacts associated with all the following:

26 (a) Emissions of air pollutants, including ozone forming compounds, particulate
27 matter, toxic air contaminants, and greenhouse gases.

28 (b) Contamination of surface water, groundwater, and soil.

29 (c) Disposal or use of the byproducts and waste materials.

30 (d) Worker safety and impacts to public health.

31 (e) Other anticipated impacts to the environment.

32 **Comment.** Section 84605 restates former Section 25252.5(b) without substantive change.

33 See Sections 83160 (“department”), 83295 (“person”), 83175 (“disposal”), 84595 (“multimedia
34 life cycle evaluation”).

35 **Note.** The introduction to Section 25252.5(b) is restated by proposed Section 84605 for clarity.
36 The introduction to Section 25252.5(b) currently provides:

37 25252.5. (b) The multimedia evaluation shall be based on the best available scientific data,

38 **Absent comment, this proposed restatement will be presumed correct.**

1 **84610. Review by council**

2 84610. (a) The council shall complete its review of the multimedia life cycle
3 evaluation prepared in accordance with this article within 90 calendar days
4 following notice from the department that it intends to adopt regulations.

5 (b) If the council determines that the proposed regulations will cause a significant
6 adverse impact on the public health or the environment, or that alternatives exist
7 that would be less adverse, the council shall recommend alternative measures that
8 the department or other state agencies may take to reduce the adverse impact on
9 public health or the environment.

10 (c) The council shall make all information relating to its review available to the
11 public.

12 **Comment.** Section 84610 restates former Section 25252.5(c) without substantive change.

13 See Sections 83160 (“department”), 84440 (“council”), 84595 (“multimedia life cycle
14 evaluation”).

15 **Note.** The first sentence of Section 25252.5(c) is restated by proposed Section 84610(a) for
16 clarity. The first sentence of Section 25252.5(c) currently provides:

17 25252.5. (c) The council shall complete its review of the multimedia evaluation within 90
18 calendar days following notice from the department that it intends to adopt regulations.

19 **Absent comment, this proposed restatement will be presumed correct.**

20 **84615. Significant adverse impact determination**

21 84615. Within 60 days of receiving notification from the council of a
22 determination of significant adverse impact, the department shall adopt revisions to
23 the proposed regulation to avoid or reduce the adverse impact, or the affected
24 agencies shall take appropriate action that will, to the extent feasible, mitigate the
25 adverse impact so that, on balance, there is no significant adverse impact on public
26 health or the environment.

27 **Comment.** Section 84615 continues former Section 25252.5(d) without substantive change.

28 See Sections 83160 (“department”), 84440 (“council”).

29 **Article 8. Toxics Information Clearinghouse**

30 **84630. Establishment of clearinghouse**

31 84630. The department shall establish the Toxics Information Clearinghouse,
32 which shall provide a decentralized, Web-based system for the collection,
33 maintenance, and distribution of specific chemical hazard trait and environmental
34 and toxicological end-point data.

35 **Comment.** Section 84630 continues the first sentence of former Section 25256 without
36 substantive change.

37 See Section 83160 (“department”).

1 **84635. Data to be initially included in clearinghouse**

2 84635. (a) On or before January 1, 2011, the office shall evaluate and specify the
3 hazard traits and environmental and toxicological end-points and any other relevant
4 data that are to be included in the clearinghouse.

5 (b) The office shall conduct this evaluation in consultation with the department
6 and all appropriate state agencies, after one or more public workshops, and an
7 opportunity for all interested parties to comment.

8 (c) The office may seek information from other states, the federal government,
9 and other nations in implementing this section.

10 **Comment.** Section 84635 continues former Section 25256.1 without substantive change.

11 See Sections 83160 (“department”), 84410 (“clearinghouse”), 84425 (“office”), 84630
12 (“clearinghouse”).

13 **84640. Operation of clearinghouse**

14 84640. (a) The department shall develop requirements and standards related to the
15 design of the clearinghouse and data quality and test methods that govern the data
16 that is eligible to be available through the clearinghouse.

17 (b) The department may phase in the access to eligible information and data in the
18 clearinghouse as that information and data become available.

19 (c) The department shall ensure the clearinghouse is capable of displaying
20 updated information as new data becomes available.

21 **Comment.** Section 84640 continues former Section 25256.2 without substantive change.

22 See Sections 83160 (“department”), 84410 (“clearinghouse”).

23 **84645. Department consultation with other governmental entities**

24 84645. The department shall consult with other states, the federal government,
25 and other nations to identify available data related to hazard traits and environmental
26 and toxicological end-points, and to facilitate the development of regional, national,
27 and international data sharing arrangements to be included in the clearinghouse.

28 **Comment.** Section 84645 continues former Section 25256.3 without substantive change.

29 See Sections 83160 (“department”), 84410 (“clearinghouse”).

30 **84650. Accessibility to the public**

31 84650. The department shall make the clearinghouse accessible to the public
32 through a single internet web portal.

33 **Comment.** Section 84650 continues the first part of the second sentence of former Section 25256
34 without substantive change.

35 See Sections 83160 (“department”), 84410 (“clearinghouse”).

36 **84655. Operational cost**

37 84655. The department shall, to the maximum extent possible, operate the
38 clearinghouse at the least possible cost to the state.

39 **Comment.** Section 84655 continues the second part of the second sentence of former Section
40 25256 without substantive change.

1 See Sections 83160 (“department”), 84410 (“clearinghouse”).

2 Article 9. Department Requests for Information

3 **84670. Request for information from product manufacturers**

4 84670. (a) The department may issue a formal request for information from
5 product manufacturers.

6 (b) The request shall be accompanied by a brief statement on why the department
7 is requesting the information.

8 (c) The department’s request may include, but is not limited to, all of the
9 following:

10 (1) Information on ingredient chemical identity, concentration, and functional
11 use.

12 (2) Existing information, if any, related to the use of the products by children,
13 pregnant women, or other sensitive populations.

14 (3) Data on state product sales, or national product sales in the absence of state
15 product sales data.

16 **Comment.** Subdivision (a) of Section 84670 continues the first sentence of former Section
17 25253.7(a)(1) without substantive change.

18 Subdivision (b) continues the second sentence of former Section 25253.7(a)(1) without
19 substantive change.

20 Subdivision (c) continues the fourth sentence of former Section 25253.7(a)(1) without substantive
21 change.

22 See Sections 83160 (“department”), 84435 (“product manufacturer”).

23 **84675. Response by product manufacturer**

24 84675. (a) A product manufacturer shall provide to the department data and
25 information on the ingredients and use of a consumer product upon the department’s
26 request within the time specified in Section 84690.

27 (b) If the product manufacturer certifies in writing that it does not have access to
28 information requested pursuant to Section 84670, in whole or in part, and that it has
29 attempted to, but cannot, obtain that information from one or more suppliers or
30 chemical manufacturers, the product manufacturer shall provide the identity and
31 contact information of those suppliers or chemical manufacturers to the department.

32 (c) To the extent that the product manufacturer satisfies the requirements of
33 subdivision (b), the product manufacturer shall be considered to be in compliance
34 with the requirement to provide the data and information specified in Section 84670,
35 with respect to the information that the product manufacturer has attempted to
36 obtain from the supplier or chemical manufacturer, and shall be absolved of liability
37 for violating this article as it pertains to the provision of that information.

38 **Comment.** Subdivision (a) of Section 84675 continues the third sentence of former Section
39 25253.7(a)(1) without substantive change.

40 Subdivision (b) continues former Section 25253.7(a)(2)(A) without substantive change.

41 Subdivision (c) continues former Section 25253.7(a)(2)(B) without substantive change.

1 See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84415 (“consumer
2 product”), 84435 (“product manufacturer”).

3 **84680. Request for information from supplier or chemical manufacturer**

4 84680. (a) The department may issue an independent information request to a
5 supplier or chemical manufacturer identified by the product manufacturer pursuant
6 to subdivision (b) of Section 84675 for the unknown information that the product
7 manufacturer certifies it does not have access to, as well as for the identity and
8 contact information of other suppliers or chemical manufacturers, as necessary to
9 access the information requested pursuant to Section 84670.

10 (b) Upon the department’s request, a supplier or chemical manufacturer shall
11 provide the information requested pursuant to this section to the department.

12 (c) The supplier or chemical manufacturer shall be considered to be in violation
13 of this section, and is liable for civil penalties pursuant to Section 84700, to the
14 extent that it fails to comply with an information request, pursuant to subdivisions
15 (b) or (c) of Section 84675, in its entirety.

16 **Comment.** Section 84680 continues former Section 25253.7(a)(2)(C) without substantive
17 change.

18 See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product
19 manufacturer”).

20 **Note.** The last sentence of Section 25253.7(a)(2)(C) (which would be continued by proposed
21 Section 84680(c)) provides that a supplier or chemical manufacturer shall be considered in violation
22 of Section 25253.7, and liable for civil penalties, “to the extent that it fails to comply with an
23 information request, pursuant to subparagraph (A) or (B), in its entirety.”

24 However, neither of the two cross-referenced subparagraphs, which would be continued by
25 proposed subdivisions (b) and (c) of Section 84675, seem to impose any obligation on a supplier
26 or chemical manufacturer.

27 **Comment is welcome on this issue. Depending on the comment received, the issue may be
28 added to the list of substantive issues for possible future study.**

29 **84685. Request for information for category in Priority Product Work Plan**

30 84685. The department may seek data and information pursuant to Sections
31 84670, 84675, and 84680 for any product category or subcategory published in a
32 previous Priority Product Work Plan or being considered for inclusion in an
33 upcoming Priority Product Work Plan.

34 **Comment.** Section 84685 continues former Section 25253.7(a)(3) without substantive change.
35 See Section 83160 (“department”).

36 **84690. Allowed time for response to request**

37 84690. (a) The department shall provide 30 days for a response to a request for
38 data or information, unless the department concludes additional time is necessary
39 for the entity to obtain the necessary information.

40 (b) If the department determines that a longer time is required, it shall identify the
41 deadline for response, which shall not exceed 120 days.

1 (c) If the entity is in communication with the department and is working in good
2 faith to fulfill the department’s request, the department may exceed 120 days by
3 granting additional time in an amount not to exceed 60 days.

4 **Comment.** Section 84690 continues former Section 25253.7(a)(4) without substantive change.
5 See Section 83160 (“department”).

6 **84695. Assertion of trade secret claims**

7 84695. In providing data or information in response to a request from the
8 department, a product manufacturer, chemical manufacturer, or supplier may raise
9 trade secret claims in accordance with Article 10 (commencing with Section 84720).

10 **Comment.** Section 84695 continues former Section 25253.7(a)(5) without substantive change.
11 See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product
12 manufacturer”).

13 **84700. Penalties for noncompliance**

14 84700. (a) A person who violates this article shall be liable for a civil penalty not
15 to exceed fifty thousand dollars (\$50,000) for each separate violation or, for
16 continuing violations, for each day that violation continues.

17 (b) Liability under this section may be imposed in a civil action or may be imposed
18 administratively.

19 (c) A penalty collected pursuant to this section shall be deposited in the Toxic
20 Substances Control Account in the General Fund.

21 (d) In imposing an administrative penalty pursuant to this section, the department
22 shall take into consideration the nature, circumstances, extent, and gravity of the
23 violation, the history of previous violations, the violator’s ability to pay the penalty,
24 and the deterrent effect of the penalty.

25 (e) Nothing in this section shall be construed to impose liability for a civil penalty
26 pursuant to subdivision (a) for a violation of this article resulting from another
27 party’s failure to comply with an independent information request issued by the
28 department pursuant to Section 84680.

29 **Comment.** Section 84700 continues former Section 25253.7(b) without substantive change.
30 See Sections 83160 (“department”), 83295 (“person”).

31 **Article 10. Trade Secrets**

32 **84720. Claim of trade secret**

33 84720. (a) A person providing information pursuant to this chapter may, at the
34 time of submission, identify a portion of the information submitted to the
35 department as a trade secret and, upon the written request of the department, shall
36 provide support for the claim that the information is a trade secret.

37 (b) Except as provided in Section 84730, a state agency shall not release to the
38 public, subject information supplied pursuant to this chapter that is a trade secret,
39 and that is so identified at the time of submission, in accordance with Sections

1 7924.510 and 7924.700 of the Government Code and Section 1060 of the Evidence
2 Code.

3 (c) Information not identified as a trade secret pursuant to subdivisions (a) or (b)
4 shall be available to the public unless exempted from disclosure by other provisions
5 of law.

6 (d) The fact that information is claimed to be a trade secret is public information.

7 **Comment.** Subdivision (a) of Section 84720 continues the first sentence of former Section
8 25257(a) without substantive change.

9 Subdivision (b) continues the second sentence of former Section 25257(a) without substantive
10 change.

11 Subdivision (c) continues the first sentence of former Section 25257(c) without substantive
12 change.

13 Subdivision (d) continues the second sentence of former Section 25257(c) without substantive
14 change.

15 See Sections 83160 (“department”), 83295 (“person”).

16 **Note.** In the second sentence of Section 25257(a) (continued by proposed Section 84720(b)),
17 the meaning of the term “subject information” is unclear.

18 **Comment on this issue is welcome. Depending on the comment received, the issue may be**
19 **added to the list of substantive issues for possible future study.**

20 **84725. Duty of department employees**

21 84725. An employee of the department that has access to a properly designated
22 trade secret shall maintain the confidentiality of that trade secret by complying with
23 this section.

24 **Comment.** Section 84725 continues the second sentence of former Section 25257(b) without
25 substantive change.

26 See Section 83160 (“department”).

27 **84730. Request for release of information claimed to be trade secret**

28 84730. (a) Upon receipt of a request for the release of information that has been
29 claimed to be a trade secret, the department shall immediately notify the person who
30 submitted the information.

31 (b) Based on the request, the department shall determine whether or not the
32 information claimed to be a trade secret is to be released to the public.

33 (c) The department shall make the determination specified in subdivision (b), no
34 later than 60 days after the department receives the request for disclosure, but not
35 before 30 days following the notification of the person who submitted the
36 information.

37 (d) If the department decides that the information requested pursuant to this
38 section should be made public, the department shall provide the person who
39 submitted the information 30 days’ notice prior to public disclosure of the
40 information, unless, prior to the expiration of the 30-day period, the person who
41 submitted the information obtains an action in an appropriate court for a declaratory
42 judgment that the information is subject to protection under this article or for a

1 preliminary injunction prohibiting disclosure of the information to the public and
2 promptly notifies the department of that action.

3 **Comment.** Section 84730 continues former Section 25257(d) without substantive change.
4 See Sections 83160 (“department”), 83295 (“person”).

5 **Note.** Two aspects of the text of Section 25257(d)(3) (which would be continued by proposed
6 Section 84730(d)) are somewhat unclear:

7 1. The required calculation of the 30-day notice period, based on the intended application of the
8 text of the provision beginning with the word “unless.”

9 2. The reference to a specified person “obtain[ing]” a specified action in an appropriate court,
10 which might be understood as either (a) *commencing* an action, or (b) obtaining one of the specified
11 *results* in an action.

12 **Comment on whether these issues should be added to the list of substantive issues for**
13 **possible future study is welcome.**

14 **84735. Exchange of information between public agencies**

15 84735. This article does not prohibit the exchange of a properly designated trade
16 secret between public agencies, if the trade secret is relevant and necessary to the
17 exercise of the agency’s jurisdiction and the public agency exchanging the trade
18 secrets complies with this section.

19 **Comment.** Section 84735 continues the first sentence of former Section 25257(b) without
20 substantive change.

21 **84740. Refusal to disclose information to department**

22 84740. This article does not authorize a person to refuse to disclose to the
23 department information required to be submitted to the department pursuant to this
24 article.

25 **Comment.** Section 84740 continues the first sentence of former Section 25257(e) without
26 substantive change.

27 See Section 83160 (“department”), 83295 (“person”).

28 **84745. Application of article to hazardous trait submissions**

29 84745. This article does not apply to hazardous trait submissions for chemicals
30 and chemical ingredients pursuant to this chapter.

31 **Comment.** Section 84745 continues the first sentence of former Section 25257(f) without
32 substantive change.

33 See Section 83160 (“department”).

34 Article 11. Healthy Nail Salon Recognition Programs

35 **84765. Publication of guidelines**

36 84765. The department shall, by January 1, 2018, publish guidelines for healthy
37 nail salon recognition (HNSR) programs voluntarily implemented by local cities
38 and counties.

39 **Comment.** Section 84765 continues former Section 25257.2(a) without substantive change.

1 See Section 83160 (“department”).

2 **84770. Content of guidelines**

3 84770. The guidelines for an HNSR program adopted pursuant to Section 84765
4 may include, but shall not be limited to, all of the following:

5 (a) A list of specific chemical ingredients that should not be used by a nail salon
6 seeking recognition. In determining whether to include a chemical on the list, the
7 department shall consider:

8 (1) Whether the chemical is identified as a candidate chemical pursuant to the
9 regulations adopted pursuant to Section 25252.

10 (2) Whether an existing healthy nail salon program has restricted the use of the
11 chemical.

12 (3) The potential for exposure of nail salon workers and customers to the
13 chemical.

14 (4) The availability of existing, safer alternatives to the chemical in products
15 available to nail salons in California.

16 (b) Specific best practices for minimizing exposure to hazardous chemicals,
17 including:

18 (1) A list of specific personal protective equipment that should be used by
19 personnel in a salon seeking recognition and guidance on when and how to use it.

20 (2) Engineering controls that should be adopted by salons seeking recognition,
21 including specific ventilation practices and equipment.

22 (3) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or
23 toluene.

24 (4) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

25 (5) Prohibiting nail polish removers that contain ethyl or butyl acetate.

26 (c) A list of specific training topics for salon owners and staff, whether on payroll
27 or contract, on safer practices delineated in the HNSR program guidelines.

28 (d) Criteria for the use of outside products brought in by clients.

29 (e) Verification that a salon seeking recognition is in compliance with Chapter 10
30 (commencing with Section 7301) of Division 3 of the Business and Professions
31 Code, and all applicable regulations enforced by the State Board of Barbering and
32 Cosmetology.

33 (f) Any other guidelines or best practices determined by the department to further
34 the goals of an HNSR program.

35 **Comment.** Section 84770 continues former Section 25257.2(b) without substantive change.

36 See Section 83160 (“department”).

37 **84775. Criteria for cities and counties adopting program**

38 84775. (a) The guidelines adopted pursuant to Section 84765 shall include criteria
39 for cities and counties that adopt an HNSR program.

40 (b) The criteria referred to in subdivision (a) may cover, but are not limited to:

1 (1) Coordination with other local HNSR programs to assist businesses in
2 achieving and moving beyond regulatory compliance.

3 (2) Training and certification requirements for the salon owners and staff to
4 ensure thorough knowledge of safe and environmentally friendly procedures.

5 (3) Issuance of an approved seal or certificate to salons that have met certification
6 requirements.

7 (4) The process by which a salon can enroll in an HNSR program and be verified
8 by the local entity.

9 (5) The frequency at which the local entity shall verify continued compliance by
10 a salon that has previously met all specified requirements.

11 **Comment.** Section 84775 continues former Section 25257.2(c) without substantive change.
12 See Section 83100 (“business”).

13 **84780. Consultation with other agencies**

14 84780. In developing guidelines pursuant to Section 84765, the department shall
15 consult with the Division of Occupational Safety and Health, the State Department
16 of Public Health, and the State Board of Barbering and Cosmetology.

17 **Comment.** Section 84780 continues former Section 25257.2(d) without substantive change.
18 See Section 83160 (“department”).

19 **84785. Promotion of guidelines**

20 84785. In collaboration with existing healthy nail salon programs, the department
21 shall promote the HNSR guidelines developed pursuant to Section 84765 by doing
22 all of the following:

23 (a) Developing and implementing a consumer education program.

24 (b) Presenting the HNSR guidelines to local health officers, local environmental
25 health departments, and other local agencies as appropriate.

26 (c) Developing and either distributing or posting on its internet website
27 information for local entities, including, but not limited to the following:

28 (1) Suggestions for successful implementation of HNSR programs.

29 (2) Resource lists that include names and contact information of vendors,
30 consultants, or providers of financial assistance or loans for purchases of ventilation
31 equipment.

32 (d) Developing an internet website or a section on the department’s internet
33 website that links to county HNSR internet websites.

34 **Comment.** Section 84785 restates former Section 25257.2(e) without substantive change.
35 See Section 60610 (“department”).

36 **Note.** Section 25257.2(e)(3) is restated by proposed Section 84785(c) for clarity. The existing
37 provision currently provides:

38 25257. (e) In collaboration with existing healthy nail salon programs, the department shall
39 promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:

40 ...

1 (3) Developing and either distributing or posting on its Internet Web site information for local
2 entities, including, but not limited to, suggestions for successful implementation of HNSR
3 programs and resource lists that include names and contact information of vendors, consultants, or
4 providers of financial assistance or loans for purchases of ventilation equipment.

5 **Absent comment, this proposed restatement will be presumed correct.**

6 **84790. Outreach**

7 84790. The department may prioritize its outreach to those counties that have the
8 greatest number of nail salons.

9 **Comment.** Section 84790 continues former Section 25257.2(f) without substantive change.
10 See Section 83160 (“department”).

11 **84795. Violation of regulation by salon**

12 84795. (a) The State Board of Barbering and Cosmetology may notify the city,
13 county, or city and county if a recognized salon is found in violation of Article 12
14 (commencing with Section 977) of Division 9 of Title 16 of the California Code of
15 Regulations.

16 (b) A violation shall result in the removal of healthy nail salon recognition from
17 that salon.

18 **Comment.** Section 84795 restates former Section 25257.2(g) without substantive change.

19 **84800. Local rules and ordinances**

20 84800. This article does not prevent the adoption or enforcement of any local rules
21 or ordinances.

22 **Comment.** Section 84800 continues former Section 25257.2(h) without substantive change.

23 CHAPTER 2. POLLUTION PREVENTION AND HAZARDOUS WASTE SOURCE
24 REDUCTION AND MANAGEMENT REVIEW ACT

25 Article 1. Preliminary Provisions

26 **§ 84850. Short title**

27 84850. This chapter shall be known and may be cited as the Pollution Prevention
28 and Hazardous Waste Source Reduction and Management Review Act.

29 **Comment.** Section 84850 continues former Section 25244.12 without substantive change.

30 **§ 84855. Legislative findings and declarations**

31 84855. The Legislature finds and declares as follows:

32 (a) Existing law requires the department and the State Water Resources Control
33 Board to promote the reduction of generated hazardous waste. This policy, in
34 combination with hazardous waste land disposal bans, requires the rapid
35 development of new programs and incentives for achieving the goal of optimal

1 minimization of the generation of hazardous wastes. Substantial improvements and
2 additions to the state’s hazardous waste reduction program are required to be made
3 if these goals are to be achieved.

4 (b) Hazardous waste source reduction provides substantial benefits to the state’s
5 economy by maximizing use of materials, avoiding generation of waste materials,
6 improving business efficiency, enhancing revenues of companies that provide
7 products and services in the state, increasing the economic competitiveness of
8 businesses located in the state, and protecting the state’s precious and valuable
9 natural resources.

10 (c) It is the intent of the Legislature to expand the state’s pollution prevention
11 activities beyond those directly associated with source reduction evaluation reviews
12 and plans. The expanded program, which is intended to accelerate pollution
13 prevention, shall include programs to promote implementation of pollution
14 prevention measures using education, outreach, and other effective voluntary
15 techniques demonstrated in California or other states.

16 (d) It is the intent of the Legislature for the department to maximize the use of its
17 available resources in implementing the pollution prevention program through
18 cooperation with other entities, including, but not limited to, CUPAs, small business
19 development corporations, business environmental assistance centers, and other
20 regional and local government environmental programs. To the extent feasible, the
21 department shall utilize cooperative programs with entities that routinely contact
22 small business to expand its support of small business pollution prevention
23 activities.

24 (e) It is the goal of this chapter to do all of the following:

25 (1) Reduce the generation of hazardous waste.

26 (2) Reduce the release into the environment of chemical contaminants that have
27 adverse and serious health or environmental effects.

28 (3) Document hazardous waste management information and make that
29 information available to state and local government.

30 (f) It is the intent of this chapter to promote the reduction of hazardous waste at
31 its source, and wherever source reduction is not feasible or practicable, to encourage
32 recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste
33 should be treated in an environmentally safe manner to minimize the present and
34 future threat to health and the environment.

35 (g) It is the intent of the Legislature not to preclude the regulation of
36 environmentally harmful releases to all media, including air, land, surface water,
37 and groundwater, and to encourage and promote the reduction of these releases to
38 air, land, surface water, and groundwater.

39 (h) It is the intent of the Legislature to encourage all state departments and
40 agencies, especially the State Water Resources Control Board, the California
41 regional water quality control boards, the State Air Resources Board, the air
42 pollution control districts, and the air quality management districts, to promote the
43 reduction of environmentally harmful releases to all media.

1 **Comment.** Section 84855 continues former Section 25244.13 without substantive change.
2 See Sections 84895 (“business”), 83110 (“CUPA”), 83160 (“department”), 83175 (“disposal”),
3 83210 (“hazardous waste”), 83260 (“natural resources”), 83325 (“recycling”), 83330 (“release”),
4 84915 (“pollution prevention”), 83395 (“waste”).

5 **§ 84860. Application of chapter**

6 84860. (a) This chapter establishes a program for pollution prevention, including,
7 but not limited to, hazardous waste source reduction.

8 (b) The department shall coordinate the activities of all state agencies with
9 responsibilities and duties relating to hazardous waste and shall promote
10 coordinated efforts to encourage the reduction of hazardous waste. Coordination
11 between the program and other relevant state agencies and programs shall, to the
12 fullest extent possible, include joint planning processes and joint research and
13 studies.

14 (c) The department shall adopt regulations to carry out the requirements imposed
15 upon generators pursuant to this chapter.

16 (d)(1) Except as provided in paragraph (3), **Sections 25244.19, 25244.20, and**
17 **25244.21** apply only to generators who, by site, routinely generate, through ongoing
18 processes and operations, more than 12,000 kilograms of hazardous waste in a
19 calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar
20 year.

21 (2) The department shall adopt regulations to establish procedures for exempting
22 generators from the requirements of this chapter where the department determines
23 that no source reduction opportunities exist for the generator.

24 (3) Notwithstanding paragraph (1), **Sections 25244.19, 25244.20, and 25244.21**
25 do not apply to any generator whose hazardous waste generating activity consists
26 solely of receiving offsite hazardous wastes and generating residuals from the
27 processing of those hazardous wastes.

28 **Comment.** Section 84860 continues former Section 25244.15 without substantive change.

29 See Sections 83160 (“department”), 83195 (“extremely hazardous waste”), 83210 (“hazardous
30 waste”), 83300 (“processing”), 84915 (“pollution prevention”).

31 **Note.** Existing Section 25244.15, as well as several other sections in this proposed chapter,
32 frequently refer to the undefined term “generators.”

33 **Should a statutory definition of this term be added to this proposed chapter, and if so,**
34 **what definition should be added?**

35 **§ 84865. Funding contingency**

36 84865. (a) The department’s duties to implement this chapter are contingent upon,
37 and limited to, the availability of funding.

38 (b) Subdivision (a) does not eliminate a requirement of this chapter that is
39 imposed upon a generator.

40 **Comment.** Section 84865 continues former Section 25244.13.1 without substantive change.

41 See Section 83160 (“department”).

1 Article 2. Definitions

2 § 84880. Definitions

3 84880. For purposes of this chapter, the definitions in this article shall apply.

4 **Comment.** Section 84880 continues the introductory clause of former Section 25244.14 without
5 substantive change.

6 § 84885. “Advisory Committee”

7 84885. “Advisory committee” means the California Pollution Prevention
8 Advisory Committee established pursuant to **Section 25244.15.1**.

9 **Comment.** Section 84885 continues former Section 25244.14(a) without substantive change.

10 § 84890. “Appropriate local agency”

11 84890. “Appropriate local agency” means a county, city, or regional association
12 that has adopted a hazardous waste management plan pursuant to **Article 3.5**
13 **(commencing with Section 25135)**.

14 **Comment.** Section 84890 continues former Section 25244.14(b) without substantive change.
15 See Section 83220 (“hazardous waste management”).

16 § 84895. “Business”

17 84895. “Business” has the same meaning as defined in **Section 25501**.

18 **Comment.** Section 84895 continues former Section 25244.14(c) without substantive change.

19 § 84900. “Hazardous waste management approaches”

20 84900. “Hazardous waste management approaches” means approaches, methods,
21 and techniques of managing the generation and handling of hazardous waste,
22 including source reduction, recycling, and the treatment of hazardous waste.

23 **Comment.** Section 84900 continues former Section 25244.14(d) without substantive change.

24 See Sections 83205 (“handling”), 83210 (“hazardous waste”), 83220 (“hazardous waste
25 management”), 83325 (“recycling”), 83370 (“treatment”), 84925 (“source reduction”).

26 § 84905. “Hazardous waste management performance report” or “report”

27 84905. “Hazardous waste management performance report” or “report” means the
28 report required by **subdivision (b) of Section 25244.20** to document and evaluate
29 the results of hazardous waste management practices.

30 **Comment.** Section 84905 continues former Section 25244.14(e) without substantive change.

31 See Section 83220 (“hazardous waste management”).

32 § 84910. “NAICS Code”

33 84910. “NAICS Code” means the identification number assigned to specific types
34 of businesses by the North American Industry Classification System (NAICS)
35 adopted by the United States Census Bureau.

36 **Comment.** Section 84910 continues former Section 25244.14(f) without substantive change.

37 See Section 84895 (“business”).

1 **§ 84915. “Pollution prevention”**

2 84915. “Pollution prevention” means the reduction of chemical sources that have
3 adverse impacts on public health and the environment, including, but not limited to,
4 source reduction.

5 **Comment.** Section 84915 continues former Section 25244.14(g) without substantive change.
6 See Section 84925 (“source reduction”).

7 **§ 84920. “SIC Code”**

8 84920. “SIC Code” means the identification number assigned to specific types of
9 businesses by the Standard Industrial Classification (SIC) system established by the
10 United States Department of Commerce.

11 **Comment.** Section 84920 continues former Section 25244.14(h) without substantive change.
12 See Section 84895 (“business”).

13 **§ 84925. “Source reduction”**

14 84925. (a) “Source reduction” means either of the following:

15 (1) An action that causes a net reduction in the generation of hazardous waste.

16 (2) An action taken before the hazardous waste is generated that results in a
17 lessening of the properties that cause it to be classified as a hazardous waste.

18 (b) “Source reduction” includes, but is not limited to, each of the following:

19 (1) “Input change,” which means a change in raw materials or feedstocks used in
20 a production process or operation so as to reduce, avoid, or eliminate the generation
21 of hazardous waste.

22 (2) “Operational improvement,” which means improved site management so as
23 to reduce, avoid, or eliminate the generation of hazardous waste.

24 (3) “Production process change,” which means a change in a process, method, or
25 technique that is used to produce a product or a desired result, including the return
26 of materials or their components, for reuse within the existing processes or
27 operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

28 (4) “Product reformulation,” which means changes in design, composition, or
29 specifications of end products, including product substitution, so as to reduce, avoid,
30 or eliminate the generation of hazardous waste.

31 (c) “Source reduction” does not include any of the following:

32 (1) Actions taken after a hazardous waste is generated.

33 (2) Actions that merely concentrate the constituents of a hazardous waste to
34 reduce its volume or that dilute the hazardous waste to reduce its hazardous
35 characteristics.

36 (3) Actions that merely shift hazardous wastes from one environmental medium
37 to another environmental medium.

38 (4) Treatment.

39 **Comment.** Section 84925 continues former Section 25244.14(i) without substantive change.
40 See Section 83210 (“hazardous waste”), 83370 (“treatment”).

1 **§ 84930. “Source reduction evaluation review and plan” or “review and plan”**

2 84930. “Source reduction evaluation review and plan” or “review and plan”
3 means a review conducted by the generator of the processes, operations, and
4 procedures in use at a generator’s site, in accordance with the format established by
5 the department pursuant to **subdivision (a) of Section 25244.16**, and that does both
6 of the following:

7 (a) Determines any alternatives to, or modifications of, the generator’s processes,
8 operations, and procedures that may be implemented to reduce the amount of
9 hazardous waste generated.

10 (b) Includes a plan to document and implement source reduction measures for the
11 hazardous wastes specified in subdivision (a) that are technically feasible and
12 economically practicable for the generator, including a reasonable implementation
13 schedule.

14 **Comment.** Section 84930 continues former Section 25244.14(j) without substantive change.
15 See Sections 83160 (“department”), 83210 (“hazardous waste”), 84925 (“source reduction”).

16 **§ 84935. Generally defined terms**

17 84935. The following terms have the same meanings as defined in **Article 2**
18 **(commencing with Section 25110)**:

19 (a) “Hazardous waste.”

20 (b) “Person.”

21 (c) “Recycle.”

22 (d) “Treatment.”

23 **Comment.** Section 84935 restates former Section 25244.14(k) without substantive change.
24 See Sections 83210 (“hazardous waste”), 83295 (“person”), 83370 (“treatment”).

25 **Note.** Proposed Section 84935 would restate existing Section 25244.14(k) for clarity. The
26 existing subdivision reads as follows:

27 “Hazardous waste,” “person,” “recycle,” and “treatment” have the same meanings as defined
28 in Article 2 (commencing with Section 25110).

29 **Absent comment to the contrary, the Commission will presume this proposed restatement**
30 **does not substantively change the meaning of the existing subdivision.**

31 **Article 3. California Pollution Prevention Advisory Committee**

32 **§ 84950. Creation and membership**

33 84950. The California Pollution Prevention Advisory Committee is hereby
34 created and consists of the following members:

35 (a) The Executive Director of the State Air Resources Board, as an ex officio
36 member.

37 (b) The Executive Director of the State Water Resources Control Board, as an ex
38 officio member.

39 (c) The Director of Toxic Substances Control, as an ex officio member.

1 (d) The Director of Resources Recycling and Recovery, as an ex officio member.

2 (e) The Chairperson of the California Environmental Policy Council established
3 pursuant to Section 71017 of the Public Resources Code, as an ex officio member.

4 (f) The Director of Pesticide Regulation, as an ex officio member.

5 (g) Ten public members with experience in pollution prevention as appointed by
6 the department, which shall include all of the following:

7 (1) Two representatives of local governments from different regions of the state.

8 (2) One representative of a publicly owned treatment works.

9 (3) Two representatives of industry.

10 (4) One representative of small business.

11 (5) One representative of organized labor.

12 (6) Two representatives of statewide environmental advocacy organizations.

13 (7) One representative of a statewide public health advocacy organization.

14 (h) The department may appoint up to two additional public members with
15 experience in pollution prevention and detailed knowledge of one of the priority
16 categories of businesses selected in accordance with **Section 25244.17.1**.

17 **Comment.** Section 84950 continues former Section 25244.15.1(a) without substantive change.
18 See Sections 84895 (“business”), 83160 (“department”), 83370 (“treatment”).

19 **§ 84955. Chairperson**

20 84955. The advisory committee shall select one member to serve as chairperson.

21 **Comment.** Section 84955 continues former Section 25244.15.1(b) without substantive change.
22 See Section 84885 (“advisory committee”).

23 **§ 84960. Compensation and expense reimbursement**

24 84960. The members of the advisory committee shall serve without
25 compensation, but each member, other than officials of the state, upon request, shall
26 be reimbursed for all reasonable expenses incurred in the performance of their
27 duties, as authorized by the department.

28 **Comment.** Section 84960 continues former Section 25244.15.1(c) without substantive change.
29 See Sections Section 84885 (“advisory committee”), 83160 (“department”).

30 **§ 84965. Public forum**

31 84965. When convened by the department, the advisory committee shall provide
32 a public forum for discussion and deliberation on matters pertaining to the
33 implementation of this division.

34 **Comment.** Section 84965 continues former Section 25244.15.1(d) without substantive change.
35 See Sections Section 84885 (“advisory committee”), 83160 (“department”).

36 **§ 84970. Committee responsibilities**

37 84970. The advisory committee’s responsibilities shall include, but not be limited
38 to, the following:

39 (1) Reviewing and providing consultation and guidance in the preparation of the
40 work plan authorized by **Section 25244.22**.

1 (2) Evaluating the performance and progress of the department’s pollution
2 prevention program.

3 (3) Making recommendations to the department concerning program activities
4 and funding priorities, and legislative changes, if needed.

5 (4) Making recommendations to the department concerning strategies to more
6 effectively align its pollution prevention program with the goals of the department’s
7 green chemistry program, including the implementation of **Article 14**
8 **(commencing with Section 25251)**.

9 **Comment.** Section 84970 continues former Section 25244.15.1(e) without substantive change.
10 See Sections 84885 (“advisory committee”), 83160 (“department”).

11 Article 4. Publication of Prepared Material

12 **§ 84985. Draft work plan**

13 84985. (a) The department may, on a periodic basis, prepare and make available
14 for public review a draft work plan for the department’s operations and activities in
15 carrying out this chapter.

16 (b) The department shall prepare the work plan in consultation with the advisory
17 committee and with other interested parties, including local government, industry,
18 labor, health, and environmental organizations.

19 (c) The department shall hold a public meeting of the advisory committee to
20 discuss the draft work plan before finalizing the work plan.

21 (d) The work plan shall include an outline of the department’s proposed
22 operations and activities under this chapter.

23 (e) The department shall use the data summary analysis prepared pursuant to
24 Section 84990 to develop criteria for the selection of targets for pollution prevention
25 efforts.

26 (f) When identifying activities for inclusion in the work plan, the department shall
27 consider potential benefits to human health and the environment, available
28 resources, feasibility of applying pollution prevention techniques, and availability
29 of related resources from other entities, such as other states, the federal government,
30 local governments, and other organizations.

31 **Comment.** Section 84985 continues former Section 25244.22(a) without substantive change.
32 See Sections Section 84885 (“advisory committee”), 83160 (“department”).

33 **§ 84990. Publication of data summary analysis**

34 84990. (a) The department may periodically prepare, and make available to the
35 public on its Internet Web site, a summary analysis of readily available data on the
36 state’s hazardous waste generation and management patterns.

37 (b) The analysis may include information from various data sources including
38 hazardous waste manifests, biennial generator reports, and United States
39 Environmental Protection Agency Toxics Release Inventory reports.

1 (c) The department shall estimate the quantities of hazardous waste generated in
2 the state, by hazardous waste stream, the amounts of hazardous waste generated in
3 the state, by industry SIC or NAICS Code, and the amounts of hazardous waste that
4 state generators sent offsite for management, by management method.

5 **Comment.** Section 84990 continues former Section 25244.22(b) without substantive change.
6 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83250 (“manifest”), 84910
7 (“NAICS Code”).

8 **Note.** Existing Section 25244.22(b), which would be continued by proposed Section 84990,
9 indicates in its first sentence, which would be continued by subdivision (a) of proposed Section
10 84990, that the department “may” prepare a summary analysis as described in that first sentence.

11 Section 25244.22(b) then provides in its second sentence, which would be continued by
12 subdivision (b) of proposed Section 84990, that the analysis referenced in the first sentence of the
13 section “may” include information specified in the second sentence.

14 Finally, Section 25244.22(b) provides in its third sentence, which would be continued by
15 subdivision (c) of proposed Section 84990, that the department “shall” estimate quantities of
16 various categories of hazardous waste by various identified methods.

17 This phrasing of Section 25244.22(b) raises the following questions:

18 1. Is the use of the word “may” in the second sentence of Section 25244.22(b) intended to be a
19 *limitation* on what may be included in the summary analysis described in the first sentence of the
20 section, or simply a permissive and non-exclusive authorization of what may be included?

21 2. Is the different use of the word “shall” in the third sentence of Section 25244.22(b) intended
22 to *require* the department to include quantities of hazardous waste as described in the sentence, in
23 any summary analysis prepared pursuant to Section 25244.22(b), or is the word “shall” intended
24 only to compel the department to use the methods identified for measuring hazardous waste, *if* the
25 department includes estimates of hazardous waste in a prepared analysis?

26 **The Commission welcomes comment on these questions.**

27 Article 5. Pollution Prevention

28 § 85000. Technical and Research Assistance Programs

29 85000. (a) The department may establish a technical and research assistance
30 program to assist businesses in identifying and applying methods of pollution
31 prevention.

32 (b) The program shall emphasize the following subjects:

33 (1) Assistance to smaller businesses that have inadequate technical and financial
34 resources for obtaining information.

35 (2) Assessing pollution prevention methods.

36 (3) Developing and applying pollution prevention techniques.

37 (c) The program may include, but is not limited to, each of the following:

38 (1) Programs by private or public consultants, including onsite consultation at
39 sites or locations where hazardous waste is generated, to aid those generators
40 requiring assistance in developing and implementing the review and plan, the plan
41 summary, the report, and the report summary required by this chapter.

1 (2) Seminars, workshops, training programs, and other similar activities to assist
2 businesses to evaluate pollution prevention alternatives and to identify opportunities
3 for pollution prevention.

4 (3) Assembling, cataloging, and disseminating information about pollution
5 prevention methods, available consultant services, and regulatory requirements.

6 (4) The identification of a range of generic and specified technical pollution
7 prevention solutions that can be applied by particular types of businesses.

8 **Comment.** Section 85000 continues former Section 25244.17 without substantive change.

9 See Sections 84895 (“business”), 83160 (“department”), 83210 (“hazardous waste”), 84930
10 (“review and plan”).

11 **Note.** Existing Section 25244.17(a), which would be continued by proposed Section 85000(c)(1),
12 references an undescribed “report” and “report summary.”

13 **Are these references to a “Hazardous waste management performance report” or “report”**
14 **defined by existing Section 25244.14(e) (which would be continued by proposed Section**
15 **84905)?**

16 **§ 85005. Implementation of model pollution prevention in priority business categories**

17 85005. (a) The department may establish a technical assistance and outreach
18 program to promote implementation of model pollution prevention measures in
19 priority business categories.

20 (b) In the work plan described in **Section 25244.22**, the department may, in
21 consultation with the advisory committee, identify priority categories of businesses
22 by SIC or NAICS Code, in compliance with the following requirements:

23 (1) At least one identified category of businesses shall be a category that consists
24 primarily of small businesses.

25 (2) At least one identified category of businesses shall be a category that consists
26 primarily of businesses affected by an action taken by the department pursuant to
27 **Article 14 (commencing with Section 25251).**

28 (c) For each priority business category identified pursuant to subdivision (b), the
29 department may implement a cooperative pollution prevention technical assistance
30 and outreach program that includes the following elements:

31 (1) Effective pollution prevention measures for each business category.

32 (2) The most effective technical assistance and outreach methods to promote
33 implementation of the pollution prevention measures identified in paragraph (1).

34 (3) Appropriate measures for evaluating the effectiveness of the technical
35 assistance and outreach measures, including quantitative measures when feasible.

36 **Comment.** Section 85005 continues former Section 25244.17.1 without substantive change.

37 See Sections 84885 (“advisory committee”), 84895 (“business”), 83160 (“department”), 84910
38 (“NAICS Code”), 84915 (“pollution prevention”).

Article 6. Outreach by Department

§ 85015. Pollution prevention training and resources

85015. (a) The department may provide pollution prevention training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs to enable those entities to provide technical assistance to businesses in identifying and applying methods of pollution prevention.

(b) The activities conducted pursuant to paragraph (a) shall emphasize activities necessary to implement **Sections 25244.17 and 25244.17.1**.

(c) The department may determine, in consultation with the advisory committee, the most effective methods to promote implementation of pollution prevention education programs by CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs, the elements of which may include, but are not limited to, all of the following:

(1) Sponsoring workshops, conferences, technology fairs, and other training events.

(2) Sponsoring regional training groups, such as the regional hazardous waste reduction committees.

(3) Developing and distributing educational materials, such as short descriptions of successful pollution prevention projects and materials explaining how pollution prevention has been used by businesses to achieve compliance with environmental laws enforced by local governments.

(4) Developing site review checklists, training manuals, and technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(5) Preparing and distributing resource lists such as lists of vendors, consultants, or providers of financial assistance for pollution prevention projects.

(6) Serving as an information clearinghouse to support telephone and onsite consultants with local governments.

Comment. Subdivisions (a) and (b) of Section 85015 continue former Section 25244.17.2(a) without substantive change.

Subdivision (c) continues former Section 25244.17.2(d) without substantive change.

See Sections 84885 (“advisory committee”), 84895 (“business”), 83110 (“CUPA”), 83160 (“department”), 84915 (“pollution prevention”).

§ 85020. California Green Business Program

85020. (a) As part of implementing the program authorized by this article, the department may develop a California Green Business Program would voluntarily certify small businesses that adopt environmentally preferable business practices, including, but not limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation, and reduced waste generation, and that

1 provides support and assistance to programs operated by local governments to meet
2 the following requirements:

3 (1) The program will be operated by a local government or its designee.

4 (2) The program will adopt industry-specific standards for green business
5 certification, or its equivalent, in consultation with the other participants in the
6 California Green Business Program.

7 (3) The program will grant a small business that voluntarily applies to the program
8 a green business certification or its equivalent, only upon a determination by the
9 program operator or designee that the business is a small business, as determined by
10 the program, and complies with the industry-specific standards for green business
11 certification adopted pursuant to paragraph (2).

12 (4) The program will grant a green business certification, or its equivalent, to
13 small businesses, as determined by the program, in accordance with all of the
14 following requirements:

15 (A) Before the program grants green business certification or its equivalent, the
16 program conducts an evaluation to verify compliance with the appropriate green
17 business certification standards adopted pursuant to paragraph (2).

18 (B) A green business certification or its equivalent is granted only to an individual
19 location of a small business.

20 (C) A green business certification or its equivalent is granted to an individual
21 small business only for a limited time period, and, after the elapse of that time
22 period, the small business is required to reapply for that certification.

23 (D) Compliance with applicable federal, state, and local environmental laws and
24 regulations is required as a condition of receiving a green business certification or
25 its equivalent.

26 (b) The California Green Business Program may also do any or all of the
27 following:

28 (1) Assist the network of statewide local government programs in implementing
29 guidelines and structures that establish and promote a level of consistency among
30 green business programs across the state.

31 (2) Support, through staffing and contracts, the development and maintenance of
32 a statewide database to register small businesses granted green business
33 certification, or its equivalent, pursuant to a local government program, and track
34 measurable pollution reductions and cost savings.

35 (3) Solicit participation of additional local programs and facilitate the startup of
36 new local programs.

37 (4) Develop technical guidance on pollution prevention measures, conduct
38 industry studies and pilot projects, and provide policy coordination for the
39 participating local programs.

40 (5) Collaborate with relevant state agencies that operate small business efficiency
41 and economic development programs, including, but not limited to, the Department
42 of Resources Recycling and Recovery, the Public Utilities Commission, the State

1 Energy Resources Conservation and Development Commission, the State Air
2 Resources Board, and the Department of Water Resources.

3 **Comment.** Subdivision (a) of Section 85020 combines and restates the first sentence of former
4 Section 25244.17.2(b) and former Section 25244.17.2(c), without substantive change.

5 Subdivision (b) continues the second sentence of former Section 25244.17.2(b) without
6 substantive change.

7 See Sections 84895 (“business”), 83160 (“department”), 84915 (“pollution prevention”).

8 **Notes. (1)** Proposed Section 85020(a) would combine and restate the first sentence of existing
9 Section 25244.17.2(b), and 25244.17.2(c). That text in the existing section reads as follows:

10 “(b) As part of implementing the program authorized by this section, the department may develop
11 a California Green Business Program that provides support and assistance to programs operated by
12 local governments to meet the requirement of subdivision (c) and that would voluntarily certify
13 small businesses that adopt environmentally preferable business practices, including, but not
14 limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water
15 conservation, and reduced waste generation. [...]”

16 (c) The department may provide support and assistance to a local government program to enable
17 the program to meet all of the following requirements:

18 (1) The program will be operated by a local government or its designee.

19 (2) The program will adopt industry-specific standards for green business certification, or its
20 equivalent, in consultation with the other participants in the California Green Business Program.

21 (3) The program will grant a small business that voluntarily applies to the program a green
22 business certification or its equivalent, only upon a determination by the program operator or
23 designee that the business is a small business, as determined by the program, and complies with the
24 industry-specific standards for green business certification adopted pursuant to paragraph (2).

25 (4) The program will grant a green business certification, or its equivalent, to small businesses,
26 as determined by the program, in accordance with all of the following requirements:

27 (A) Before the program grants green business certification or its equivalent, the program
28 conducts an evaluation to verify compliance with the appropriate green business certification
29 standards adopted pursuant to paragraph (2).

30 (B) A green business certification or its equivalent is granted only to an individual location of a
31 small business.

32 (C) A green business certification or its equivalent is granted to an individual small business only
33 for a limited time period, and, after the elapse of that time period, the small business is required to
34 reapply for that certification.

35 (D) Compliance with applicable federal, state, and local environmental laws and regulations is
36 required as a condition of receiving a green business certification or its equivalent.”

37 **The Commission welcomes comment on this restatement of existing text in Section**
38 **25244.17.2.**

39 (2) Existing Section 25244.17.2(b), which would be continued in part by proposed Section
40 85020(a), begins with the phrase “As part of implementing the program authorized by this section,
41”

42 **The Commission welcomes clarification as to what specific “program” is intended to be**
43 **referenced by that phrase, and welcomes comment as to whether this reference can be**
44 **clarified without substantively changing the intended meaning of the phrase.**

45 (3) Even after this proposed recodification, this section remains quite difficult to parse. Part of
46 that difficulty is attributable to the phrasing of subdivision (a) of the existing section, which does

1 not make clear whether the California Green Business Program that the department is authorized
2 to develop must satisfy TWO prerequisites — supporting and assisting specified local government
3 programs AND voluntarily certifying specifying small businesses — or whether the program need
4 provide only ONE of those two services.

5 **The Commission welcomes comment on this question.**

6 Article 7. Generator Requirements

7 **§ 85030. Source reduction evaluation review and plan**

8 85030. (a) On or before September 1, 1991, and every four years thereafter, each
9 generator shall conduct a source reduction evaluation review and plan pursuant to
10 subdivision (b).

11 (b) Except as provided in subdivision (c), the source reduction evaluation review
12 and plan required by subdivision (a) shall be conducted and completed for each site
13 pursuant to the format adopted pursuant to **subdivision (a) of Section 25244.16** and
14 shall include, at a minimum, all of the following:

15 (1) The name and location of the site.

16 (2) The SIC Code of the site.

17 (3) Identification of all routinely generated hazardous waste streams that annually
18 weigh 600 kilograms or more and that result from ongoing processes or operations
19 and exceed 5 percent of the total yearly weight of hazardous waste generated at the
20 site, or, for extremely hazardous waste, that annually weigh 0.6 kilograms or more
21 and exceed 5 percent of the total yearly weight of extremely hazardous waste
22 generated at the site. For purposes of this paragraph, a hazardous waste stream
23 identified pursuant to this paragraph shall also meet one of the following criteria:

24 (A) It is processed in a wastewater treatment unit that discharges to a publicly
25 owned treatment works or under a national pollutant discharge elimination system
26 (NPDES) permit, as specified in the Federal Water Pollution Control Act, as
27 amended (33 U.S.C. Sec. 1251 and following).

28 (B) It is not processed in a wastewater treatment unit, and its weight exceeds 5
29 percent of the weight of the total yearly volume at the site, less the weight of any
30 hazardous waste stream identified in subparagraph (A).

31 (4) For each hazardous waste stream identified in paragraph (3), the review and
32 plan shall include all of the following information:

33 (A) An estimate of the quantity of hazardous waste generated.

34 (B) An evaluation of source reduction approaches available to the generator that
35 are potentially viable. The evaluation shall consider at least all of the following
36 source reduction approaches:

37 (i) Input change.

38 (ii) Operational improvement.

39 (iii) Production process change.

40 (iv) Product reformulation.

1 (5) A specification of, and a rationale for, the technically feasible and
2 economically practicable source reduction measures that will be taken by the
3 generator with respect to each hazardous waste stream identified in paragraph (3).
4 The review and plan shall fully document any statement explaining the generator's
5 rationale for rejecting any available source reduction approach identified in
6 paragraph (4).

7 (6) An evaluation, and, to the extent practicable, a quantification, of the effects of
8 the chosen source reduction method on emissions and discharges to air, water, or
9 land.

10 (7) A timetable for making reasonable and measurable progress towards
11 implementation of the selected source reduction measures specified in paragraph
12 (5).

13 (8) Certification pursuant to subdivision (d).

14 (9) A generator subject to this chapter shall include in its source reduction
15 evaluation review and plan four-year numerical goals for reducing the generation of
16 hazardous waste streams through the approaches provided for in subparagraph (B)
17 of paragraph (4), based upon its best estimate of what is achievable in that four-year
18 period.

19 (10) A summary progress report that briefly summarizes and, to the extent
20 practicable, quantifies, in a manner that is understandable to the general public, the
21 results of implementing the source reduction methods identified in the generator's
22 review and plan for each waste stream addressed by the previous plan over the
23 previous four years. The report shall also include an estimate of the amount of
24 reduction that the generator anticipates will be achieved by the implementation of
25 source reduction methods during the period between the preparation of the review
26 and plan and the preparation of the generator's next review and plan.

27 (c) If a generator owns or operates multiple sites with similar processes,
28 operations, and waste streams, the generator may prepare a single multisite review
29 and plan addressing all of these sites.

30 (d) Every review and plan conducted pursuant to this section shall be submitted
31 by the generator for review and certification by an engineer who is registered as a
32 professional engineer pursuant to Section 6762 of the Business and Professions
33 Code and who has demonstrated expertise in hazardous waste management, by an
34 individual who is responsible for the processes and operations of the site, or by an
35 environmental assessor who has demonstrated expertise in hazardous waste
36 management. The engineer, individual, or environmental assessor shall certify the
37 review and plan only if the review and plan meet all of the following requirements:

38 (1) The review and plan addresses each hazardous waste stream identified
39 pursuant to paragraph (3) of subdivision (b).

40 (2) The review and plan addresses the source reduction approaches specified in
41 subparagraph (B) of paragraph (4) of subdivision (b).

42 (3) The review and plan clearly sets forth the measures to be taken with respect to
43 each hazardous waste stream for which source reduction has been found to be

1 technically feasible and economically practicable, with timetables for making
 2 reasonable and measurable progress, and properly documents the rationale for
 3 rejecting available source reduction measures.

4 (4) The review and plan does not merely shift hazardous waste from one
 5 environmental medium to another environmental medium by increasing emissions
 6 or discharges to air, water, or land.

7 (e) At the time a review and plan is submitted to the department or the unified
 8 program agency, the generator shall certify that the generator has implemented, is
 9 implementing, or will be implementing, the source reduction measures identified in
 10 the review and plan in accordance with the implementation schedule contained in
 11 the review and plan. A generator may determine not to implement a measure
 12 selected in paragraph (5) of subdivision (b) only if the generator determines, upon
 13 conducting further analysis or due to unexpected circumstances, that the selected
 14 measure is not technically feasible or economically practicable, or if attempts to
 15 implement that measure reveal that the measure would result in, or has resulted in,
 16 any of the following:

17 (1) An increase in the generation of hazardous waste.

18 (2) An increase in the release of hazardous chemicals to other environmental
 19 media.

20 (3) Adverse impacts on product quality.

21 (4) A significant increase in the risk of an adverse impact to human health or the
 22 environment.

23 (f) If the generator elects not to implement the review and plan, including, but not
 24 limited to, a selected measure pursuant to subdivision (e), the generator shall amend
 25 its review and plan to reflect that election and include in the review and plan proper
 26 documentation identifying the rationale for that election.

27 **Comment.** Section 85030 continues former Section 25244.19 without substantive change.

28 See Sections 83160 (“department”), 83190 (“environmental assessor”), 83195 (“extremely
 29 hazardous waste”), 83210 (“hazardous waste”), 83330 (“release”), 83370 (“treatment”), 83375
 30 (“unified program agency”), (“SIC Code”), 84930 (“review and plan”), 84925 (“source reduction”),
 31 83395 (“waste”).

32 **Notes. (1)** Several provisions in existing Section 25244.19, which would be continued by
 33 proposed Section 85030, refer to an unspecified “generator.” One of those existing provisions,
 34 Section 25244.19(a)(9), which would be continued by proposed Section 85030(a)(9), refers to “[a]
 35 generator subject to this article.”

36 Another section in the existing article, Section 25244.14, specifies a number of definitions that
 37 apply for purposes of the article, but the list of definitions does not include the term “generator.”

38 However, the term “generator” *is* defined, expressly for purposes of *another* existing statutory
 39 article, by existing Section 25205.1(e).

40 **The Commission welcomes comment on two issues relating to the use of the term**
 41 **“generator” in existing Section 25244.19:**

42 1. Despite apparent statutory language to the contrary, is the definition of the term “generator”
 43 in existing Section 25205.1(e) meant to define that term as used throughout existing Section
 44 25244.19?

1 2. What is the intended meaning of the term “generator subject to this article” in existing Section
2 25244.19(a)(9)?

3 (2) Existing Section 25244.19(e), which would be continued by proposed Section 85030(f),
4 begins with the phrase “At the time a review and plan is submitted to the department or the unified
5 program agency,....”

6 **The Commission welcomes comment on whether there is a statutory provision, which could**
7 **be cross-referenced in the recodification of Section 25244.29(e), specifying when the**
8 **referenced review and plan is required to be submitted to the department or unified program**
9 **agency.**

10 **§ 85035. Hazardous waste management performance report**

11 85035. (a) On or before September 1, 1991, and every four years thereafter, each
12 generator shall prepare a hazardous waste management performance report
13 documenting hazardous waste management approaches implemented by the
14 generator.

15 (b) Except as provided in subdivision (d), the hazardous waste management
16 performance report required by subdivision (a) shall be prepared for each site in
17 accordance with the format adopted pursuant to **subdivision (a) of Section**
18 **25244.16** and shall include all of the following:

19 (1) The name and location of the site.

20 (2) The SIC Code for the site.

21 (3) All of the following information for each waste stream identified pursuant to
22 **paragraph (3) of subdivision (b) of Section 25244.19:**

23 (A) An estimate of the quantity of hazardous waste generated and the quantity of
24 hazardous waste managed, both onsite and offsite, during the current reporting year
25 and the baseline year, as specified in subdivision (c).

26 (B) An abstract for each source reduction, recycling, or treatment technology
27 implemented from the baseline year through the current reporting year, if the
28 reporting year is different from the baseline year.

29 (C) A description of factors during the current reporting year that have affected
30 hazardous waste generation and onsite and offsite hazardous waste management
31 since the baseline year, including, but not limited to, any of the following:

32 (i) Changes in business activity.

33 (ii) Changes in waste classification.

34 (iii) Natural phenomena.

35 (iv) Other factors that have affected either the quantity of hazardous waste
36 generated or onsite and offsite hazardous waste management requirements.

37 (4) The certification of the report pursuant to subdivision (e).

38 (c) For purposes of subdivision (b), the following definitions apply:

39 (1) The current reporting year is the calendar year immediately preceding the year
40 in which the report is to be prepared.

41 (2) The baseline year is either of the following, whichever is applicable:

1 (A) For the initial report, the baseline year is the calendar year selected by the
2 generator for which substantial hazardous waste generation, or onsite or offsite
3 management, data is available prior to 1991.

4 (B) For all subsequent reports, the baseline year is the current reporting year of
5 the immediately preceding report.

6 (d) If a generator owns or operates multiple sites with similar processes,
7 operations, and waste streams, the generator may prepare a single multisite report
8 addressing all of these sites.

9 (e) Every report completed pursuant to this section shall be submitted by the
10 generator for review and certification by an engineer who is registered as a
11 professional engineer pursuant to Section 6762 of the Business and Professions
12 Code and who has demonstrated expertise in hazardous waste management, by an
13 individual who is responsible for the processes and operations of the site, or by an
14 environmental assessor who has demonstrated expertise in hazardous waste
15 management. The engineer, individual, or environmental assessor shall certify the
16 report only if the report identifies factors that affect the generation and onsite and
17 offsite management of hazardous wastes and summarizes the effect of those factors
18 on the generation and onsite and offsite management of hazardous wastes.

19 **Comment.** Section 85035 continues former Section 25244.20 without substantive change.

20 Sections 84895 (“business”), 83190 (“environmental assessor”), 83210 (“hazardous waste”),
21 83325 (“recycling”), 83370 (“treatment”), 84900 (“hazardous waste management approaches”),
22 84905 (“hazardous waste management performance report”), 84920 (“SIC Code”), 84925 (“source
23 reduction”), 83395 (“waste”).

24 **§ 85040. Generator retention of review and plan and report**

25 85040. (a) Every generator shall retain the original of the current review and plan
26 and report, shall maintain a copy of the current review and plan and report at each
27 site, or, for a multisite review and plan or report, at a central location, and upon
28 request, shall make it available to any authorized representative of the department
29 or the unified program agency conducting an inspection pursuant to **Section 25185**.

30 (b) If a generator fails, within five days, to make available to the inspector the
31 review and plan or report, the department, the unified program agency, or any
32 authorized representative of the department, or of the unified program agency,
33 conducting an inspection pursuant to **Section 25185**, shall, if appropriate, impose a
34 civil penalty pursuant to **Section 25187**, in an amount not to exceed one thousand
35 dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding
36 **Section 25189.2**.

37 (c) If a generator fails to respond to a request for a copy of its review and plan or
38 report made by the department or a unified program agency pursuant to **subdivision**
39 **(a) of Section 25244.18**, or by a local agency pursuant to **subdivision (e) of Section**
40 **25244.18**, within 30 days from the date of the request, the department or unified
41 program agency shall, if appropriate, assess a civil penalty pursuant to **Section**
42 **25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the
43 violation of this chapter continues, notwithstanding **Section 25189.2**.

1 **Comment.** Section 85040 continues former Section 25244.21(a) and (b) without substantive
2 change.

3 See Sections 83160 (“department”), 83375 (“unified program agency”), 84905 (“report”), 84930
4 (“review and plan”).

5 **§ 85045. Evaluation of generator review and plan or report**

6 85045. (a) The department or the unified program agency may request from any
7 generator, and the generator shall provide within 30 days from the date of the
8 request, a copy of the generator’s review and plan or report conducted and
9 completed pursuant to **Section 25244.19 or 25244.20**.

10 (b) The department or the unified program agency may evaluate any of those
11 documents submitted to the department or the unified program agency to determine
12 whether it satisfies the requirements of this chapter.

13 (c) If the department or the unified program agency determines that a generator
14 has not completed the review and plan in the manner required by **Section 25244.19**,
15 or the report in the manner required by **Section 25244.20**, the department or the
16 unified program agency shall provide the generator with a notice of noncompliance,
17 specifying the deficiencies in the review and plan or report identified by the
18 department.

19 (d) If the department or the unified program agency finds that the review and plan
20 does not comply with **Section 25244.19**, the department or the unified program
21 agency shall consider the review and plan to be incomplete.

22 (e) A generator shall file a revised review and plan or report correcting the
23 deficiencies identified by the department or the unified program agency within 60
24 days from the date of the receipt of the notice.

25 (f) The department or the unified program agency may grant, in response to a
26 written request from the generator, an extension of the 60-day deadline, for cause,
27 except that the department or the unified program agency shall not grant that
28 extension for more than an additional 60 days.

29 (g) If a generator fails to submit a revised review and plan or report complying
30 with the requirements of this chapter within the required period, or if the department
31 or unified program agency determines that a generator has failed to implement the
32 measures included in the generator’s review and plan for reducing the generator’s
33 hazardous waste, in accordance with **Section 25244.19**, the department or the
34 unified program agency may impose civil penalties pursuant to **Section 25187**, in
35 an amount not to exceed one thousand dollars (\$1,000) for each day the violation of
36 this chapter continues, notwithstanding **Section 25189.2**, seek an order directing
37 compliance pursuant to **Section 25181**, or enter into a consent agreement or a
38 compliance schedule with the generator.

39 (h) If a generator fails to implement a measure specified in the review and plan
40 pursuant to **paragraph (5) of subdivision (b) of Section 25244.19**, the generator
41 shall not be deemed to be in violation of **Section 25244.19** for not implementing the
42 selected measure if the generator does both of the following:

1 (1) The generator finds that, upon further analysis or as a result of unexpected
2 consequences, the selected measure is not technically feasible or economically
3 practicable, or if the selected approach has resulted in any of the following:

4 (A) An increase in the generation of hazardous waste.

5 (B) An increase in the release of hazardous chemical contaminants to other media.

6 (C) Adverse impacts on product quality.

7 (D) A significant increase in the risk of an adverse impact to human health or the
8 environment.

9 (2) The generator revises the review and plan to comply with the requirements of
10 **Section 25244.19**.

11 (i) When taking enforcement action pursuant to this chapter, the department or the
12 unified program agency shall not judge the appropriateness of any decisions or
13 proposed measures contained in a review and plan or report, but shall only
14 determine whether the review and plan or report is complete, prepared, and
15 implemented in accordance with this chapter.

16 (j) In addition to the unified program agency, an appropriate local agency that has
17 jurisdiction over a generator's site may request from the generator, and the generator
18 shall provide within 30 days from the date of that request, a copy of the generator's
19 current review and plan and report.

20 (k) In carrying out this chapter, the department shall not disseminate information
21 determined to be a trade secret pursuant to **Section 25244.23**.

22 **Comment.** Section 85045 continues former Section 25244.18 without substantive change.

23 See Sections 84890 ("appropriate local agency"), 83160 ("department"), 83210 ("hazardous
24 waste"), 83330 ("release"), 83375 ("unified program agency"), 84905 ("report"), 84930 ("review
25 and plan").

26 **§ 85050. Request for certification of generator compliance**

27 85050. (a) A person may request the department to certify that a generator is in
28 compliance with this chapter by having the department certify that the generator has
29 properly completed the review and plan and report required pursuant to **Sections**
30 **25244.19 and 25244.20**.

31 (b) The department shall respond within 60 days to a request for certification.

32 (c) Upon receiving a request for certification, the department shall request from
33 the generator, who is the subject of the request, a copy of the generator's review and
34 plan and report, pursuant to **subdivision (a) of Section 25244.18**, if the department
35 does not have these documents.

36 (d) The department shall forward a copy of the review and plan and report to the
37 person requesting certification, within 10 days from the date that the department
38 receives the request for certification or receives the review and plan and report,
39 whichever is later.

40 (e) The department shall protect trade secrets in accordance with **Section**
41 **25244.23** in a review and plan or report, requested to be released pursuant to this
42 section.

1 (f) This section does not prohibit any person from directly requesting from a
2 generator a copy of the review and plan or report.

3 (g) Solely for the purposes of responding to a request pursuant to this section, the
4 department shall deem the review and plan or report to be a public record subject to
5 **Section 25152.5**, and shall act in compliance with that **section**.

6 **Comment.** Section 85050 continues former Section 25244.21(c) without substantive change.
7 See Sections 83160 (“department”), 83295 (“person”), 84905 (“report”), 84930 (“review and
8 plan”).

9 Article 8. Department Responsibilities

10 § 85065. Department adoption of format to be used by generators

11 85065. (a) The department shall adopt a format to be used by generators for
12 completing the review and plan required by **Section 25244.19**, and the report
13 required by **Section 25244.20**.

14 (b) The format shall include at least all of the factors the generator is required to
15 include in the review and plan and the report.

16 (c) The department may include any other factor determined by the department to
17 be necessary to carry out this chapter.

18 (d) The adoption of a format pursuant to this subdivision is not subject to Chapter
19 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
20 Government Code.

21 **Comment.** Section 85065 continues former Section 25244.16(a) without substantive change.
22 See Sections 83160 (“department”), 84905 (“report”), 84930 (“review and plan”).

23 § 85070. Department establishment of system to process generator information

24 85070. (a) The department shall establish a data and information system to be
25 used by the department for processing and evaluating the source reduction and other
26 hazardous waste management information submitted by generators pursuant to
27 **Section 25244.18**.

28 (b) In establishing the data and information system, the department shall do all of
29 the following:

30 (1) Establish methods and procedures for appropriately processing or managing
31 hazardous waste source reduction and management information.

32 (2) Use the data management expertise, resources, and forms of already
33 established environmental protection programs, to the extent practicable.

34 (3) Establish computerized data retrieval and data processing systems, including
35 safeguards to protect trade secrets designated pursuant to **Section 25244.23**.

36 (4) Identify additional data and information needs of the program.

37 **Comment.** Section 85070 continues former Section 25244.16(b) without substantive change.
38 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste
39 management”), 83300 (“processing”), 84925 (“source reduction”).

1 **§ 85075. Protection of trade secrets**

2 85075. (a) The department shall adopt regulations to ensure that trade secrets
3 designated by a generator in all or a portion of the review and plan or the report
4 required by this chapter are utilized by the director, the department, the unified
5 program agency, or the appropriate local agency only in connection with the
6 responsibilities of the department pursuant to this chapter, and that those trade
7 secrets are not otherwise disseminated by the director, the department, the unified
8 program agency, or any authorized representative of the department, or the
9 appropriate local agency, without the consent of the generator.

10 (b) Any information subject to this section shall be made available to
11 governmental agencies for use in making studies and for use in judicial review or
12 enforcement proceedings involving the person furnishing the information.

13 (c) As provided by **Section 25159.5**, the regulations adopted pursuant to
14 subdivision (a) shall conform with the corresponding trade secret regulations
15 adopted by the Environmental Protection Agency pursuant to the federal act, except
16 that the regulations adopted by the department may be more stringent or more
17 extensive than the federal trade secret regulations.

18 (d) "Trade secrets," as used in this section, may include, but are not limited to,
19 any formula, plan, pattern, process, tool, mechanism, compound, procedure,
20 production data, or compilation of information that is not patented, that is known
21 only to certain individuals within a commercial concern who are using it to
22 fabricate, produce, or compound an article of trade or a service having commercial
23 value, and that gives its user an opportunity to obtain a business advantage over
24 competitors who do not know or use it.

25 (e) The department, the unified program agency, and the appropriate local agency
26 shall protect from disclosure any trade secret designated by the generator pursuant
27 to this section. The department shall make available information concerning
28 pollution prevention approaches that have proved successful, and that do not
29 constitute a trade secret, when carrying out **subdivision (c) of Section 25244.17**.

30 (f) This section does not permit a generator to refuse to disclose the information
31 required pursuant to this chapter to the department, the unified program agency, or
32 the appropriate local agency, an officer or employee of the department, the unified
33 program agency, or the appropriate local agency, in connection with the official
34 duties of that officer or employee under this chapter.

35 (g) Any officer or employee of the department, the unified program agency, or the
36 appropriate local agency, or any other person, who, because of their employment or
37 official position, has possession of, or has access to, confidential information, and
38 who, knowing that disclosure of the information to the general public is prohibited
39 by this section, knowingly and willfully discloses the information in any manner to
40 any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction
41 thereof, shall be punished by imprisonment in the county jail not exceeding six
42 months, by a fine not exceeding one thousand dollars (\$1,000), or by both the fine
43 and imprisonment.

1 See Section 60295 (“person”).

2 **§ 85165. Nonapplication of chapter**

3 85165. This chapter does not do any of the following:

4 (a) Affect a duty or other requirement imposed under federal or state law.

5 (b) Alter or diminish a legal obligation otherwise required in common law or by
6 statute or regulation.

7 (c) Create or enlarge a defense in an action to enforce a legal obligation otherwise
8 required in common law or by statute or regulation.

9 **Comment.** Section 85165 continues former Section 25214.19 without substantive change.

10 **Article 2. Definitions**

11 **§ 85180. Application of definitions**

12 85180. For purposes of this chapter, the definitions in this article shall apply.

13 **Comment.** Section 85180 continues the introductory clause of former Section 25214.12 without
14 substantive change.

15 **§ 85185. “ASTM”**

16 85185. “ASTM” means the American Society for Testing and Materials.

17 **Comment.** Section 85185 continues former Section 25214.12(b) without substantive change.

18 **§ 85190. “Authorized official”**

19 85190. “Authorized official” means a representative of a manufacturer or supplier
20 who is authorized pursuant to the laws of this state to bind the manufacturer or
21 supplier regarding the accuracy of the content of a certificate of compliance.

22 **Comment.** Section 85190 continues former Section 25214.12(a) without substantive change.
23 See Section 85210 (“manufacturer”), 85245 (“supplier”).

24 **§ 85195. “Distribution”**

25 85195. (a) “Distribution” means the practice of taking title to a package or a
26 packaging component for promotional purposes or resale.

27 (b) A person involved solely in delivering a package or a packaging component
28 on behalf of a third party is not engaging in distribution.

29 **Comment.** Section 85195 continues former Section 25214.12(c) without substantive change.
30 See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

31 **§ 85200. “Incidental presence”**

32 85200. “Incidental presence” means the presence of a regulated metal as an
33 unintended or undesired ingredient of a package or packaging component.

34 **Comment.** Section 85200 continues former Section 25214.12(e) without substantive change.
35 See Sections 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

1 **§ 85205. “Intentional introduction”**

2 85205. (a) “Intentional introduction,” except as provided in subdivision (b),
3 means the act of deliberately utilizing a regulated metal in the formation of a
4 package or packaging component where its continued presence is desired in the final
5 package or packaging component to provide a specific characteristic, appearance,
6 or quality.

7 (b) “Intentional introduction” does not include either of the following:

8 (1) The use of a regulated metal as a processing agent or intermediate to impart
9 certain chemical or physical changes during manufacturing, where the incidental
10 retention of a residue of that metal in the final package or packaging component is
11 not desired or deliberate, if the final package or packaging component is in
12 compliance with subdivision (b) of Section 85310.

13 (2) The use of recycled materials as feedstock for the manufacture of new
14 packaging materials, where some portion of the recycled materials may contain
15 amounts of a regulated metal, if the new package or packaging component is in
16 compliance with subdivision (b) of Section 85310.

17 **Comment.** Section 85205 continues former Section 25214.12(d) without substantive change.

18 See Sections 85220 (“package”), 85225 (“packaging component”), 85215 (“manufacturing”),
19 85235 (“recycled material”), 85240 (“regulated metal”).

20 **§ 85210. “Manufacturer”**

21 85210. “Manufacturer” means any person, firm, association, partnership, or
22 corporation producing a package or packaging component.

23 **Comment.** Section 85210 continues former Section 25214.12(f) without substantive change.

24 See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

25 **§ 85215. “Manufacturing”**

26 85215. “Manufacturing” means the physical or chemical modification of a
27 material to produce packaging or a packaging component.

28 **Comment.** Section 85215 continues former Section 25214.12(g) without substantive change.

29 See Sections 85220 (“package”), 85225 (“packaging component”).

30 **§ 85220. “Package”**

31 85220. (a) “Package,” except as provided in subdivision (c), means any container,
32 produced either domestically or in a foreign country, providing a means of
33 marketing, protecting, or handling a product from its point of manufacture to its sale
34 or transfer to a consumer, including a unity package, an intermediate package, or a
35 shipping container, as defined in the ASTM specification D 996.

36 (b) “Package” also includes, but is not limited to, unsealed receptacles, including
37 carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping
38 films, bags, and tubs.

39 (c) “Package” does not include a reusable bag, as defined in subdivision (d) of
40 Section 42250 of the Public Resources Code.

41 **Comment.** Section 85220 continues former Section 25214.12(h) without substantive change.

1 **Staff Notes. (1)** Existing Section 25214.12(h), which would be continued by proposed Section
2 85220, as well as existing Section 25214.14(d)(2), which would be continued by proposed Section
3 85330(c), and existing Section 25214.15(e), which would be continued by proposed Section 85365,
4 all contain at least one reference to “handling” a product, or a package’s contents.

5 Existing Section 25116, which would be continued by proposed Section 60205, defines the term
6 “handling” to mean “the transporting or transferring from one place to another, or pumping,
7 processing, storing, or packaging of hazardous waste, but does not include the handling of any
8 substance before it becomes a waste.” And existing Section 25110, which would be continued by
9 proposed Section 60075, states that the definition of “handling” in existing Section 25116 “governs
10 the construction” of the entirety of Chapter 20 of the Health and Safety Code, which includes
11 existing Section 25214.12(h).

12 Based on this chapter-wide assignment of this definition, the use of the term “handling” in
13 existing Section 25214.14(d)(2), (e), and (h) raises two questions:

14 1. Is the term “handling” as used in existing Section 25214.14(d)(2), (e), or (h) intended to be
15 defined as provided by existing Section 25116?

16 2. If not, would any statutory resolution of this issue in proposed Section 85220, 85330, or 85365
17 be helpful? For example, a synonym for “handling” could be substituted in the three proposed
18 sections, or each provision could be revised to provide that the term “handling” as used in the
19 section is not intended as a defined term.

20 **The staff welcomes comment on these questions.**

21 **(2)** Existing Section 25214.12(h) excludes from the definition of “package” a “reusable bag, as
22 defined in subdivision (d) of Section 42250 of the Public Resources Code.”

23 However, Section 42250 of the Public Resources Code was repealed in 2012, and its provided
24 definition of “reusable bag” does not appear to have been continued in any other code section. The
25 definition that section provided prior to its repeal was as follows:

26 “Reusable bag” means either of the following:

27 (1) A bag made of cloth or other machine washable fabric that has handles.

28 (2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed
29 and manufactured for multiple reuse.

30 **The staff welcomes comment on whether the definition of “reusable bag” above should be
31 incorporated in the text of proposed Section 85220 or offering another suggestion as to how
32 to address this recodification issue.**

33 **§ 85225. “Packaging component”**

34 85225. (a) “Packaging component” means any individual assembled part of a
35 package that is produced either domestically or in a foreign country, including, but
36 not necessarily limited to, any interior or exterior blocking, bracing, cushioning,
37 weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments,
38 adhesives, stabilizers, or any other additives.

39 (b) Tin-plated steel that meets the ASTM specification A 623, shall be considered
40 as a single package component.

41 (c) Electrogalvanized coated steel and hot dipped coated galvanized steel that
42 meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in
43 the same manner as tin-plated steel.

44 **Comment.** Section 85225 continues former Section 25214.12(i) without substantive change.
45 See Section 85220 (“package”).

1 **Staff Note.** The intended meaning of the third sentence of existing Section 25214.12(i), which
2 would be continued as proposed Section 85225(c), is unclear. The staff has two questions:

3 (1) Is the direction in that sentence that the steel specified in that sentence “shall be treated in the
4 same manner as tin-plated steel” intended to mean that the steel specified is to be considered a
5 single package component?

6 (2) If so, is the reference in that third sentence to “tin-plated steel” intended to refer to *any* tin-
7 plated steel, or only to “tin-plated steel that meets the ASTM specification A 623,” as referenced
8 in the second sentence of existing Section 25214.12(i), which would be continued by proposed
9 Section 85215(b)?

10 **The staff welcomes comment on these questions.**

11 **§ 85230. “Purchaser”**

12 85230. ”Purchaser” means a person who purchases and takes title to a package or
13 a packaging component, from a manufacturer or supplier, for the purpose of
14 packaging a product manufactured, distributed, or sold by the purchaser.

15 **Comment.** Section 85230 continues former Section 25214.12(j) without substantive change.

16 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
17 60295 (“person”), 85245 (“supplier”).

18 **§ 85235. “Recycled material”**

19 85235. (a) ”Recycled material,” except as provided in subdivision (c), means a
20 material that has been separated from solid waste for the purpose of recycling the
21 material as a secondary material feedstock.

22 (b) Recycled material includes paper, plastic, wood, glass, ceramics, metals, and
23 other materials, except as provided in subdivision (c).

24 (c) Recycled material does not include a regulated metal that has been separated
25 from other materials into its elemental or other chemical state for recycling as a
26 secondary material feedstock.

27 **Comment.** Section 85235 continues former Section 25214.12(k) without substantive change.

28 See Sections 60325 (“recycling”), 85240 (“regulated metal”), 60390 (“waste”).

29 **§ 85240. “Regulated metal”**

30 85240. ”Regulated metal” means lead, mercury, cadmium, or hexavalent
31 chromium.

32 **Comment.** Section 85240 continues former Section 25214.12(l) without substantive change.

33 **§ 85245. “Supplier”**

34 85245. (a) “Supplier,” except as provided in subdivision (b), means a person who
35 does or is one or more of the following:

36 (1) Sells, offers for sale, or offers for promotional purposes, a package or
37 packaging component that is used by any other person to package a product.

38 (2) Takes title to a package or packaging component, produced either
39 domestically or in a foreign country, that is purchased for resale or promotional
40 purposes.

1 (3) Acts as an intermediary for the purchase of a package or packaging component
2 for resale from a manufacturer located in another country to a purchaser located in
3 this state, and who may receive a commission or a fee on that sale.

4 (4) Listed as the importer of record on a United States Customs Service form for
5 an imported package or packaging component.

6 (b) “Supplier” does not include a person involved solely in delivering a package
7 or packaging component on behalf of a third party.

8 **Comment.** Section 85245 continues former Section 25214.12(m) without substantive change.
9 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
10 60295 (“person”), 85230 (“purchaser”).

11 **§ 85250. “Toxics in Packaging Clearinghouse”**

12 64323. ”Toxics in Packaging Clearinghouse” means the Toxics in Packaging
13 Clearinghouse (TPCH) of the Council of State Governments.

14 **Comment.** Section 85250 continues former Section 25214.12(n) without substantive change.

15 **Article 3. Department Authority and Responsibilities**

16 **§ 85270. Enforcement of chapter**

17 85270. (a) The department may enforce the requirements of this chapter pursuant
18 to its authority to enforce this division under all applicable provisions of law.

19 (b) The department may also adopt regulations to implement this chapter, as
20 deemed necessary to further the purposes of this chapter.

21 **Comment.** Subdivision (a) of Section 85270 continues former Section 25214.21 without
22 substantive change.

23 Subdivision (b) continues former Section 25214.26 without substantive change.

24 See Section 60160 (“department”).

25 **§ 85275. Entry and inspection**

26 85275. (a) For the purpose of administering and enforcing this chapter, an
27 authorized representative of the department, upon obtaining consent or after
28 obtaining an inspection warrant pursuant to Title 13 (commencing with Section
29 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate
30 credentials and at a reasonable time, do any of the following:

31 (1) Enter a factory, warehouse, or establishment in which a package or packaging
32 component is manufactured, packed, held, or sold.

33 (2) Enter a vehicle that is being used to transport, hold, or sell the package or
34 packaging component.

35 (3) Enter a place where a package or packaging component is suspected of being
36 held or sold in violation of this chapter.

37 (4) Inspect a factory, warehouse, establishment, vehicle, or place described in
38 paragraph (1), (2), or (3) and all pertinent equipment, raw material, finished and

1 unfinished materials, containers, and labeling in the factory, warehouse,
2 establishment, vehicle, or place.

3 (5) Inspect, in the case of a factory, warehouse, or establishment in which a
4 package or packaging component is manufactured, packed, held, or sold, any record,
5 file, paper, process, control, and facility that has a bearing on whether the package,
6 packaging component, or product in a package is being manufactured, packed, held,
7 transported, sold, offered for sale, or offered for promotional purposes in violation
8 of this chapter.

9 (6) Access all records of a carrier in commerce relating to the movement in
10 commerce of a package or packaging component, or the holding of that package or
11 packaging component during or after the movement, and the quantity, shipper, and
12 consignee of the package or packaging component.

13 (b) An authorized representative of the department shall be deemed to have
14 received implied consent to enter a retail establishment for purposes of this section,
15 if the authorized representative enters the location of that retail establishment where
16 the public is generally granted access.

17 **Comment.** Section 85275 continues former Section 25214.23 with the exception of the second
18 sentence of Section 25214.23(a)(3), without substantive change.

19 The second sentence of Section 25214.23(a)(3) is continued by Section 85395.

20 See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

21 § 85280. Securing of samples

22 85280. (a) When taking an action authorized pursuant to Section 85275, an
23 authorized representative of the department may secure a sample of a package,
24 packaging component, or product in a package. If the representative obtains a
25 sample prior to leaving the premises, he or she shall leave a receipt describing the
26 sample obtained.

27 (b) The department shall return, upon request, a sample that is not destroyed
28 during testing when the department no longer has any purpose for retaining the
29 sample.

30 (c) A sample that is secured in compliance with this section and found in
31 compliance with this chapter that is destroyed during testing shall be subject to a
32 claim for reimbursement.

33 **Comment.** Section 85280 continues former Section 25214.24 without substantive change.

34 See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

35 § 85285. Recommendations to Governor and Legislature

36 85285. If the department determines that other substances contained in packaging
37 should be added as regulated metals to the list set forth in Section 85240 in order to
38 further reduce the toxicity of packaging waste, the department may submit
39 recommendations to the Governor and the Legislature for additions to the list, along
40 with a description of the nature of the substitutes used in lieu of the recommended
41 additions to the list.

42 **Comment.** Section 85285 continues former Section 25214.18 without substantive change.

1 See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

2 **§ 85290. Public access to information**

3 85290. Except as provided in Section 85295, the department, pursuant to the
4 California Public Records Act (Division 10 (commencing with Section 7920.000)
5 of Title 1 of the Government Code), shall provide the public with access to all
6 information relating to a package or packaging component that has been submitted
7 to the department by a manufacturer or supplier of a package or packaging
8 component pursuant to this chapter.

9 **Comment.** Section 85290 continues former Section 25214.17(a) without substantive change.
10 See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

11 **§ 85295. Trade secrets**

12 85295. (a) A manufacturer or supplier providing information to the department
13 pursuant to this article shall, at the time of submission, identify all information that
14 the manufacturer or supplier believes is a trade secret as defined in **Section 25173**.

15 (b) The department shall keep confidential any information identified by the
16 manufacturer or supplier as a trade secret in accordance with departmental
17 procedures that have been adopted pursuant to **Section 25173**, if the department
18 determines that the information is a trade secret as defined in **Section 25173**.

19 (c) The department shall make available to the public any information identified
20 by the manufacturer or supplier as a trade secret that the department determines is
21 not a trade secret.

22 **Comment.** Section 85295 restates former Section 25214.17(b) without substantive change.
23 See Section 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225
24 (“packaging component”), 85245 (“supplier”).

25 **Staff Notes. (1)** Proposed Section 85295 would restate existing Section 25214.17 for clarity.
26 The existing section reads as follows:

27 “(a) Except as provided in subdivision (b), the department, pursuant to the California Public
28 Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government
29 Code), shall provide the public with access to all information relating to a package or packaging
30 component that has been submitted to the department by a manufacturer or supplier of a package
31 or packaging component pursuant to this article.

32 (b)(1) The department shall keep confidential any information identified by the manufacturer or
33 supplier, pursuant to paragraph (2), as a trade secret, as defined in Section 25173, in accordance
34 with departmental procedures that have been adopted pursuant to Section 25173, if the department
35 determines that this information meets that definition of a trade secret.

36 (2) A manufacturer or supplier providing information to the department pursuant to this article
37 shall, at the time of submission, identify all information that the manufacturer or supplier believes
38 is a trade secret. The department shall make available to the public any information that is not a
39 trade secret.”

40 **The staff welcomes comment on whether this restatement of existing Section 25214.17**
41 **improves the clarity of the section without substantively changing its meaning.**

42 **(2)** The second sentence of existing Section 25214.17(b)(2) (which would be continued by
43 proposed Section 85295(c)) provides that if a manufacturer or supplier identifies information that

1 it believes to be a trade secret, and the department determines the identified information is *not* a
 2 trade secret, the department “shall make [that information] available to the public.” This second
 3 sentence, read in conjunction with the text of existing Section 25214.17(a) (which would be
 4 continued by proposed Section 85290), suggests that information provided pursuant to existing
 5 Section 25214.17(b)(2) that the department determined was not a trade secret would then need to
 6 be made available to the public without consideration of any other exemptions from disclosure
 7 under the California Public Records Act, such as those listed in Part 6 (commencing with Section
 8 7930.000) of Division 10 of title 1 of the Government Code.

9 **The staff welcomes comment on whether that construction of the two existing subdivisions**
 10 **is correct, and if not, whether and how the text of the existing section should be clarified.**

11 Article 4. Prohibited Offering of Item for Sale or Promotional Purposes

12 **§ 85310. Generally applicable prohibitions**

13 85310. Except as provided in Section 85330, on and after January 1, 2006, a
 14 person may not offer for sale or for promotional purposes in this state any of the
 15 following:

16 (a) A product in a package that includes a regulated metal in the package, or in a
 17 packaging component, if the regulated metal has been intentionally introduced into
 18 the package or packaging component during manufacturing or distribution.

19 (b) A package, packaging component, or product in a package if the sum of the
 20 incidental total concentration levels of all regulated metals present in a single-
 21 component package or in an individual packaging component exceeds 100 parts per
 22 million by weight.

23 **Comment.** Subdivision (a) of Section 85310 continues former Section 25214.13(b) without
 24 substantive change.

25 Subdivision (b) continues former Section 25214.13(c) without substantive change.

26 See Sections 85195 (“distribution”), 85215 (“manufacturing”), 60295 (“person”), 85220
 27 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

28 **Staff Note.** Existing Section 25214.13, which would be continued by proposed Sections 85310
 29 and 85315, prohibit the “offer for sale or for promotional purposes in this state” of a number of
 30 specified items.

31 The phrasing of the quoted text above fails to make clear whether the act that must occur “in this
 32 state” to trigger the prohibition of the section is the *making of the offer* identified in the quoted text,
 33 or the *sale or promotional purpose*. For example, an offer could be made in a state other than
 34 California, to arrange for a prohibited item to be delivered in California where it could be used for
 35 a promotional purpose. Alternatively, the reverse scenario could occur. To which scenarios are the
 36 prohibitions in Section 25214.13 intended to apply?

37 **The staff welcomes comment clarifying this possible ambiguity in existing Section 25214.13.**

38 **§ 85315. Additional manufacturer or supplier prohibitions**

39 85315. Except as provided in Section 85330, on and after January 1, 2006, a
 40 manufacturer or supplier may not offer for sale or for promotional purposes in this
 41 state a package or packaging component that includes a regulated metal, in the

1 package itself, or in a packaging component, if the regulated metal has been
2 intentionally introduced into the package or packaging component during
3 manufacturing or distribution.

4 **Comment.** Section 85315 continues former Section 25214.13(a) without substantive change.
5 See Sections 85195 (“distribution”), 85210 (“manufacturer”), 85215 (“manufacturing”), 85220
6 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

7 Article 5. Exemptions for Specified Packages or Components

8 § 85330. Packages and packaging components

9 85330. A package or a packaging component is exempt from the requirements of
10 Sections 85310 and 85315, and shall be deemed in compliance with this chapter, if
11 the manufacturer or supplier complies with the applicable documentation
12 requirements specified in Article 6 (commencing with Section 85350 Section
13 25214.15 and the package or packaging component meets any of the following
14 conditions:

15 (a) The package or packaging component is marked with a code indicating a date
16 of manufacture prior to January 1, 2006.

17 (b) A regulated metal has been added to the package or packaging component in
18 the manufacturing, forming, printing, or distribution process, to comply with the
19 health or safety requirements of a federal or state law.

20 (c) A regulated metal has been added to the package or packaging component in
21 the manufacturing, forming, printing, or distribution process for a use, other than
22 for purposes of marketing, for which a regulated metal is essential to the protection,
23 safe handling, or function, of the package’s contents, and technical constraints
24 preclude the substitution of other materials.

25 **Comment.** Section 85330 continues former Section 25214.14(a), (b), and (d) without substantive
26 change.

27 See Sections 85195 (“distribution”), 85210 (“manufacturer”), 85215 (“manufacturing”), 85220
28 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

29 **Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term
30 “handling” in proposed Section 85330(c).

31 § 85335. Expired exemptions

32 85335. The following exemptions to the requirements of former Section
33 25214.13, which had been available pursuant to former Section 25214.14, expired
34 on January 1, 2010:

35 (a) A package or packaging component contains no intentionally introduced
36 regulated metals but exceeds the applicable maximum concentration level set forth
37 in subdivision (c) of former Section 25214.13 only because of the addition of a
38 recycled material.

39 (b) A package or packaging component is reused and contains no intentionally
40 introduced regulated metals, but exceeds the applicable maximum concentration

1 level set forth in subdivision (c) of former Section 25214.13, and all of the following
2 apply:

3 (1) The product being conveyed by the package, the package, or packaging
4 component is otherwise regulated under a federal or state health or safety
5 requirement.

6 (2) The transportation of the packaged product is regulated under federal or state
7 transportation requirements.

8 (3) The disposal of the package is otherwise performed according to the
9 requirements of this chapter or Chapter 8 (commencing with Section 114960) of
10 Part 9 of Division 104.

11 (c) A package or packaging component has a controlled distribution and reuse and
12 contains no intentionally introduced regulated metals but exceeds the applicable
13 maximum concentration level set forth in subdivision (c) of Section 25214.13.

14 (d) A packaging or packaging component is a glass or ceramic package or
15 packaging component that has a vitrified label, and that, when tested in accordance
16 with the Waste Extraction Test, described in Appendix II of Chapter 11
17 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California
18 Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent
19 chromium, or 5.0 ppm for lead, does not contain mercury, and is not a glass bottle
20 package with paint or applied ceramic decoration on the bottle and the paint or
21 applied ceramic decoration contains lead or lead compounds in excess of 0.06
22 percent by weight.

23 **Comment.** Section 85335 would restate former Section 25214.14(c), (e), (f), (g) without
24 substantive change.

25 See Sections 60175 (“disposal”), 85195 (“distribution”), 85220 (“package”), 85225 (“packaging
26 component”), 85235 (“recycled material”), 85240 (“regulated metal”).

27 **Staff Note.** The text of existing Section 25214.14 lists several exemptions from the prohibitions
28 of existing Section 25214.13 that expired in 2010. Proposed Section 85335 would preserve the
29 published record of these expired exemptions to allow for a claimed exemption for conduct that
30 occurred prior to 2010.

31 **The staff welcomes comment on whether this preservation is necessary, and if so, whether**
32 **the restatement of these expired exemptions in proposed Section 85335 continues the**
33 **provisions establishing the exemptions without substantive change.**

34 Article 6. Documentation Required for Exemptions

35 § 85350. Biennially updated information

36 85350. A package or packaging component qualifies for an exemption pursuant
37 to Section 85330 or Section 85335 only if the manufacturer or supplier prepares,
38 retains, and biennially updates documentation containing all of the following
39 information for that package or packaging component:

40 (a) A statement that the documentation applies to an exemption from any
41 applicable requirements of Sections 85310 and 85315.

1 (b) The name, position, and contact information for the person who is the
 2 manufacturer’s or supplier’s contact person on all matters concerning the
 3 exemption.

4 (c) An identification of the exemption and a reference to the applicable
 5 subdivision in Section 85330 or Section 85335 setting forth the conditions for the
 6 exemption.

7 (d) A description of the type of package or packaging component to which the
 8 exemption applies.

9 (e) Identification of the type and concentration of the regulated metal or metals
 10 present in the package or packaging component, and a description of the testing
 11 methods used to determine the concentration.

12 (f) An explanation of the reason for the exemption.

13 (g) Supporting documentation that fully and clearly demonstrates that the package
 14 or packaging component is eligible for the exemption.

15 (h) Any other required documentation specified in this article.

16 **Comment.** Section 85350 restates former Section 25214.15(a) without substantive change.

17 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
 18 60295 (“person”), 85240 (“regulated metal”), 85245 (“supplier”).

19 **Staff Notes. (1)** Proposed Section 85350(h) is intended to restate existing Section 25214.15(a)(8)
 20 without substantive change. The existing paragraph reads as follows:

21 “The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is
 22 applicable for the exemption.”

23 **The staff welcomes comment on this restatement of existing Section 25214.5(a)(8).**

24 (2) Several subdivisions of existing Section 25214.15 referenced in subdivision (a)(8) of that
 25 section specify documentation required for exemptions that were previously authorized under
 26 Section 25214.14 but expired in 2010. See existing Section 25214.14(c)(2), (e)(2), (f)(2), (g)(3).
 27 Based on their apparent obsolescence for that reason, subdivisions (d), (f), (g), and (h) of Section
 28 25214.15 would not be continued in this recodification.

29 **The staff welcomes comment on the discontinuation of those subdivisions.**

30 **§ 85355. Additional information required for exemption under subdivision (a) of Section**
 31 **85330**

32 85355. In addition to the requirements specified in Section 85350, if an exemption
 33 is being claimed under subdivision (a) of Section 85330, the manufacturer or
 34 supplier shall prepare, retain, and biennially update documentation containing all of
 35 the following information for the package or packaging component to which the
 36 exemption applies:

37 (a) Date of manufacture.

38 (b) Estimated time needed to exhaust current inventory.

39 (c) Alternative package or packaging component that meets the requirements of
 40 Sections 85310 and 85315.

41 **Comment.** Section 85355 continues former Section 25214.15(b) without substantive change.

1 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
2 85245 (“supplier”).

3 **§ 85360. Additional information required for exemption under subdivision (b) of Section**
4 **85330**

5 85360. In addition to the requirements specified in Section 85350, if an exemption
6 is being claimed under subdivision (b) of Section 85330, the manufacturer or
7 supplier shall prepare, retain, and biennially update documentation that contains all
8 of the following information for each regulated metal intentionally introduced in the
9 package or packaging component to which the exemption applies:

10 (a) Identification of the specific federal or state law requiring the addition of the
11 regulated metal to the package or packaging component.

12 (b) Detailed information that fully and clearly demonstrates that the addition of
13 the regulated metal to the package or packaging component is necessary to comply
14 with the law identified pursuant to subdivision (a).

15 (c) A description of past, current, and planned future efforts to seek or develop
16 alternatives to eliminate the use of the regulated metal in the package or packaging
17 component.

18 (d) A description of all alternative measures that have been considered, and, for
19 each alternative, an explanation as to why the alternative is not satisfactory for
20 purposes of achieving compliance with the law identified pursuant to subdivision
21 (a).

22 **Comment.** Section 85360 continues former Section 25214.15(c) without substantive change.

23 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
24 85240 (“regulated metal”), 85245 (“supplier”).

25 **§ 85365. Additional information required for exemption under subdivision (c) of Section**
26 **85330**

27 85365. In addition to the requirements specified in Section 85350, if an exemption
28 is being claimed under subdivision (c) of Section 85330, the manufacturer or
29 supplier shall prepare, retain, and biennially update documentation containing all of
30 the following information for each regulated metal intentionally introduced into the
31 package or packaging component to which the exemption applies:

32 (a) Detailed information and evidence that fully and clearly demonstrates how the
33 regulated metal contributes to, and is essential to, the protection, safe handling, or
34 functioning of the package’s contents.

35 (b) A description of past, current, and planned future efforts to seek or develop
36 alternatives to minimize or eliminate the use of the regulated metal in the package
37 or packaging component.

38 (c) A description of all alternative measures that have been considered, and, for
39 each alternative, an explanation as to the technical constraints that preclude
40 substitution of the alternative for the use of the regulated metal.

41 (d) Documentation that the regulated metal is not being used for the purposes of
42 marketing.

1 **Comment.** Section 85365 continues former Section 25214.15(e) without substantive change.
2 See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
3 85240 (“regulated metal”), 85245 (“supplier”).

4 **Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term
5 “handling” in proposed Section 85365(a).

6 **§ 85370. Submission of required documentation**

7 85370. A manufacturer or supplier shall submit the documentation required
8 pursuant to this article to the department, as follows:

9 (a) Upon receipt of a written request from the department, the manufacturer or
10 supplier shall, on or before 30 calendar days after the date of receipt, do one of the
11 following:

12 (1) Submit the required documentation to the department.

13 (2) Submit a letter to the department indicating the date by which the
14 documentation shall be submitted, which may be no more than 90 calendar days
15 after the date of receipt of the department’s request.

16 (b) If the department finds that the documentation supplied pursuant to
17 subdivision (a) is incomplete or incorrect, the department shall notify the
18 manufacturer or supplier that the documentation is incomplete or incorrect, and the
19 manufacturer or supplier shall submit complete and correct documentation to the
20 department within 60 calendar days after the date of receipt of the notification.

21 (c) If a manufacturer or supplier fails to comply with subdivision (a) or (b) by any
22 of the specified dates in that subdivision, the manufacturer or supplier shall, with
23 respect to the package or packaging component to which the documentation request
24 applies, comply with one of the following:

25 (1) Immediately cease to offer the package or packaging component for sale or
26 for promotional purposes in this state.

27 (2) Replace the package or packaging component with a package or packaging
28 component that conforms with the regulated metals limitations specified in Sections
29 85310 and 85315, in accordance with a schedule approved in writing by the
30 department.

31 (3) Submit complete and correct documentation for the package or packaging
32 component, in accordance with a schedule approved in writing by the department.

33 **Comment.** Subdivisions (a) and (b) of Section 85370 continues former Section 25214.15(i)
34 without substantive change.

35 Subdivision (c) continues former Section 25214.15(j) without substantive change.

36 See Sections 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225
37 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

38 **§ 85375. Required furnishing of certificate of compliance**

39 85375. (a) On and after January 1, 2006, each manufacturer or supplier shall
40 furnish a certificate of compliance to the purchaser of a package or packaging
41 component, including instances in which the purchaser is also a supplier, stating that

1 the package or packaging component is in compliance with the requirements of this
2 chapter.

3 (b) If the package is exempt from the requirements of Sections 85310 and 85315
4 pursuant to Section 85330, the certificate of compliance shall state the specific basis
5 upon which the exemption is claimed.

6 (c) The certificate of compliance shall be signed by an authorized official of the
7 manufacturer or supplier.

8 (d) A copy of the certificate of compliance shall be kept on file by the
9 manufacturer or supplier of the package or packaging component.

10 (e) A purchaser of a package or packaging component subject to subdivision (a)
11 shall retain the certificate of compliance for as long as the package or packaging
12 component is in use by the purchaser.

13 (f) The manufacturer or supplier shall furnish to the department a copy of the
14 certificate of compliance for each package or packaging component for which an
15 exemption is claimed under Section 85330 at the time when a certificate of
16 compliance for that package or packaging component is first furnished to a
17 purchaser. If no exemption is claimed for a package or packaging component, the
18 manufacturer or supplier shall provide to the department upon request a copy of the
19 certificate of compliance for that package or packaging component.

20 (g) If a manufacturer or supplier of a package or packaging component subject to
21 subdivision (a) reformulates or creates a new package or packaging component, the
22 manufacturer or supplier shall provide the purchaser, and, if the package or
23 packaging component is exempt, the department, with an amended or new
24 certificate of compliance for the reformulated or new package or packaging
25 component.

26 **Comment.** Section 85375 continues former Section 25214.16 without substantive change.

27 See Sections 85190 (“authorized official”), 60160 (“department”), 85210 (“manufacturer”),
28 85220 (“package”), 85225 (“packaging component”), 85230 (“purchaser”), 85245 (“supplier”).

29 **Staff Note. The staff welcomes comment on whether the introductory clause of existing**
30 **Section 25214.16, which reads “On and after January 1, 2006,” may be safely deleted from**
31 **the recodification of the section.**

32 Article 7. Exemptions for Specified Persons

33 § 85390. Unknowing violation of chapter

34 85390. (a) Except as provided in subdivision (b), a person who offers for retail
35 sale or for promotional purposes a product in a package or in a packaging component
36 that includes a regulated metal shall not be subject to any administrative or civil
37 penalty for a violation of this chapter, if the person proves, by a preponderance of
38 evidence, all of the following:

39 (1) The person received a certificate of compliance for the package or packaging
40 component from the manufacturer or supplier.

1 (2) The certificate of compliance received pursuant to paragraph (1) stated that
2 the package or packaging component is in compliance with the requirements of this
3 chapter.

4 (3) The person relied on the certificate of compliance and did not know or had no
5 reason to know that the package or packaging component was in violation of this
6 chapter.

7 (4) Upon receiving a notice of violation from the department, the person took
8 corrective action by immediately removing the package or packaging component
9 from commerce.

10 (b) The affirmative defense specified in subdivision (a) does not apply to, and
11 may not be raised by, a person who has been found to be in violation of this chapter
12 on at least two prior occasions in the preceding three years from the filing date of
13 the current action.

14 **Comment.** Section 85390 continues former Section 25214.22 without substantive change.

15 See Sections 60160 (“department”), 85220 (“package”), 85225 (“packaging component”), 60295
16 (“person”), 85210 (“manufacturer”), 85240 (“regulated metal”), 85245 (“supplier”).

17 § 85395. Carrier exemption

18 85395. Except as provided in paragraph (6) of subdivision (a) of Section 85275,
19 a carrier shall not be subject to any provision of this chapter by reason of its receipt,
20 carriage, holding, or delivery of a product in a package or packaging component, in
21 the usual course of business as a carrier.

22 **Comment.** Section 85395 continues the second sentence of former Section 25214.23(a)(3)
23 without substantive change.

24 See Sections 85220 (“package”), 85225 (“packaging component”).

25 Article 8. Criminal Violations

26 § 85410. Offering package or component in violation of chapter

27 85410. A manufacturer or supplier of a package or packaging component who
28 knowingly and intentionally offers for sale or for promotional purposes a package
29 or packaging component in violation of this chapter is guilty of a misdemeanor, and
30 punishable by a fine of not less than five thousand dollars (\$5,000) nor more than
31 one hundred thousand dollars (\$100,000), imprisonment in a county jail for not
32 more than one year, or by both fine and imprisonment.

33 **Comment.** Section 85410 continues former Section 25214.22.1 without substantive change.

34 See Section 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),
35 85245 (“supplier”).

36 CHAPTER 4. PERCHLORATE

Article 1. Management

§ 85450. Definitions

85450. For purposes of this article, the following definitions shall apply:

(a) Notwithstanding **Section 25117.2**, “management” means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) “Perchlorate” means all perchlorate-containing compounds.

(c) “Perchlorate material” means perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

Comment. Section 85450 continues former Section 25210.5 without substantive change.

See Sections 83175 (“disposal”), 83300 (“processing”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

§ 85455. Other persons authorized to enforce specific standards and regulations

85455. (a) On or before December 31, 2005, the department shall adopt regulations specifying the best management practices for a person managing perchlorate materials. ~~These~~

(b) Best management practices may include, but are not limited to, all of the following:

(1) Procedures for documenting the amount of perchlorate materials managed by the facility.

(2) Management practices necessary to prevent releases of perchlorate materials, including, but not limited to, containment standards, usage, processing and transferring practices, and spill response procedures.

(c) Before adopting regulations pursuant to subdivision (a), the department shall consult with the State Air Resources Board, the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Office of Emergency Services, the State Fire Marshal, and the California certified unified program agencies forum.

(d) Before adopting regulations pursuant to subdivision (a), the department shall also review existing federal, state, and local laws governing the management of perchlorate materials to determine the degree to which uniform and adequate requirements already exist, so as to avoid any unnecessary duplication of, or interference with the application of, those existing requirements.

(e) In adopting regulations pursuant to subdivision (a), the department shall ensure that those regulations are at least as stringent as, and to the extent practical consistent with, the existing requirements of Chapter 6.95 (commencing with Section 25500) and the California Fire Code governing the management of perchlorate materials.

(f) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and

1 for the purposes of that chapter, including Section 11349.6 of the Government Code,
2 the adoption of these regulations is an emergency and shall be considered by the
3 Office of Administrative Law as necessary for the immediate preservation of the
4 public peace, health and safety, and general welfare.

5 (g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code, including subdivision (e) of Section
7 11346.1 of the Government Code, any emergency regulations adopted pursuant to
8 this section shall be filed with, but not be repealed by, the Office of Administrative
9 Law, and shall remain in effect until revised by the department.

10 (h) The department may implement an outreach effort to educate persons who
11 manage perchlorate materials concerning the regulations promulgated pursuant to
12 subdivision (a).

13 **Comment.** Section 85455 continues former Section 25210.6 without substantive change.
14 See Sections 83160 (“department”), 85450 (“management,” “perchlorate material”).

15 § 85460. Date of required compliance with regulations

16 85460. On and after the effective date of the regulations adopted by the
17 department pursuant to **Section 85455**, a person may not manage perchlorate
18 materials unless the management complies with the best management practices
19 specified in the regulations adopted by the department.

20 **Comment.** Section 85460 continues former Section 25210.7 without substantive change.
21 See Sections 83160 (“department”), 83295 (“person”), 85450 (“management,” “perchlorate
22 material”).

23 Article 2. Contamination

24 § 85475. Definitions

25 85475. For the purposes of this article, the following definitions shall apply:

26 (a) “Management” means disposal, storage, packaging, processing, pumping,
27 recovery, recycling, transportation, transfer, treatment, use, and reuse.

28 (b) “Perchlorate” means all perchlorate-containing compounds.

29 (c) “Perchlorate facility” means all contiguous land, and the structures,
30 appurtenances and improvements on the land, consisting of one or more units, or
31 combination of units, that is or has been used for the management of perchlorate
32 material.

33 (d) “Perchlorate material” means perchlorate and all perchlorate-containing
34 substances, including, but not limited to, waste perchlorate and perchlorate-
35 containing waste.

36 (e) “Public drinking water well” has the same meaning as defined in paragraph
37 (1) of subdivision (a) of Section 25299.97.

38 **Comment.** Section 85475 restates former Section 25249.1 without substantive change.
39 See Sections 83175 (“disposal”), 83300 (“processing”), 83325 (“recycling”), 83355 (“storage”),
40 83370 (“treatment”), 83395 (“waste”).

1 **Staff Note.** Subdivision (c) of proposed Section 85475 would restate existing Section
2 25249.1(c), which currently reads as follows:

3 25249.1(c) “Perchlorate facility” means all contiguous land, and the structures, appurtenances
4 and improvements on the land, that has been used for the management of perchlorate material. A
5 perchlorate facility may consist of one or more units, or combination of units, that is or has been
6 used for the management of perchlorate material.

7 **Absent comment, this proposed restatement of this provision will be presumed correct.**

8 **§ 85480. Submission of contamination information to EPA**

9 85480. (a) On or before July 1, 2004, the owner or operator of a perchlorate
10 facility, located within a 5-mile radius of a public drinking water well that has been
11 found by any state or local agency to be contaminated with perchlorate, shall submit
12 to the Environmental Protection Agency a summary of any subsurface and any
13 groundwater monitoring, investigation, or remediation work that has been
14 performed at the facility.

15 (b) The owner or operator shall submit the information electronically, if it is
16 available in electronic format.

17 **Comment.** Section 85480 continues former Section 25249.2 without substantive change.
18 See Section 85475 (“perchlorate,” “perchlorate facility”).

19 **Staff Note.** Public comment is requested on whether existing Section 25249.2, which would be
20 continued by proposed Section 85480, should be either revised or discontinued, based the specified
21 deadline for required action.

22
23 **CHAPTER 5. RULES FOR SPECIFIC PRODUCTS**

24 **Article 1. Chemical Toilets, Recreational Vehicles, Vessel Waste**
25 **Facilities, and Prohibited Chemicals**

26 **§ 85500. Prohibited acts relating to chemical toilets**

27 85500. (a) It shall be unlawful, on or after January 1, 1979, to use a
28 nonbiodegradable toxic chemical in a chemical toilet, recreational vehicle, or waste
29 facility of a vessel, as the term vessel is defined in the Harbors and Navigation Code,
30 ~~and it~~.

31 (b) It shall be unlawful, on or after January 1, 1979, to sell a nonbiodegradable
32 toxic chemical in a container indicating that the chemical could be used in a
33 chemical toilet, a waste facility of a recreational vehicle, or a waste facility of a
34 vessel, as the term vessel is defined in the Harbors and Navigation Code.

35 (c) The department shall develop and adopt regulations to define
36 nonbiodegradable toxic chemicals, and limitations on the sale thereof, by June 1,
37 1978.

38 **Comment.** Section 85500 continues former Section 25210 without substantive change.
39 See Section 83160 (“department”).

1 **Staff Notes. (1)** Public comment is requested on whether the introductory text of the first two
2 sentences of existing Section 25210 (sentences that would be continued by proposed Section 85500
3 (a) and (b)) should be revised to read as follows: “It ~~shall be~~ is unlawful, ~~on or after January 1,~~
4 ~~1979,~~ to”.

5 **(2)** Public comment is requested on whether discontinuing the last sentence of existing Health
6 and Safety Code Section 25210 — set forth above as subdivision (c) of proposed Section 85500 —
7 would be problematic.

8 **§ 85505. Prohibited acts relating to sewage disposal systems**

9 85505. (a) For purposes of this section, the following definitions shall apply:

10 (1) “Halocarbon chemicals” means chemical compounds which contain carbon,
11 and one or more halogens, and which may include hydrogen, including, but not
12 limited to, trichloroethane, tetrachloroethylene, methylene chloride, halogenated
13 benzenes, and carbon tetrachloride.

14 (2) “Aromatic hydrocarbon chemicals” means chemical compounds containing
15 carbon and hydrogen and at least one six-carbon ring containing double bonds,
16 including, but not limited to, benzene, toluene, and naphthalene.

17 (3) “Sewage disposal system” means a septic tank, cesspool, sewage seepage pit,
18 leachline, or other structure into which sewage is drained for purposes of disposal
19 and which is not connected to a municipal treatment works.

20 (b) On and after July 1, 1988, no person shall use any product containing
21 halocarbon chemicals or aromatic hydrocarbon chemicals for the purposes of
22 cleaning or unclogging a sewage disposal system.

23 (c) On and after July 1, 1988, no person shall sell any product containing
24 halocarbon chemicals or aromatic hydrocarbon chemicals in a container indicating
25 that the product may be used for the purposes of cleaning or unclogging a sewage
26 disposal system.

27 (d) The department may adopt regulations regarding the sale of any product
28 described in subdivision (c) for the purposes of enforcing that subdivision.

29 **Comment.** Section 85505 restates former Section 25210.1 without substantive change.
30 See Sections 83160 (“department”), 83295 (“person”).

31 **Staff Note (1).** Public comment is requested on whether subdivisions (b) and (c) of existing
32 Section 25210.1, which would be continued by proposed Section 85505(b) and (c), should be
33 revised to delete the references to the date when the prohibitions in the provisions took effect.

34 **(2) Public comment on whether the restatement of the second sentence of existing Section**
35 **25210.1(c) and relocation to a new subdivision (d) of proposed Section 85505 would cause any**
36 **substantive change to the provision is welcome and invited.**

37 **§ 85510. Prohibited acts relating to waste facilities of recreational vehicles or campgrounds**

38 85510. (a) It is unlawful to sell or distribute in commerce a product that contains
39 bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde,
40 para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-
41 trichloroethane, trichloroethylene, or perchloroethylene in a container ~~that indicates~~

1 indicating that the product is suitable for use in a holding tank or other portion of a
2 waste facility of a recreational vehicle.

3 (b) It is unlawful to use a product that contains bronopol, dowicil, formalin,
4 formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene,
5 toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or
6 perchloroethylene in a holding tank or other portion of a waste facility of a
7 recreational vehicle or of a campground chemical toilet that discharges to a septic
8 system, onsite wastewater treatment system, or subsurface disposal system.

9 (c) To the extent that funding is made available, the State Water Resources
10 Control Board shall investigate methods to detect and quantify concentrations of
11 chemical toilet deodorants, including bronopol, dowicil, formalin, formaldehyde,
12 glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene,
13 ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene, in a
14 septic system, onsite wastewater treatment system, or subsurface disposal system
15 that may inhibit biological treatment processes or result in degradation of
16 groundwater quality.

17 (d)(1) An owner or operator of a recreational vehicle park or campground that
18 utilizes a septic system, onsite wastewater treatment system, or subsurface disposal
19 system to dispose of recreational vehicle wastewater shall post in a conspicuous
20 location a notice stating the following:

21 “The State of California prohibits the use of products in RV holding tanks,
22 including deodorizers, that contain bronopol, dowicil, formalin, formaldehyde,
23 glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene,
24 ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene.
25 These chemicals can inhibit biological activity in onsite wastewater treatment
26 systems and threaten groundwater and drinking water wells, and are strictly
27 forbidden.

28 Please use bacteria- or enzyme-based products.”

29 (2) The State Water Resources Control Board or a regional water quality control
30 board shall require an owner or operator described in paragraph (1) to certify
31 compliance with paragraph (1) as part of any waste discharge requirement, or as a
32 condition of a waiver of a waste discharge requirement, issued pursuant to Division
33 7 (commencing with Section 13000) of the Water Code.

34 (e) Enforcement of subdivisions (a), (b), and (d) is contingent upon an
35 appropriation by the Legislature for purposes of enforcing those requirements.

36 (f) This section shall become operative on January 1, 2022.

37 **Comment.** Section 85510 continues former Section 25210.2 without substantive change.

Article 2. Lighting

§ 85525. “General purpose lights”

85525. (a) For purposes of this article, “general purpose lights” means lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use.

(b) General purpose lights do not include any of the following specialty lighting:

(1) Appliance.

(2) Black light.

(3) Bug.

(4) Colored.

(5) Infrared.

(6) Left-hand thread, ~~marine, marine~~ .

(7) Marine.

(8) Marine signal service, ~~mine~~ .

(9) Mine service, ~~plant~~ .

(10) Plant light, ~~reflector, rough~~ .

(11) Reflector.

(12) Rough service, ~~shatter~~ .

(13) Shatter resistant, ~~sign~~ .

(14) Sign service, ~~silver~~ .

(15) Silver bowl, ~~showcase, three-way, traffic~~ .

(16) Showcase.

(17) Three-way.

(18) Traffic signal, ~~and vibration~~ .

(19) Vibration service or vibration resistant.

(c) General purpose lights do not include lights needed to provide special-needs lighting for individuals with exceptional needs.

Comment. Section 85525 continues former Section 25210.10 without substantive change.

§ 85530. Required compliances for general purpose lights

85530. (a) Except as provided in subdivisions (e), (f), and (g), on and after January 1, 2010, a person shall not manufacture general purpose lights for sale in this state that contain levels of hazardous substances that would result in the prohibition of those general purpose lights being sold or offered for sale in the European Union pursuant to the RoHS Directive.

(b) Except as provided in subdivisions (e), (f), and (g), on and after January 1, 2010, a person shall not sell or offer for sale in this state a general purpose light under any of the following circumstances:

(1) The general purpose light being sold or offered for sale was manufactured on and after January 1, 2010, and contains levels of hazardous substances that would result in the prohibition of that general purpose light being sold or offered for sale in the European Union pursuant to the RoHS Directive.

1 (2) The manufacturer of the general purpose light sold or being offered for sale
2 fails to provide the documentation to the department required by subdivision (h).

3 (3) The manufacturer of the general purpose light being sold or offered for sale
4 does not provide the certification required in subdivision (i).

5 (c) For the purposes of this section, “RoHS Directive” means Directive
6 2002/95/EC, adopted by the European Parliament and the Council of the European
7 Union on January 27, 2003, on the restriction of certain hazardous substances in
8 electrical and electronic equipment, as amended thereafter by the Commission of
9 European Communities (13.2.2003 Official Journal of the European Union).

10 (d) The department shall determine the products covered by the RoHS Directive
11 by reference to authoritative guidance published by the United Kingdom
12 implementing the RoHS Directive in that country.

13 (e) (1) Except as provided in paragraph (2), subdivisions (a), (b), (h), and (i) do
14 not apply to high output and very high output linear fluorescent lamps greater than
15 32 millimeters in diameter and preheat linear fluorescent lamps.

16 (2) On or after January 1, 2014, the department shall determine, in consultation
17 with companies that manufacture lamps specified in paragraph (1) in the United
18 States, if those lamps should be subject to the requirements of subdivisions (a), (b),
19 (h), and (i), taking into consideration changes in lamp design or manufacturing
20 technology that will allow for the removal or reduction of mercury.

21 (f) On and after January 1, 2012, for high intensity discharge lamps and compact
22 fluorescent lamps greater than nine inches in length, subdivisions (a), (b), (h), and
23 (i) shall be applicable.

24 (g) On and after January 1, 2014, for state-regulated general service incandescent
25 lamps and enhanced spectrum lamps as defined in subdivision (k) of Section 1602
26 of Title 20 of the California Code of Regulations, subdivisions (a), (b), (h), and (i)
27 shall be applicable.

28 (h) A manufacturer of general purpose lights sold or being offered for sale in
29 California shall prepare and, at the request of the department, submit within 28 days
30 of the date of the request, technical documentation or other information showing
31 that the manufacturer’s general purpose lights sold or offered for sale in this state
32 comply with the requirements of the RoHS Directive.

33 (i) A manufacturer of general purpose lights sold or being offered for sale in
34 California shall comply with one of the following requirements:

35 (1) Provide, upon request, a certification to a person who sells or offers for sale
36 that manufacturer’s general purpose lights that shall attest that the general purpose
37 lights do not contain levels of hazardous substances that would result in the
38 prohibition of those general purpose lights being sold or offered for sale in
39 California.

40 (2) Display the certification required by this subdivision prominently on the
41 shipping container or on the packaging of general purpose lights.

42 (j) The department may adopt regulations to implement and administer this
43 article.

1 **Comment.** Section 85530 restates former Section 25210.9 without substantive change.
2 See Sections 83160 (“department”), 83295 (“person”), 85525 (“general purpose lights”).

3 **Staff Notes. (1)** Subdivision (i) of proposed Section 85530 would restate existing Section
4 25210.9(i), which currently reads as follows:

5 25210.9(i) A manufacturer of general purpose lights sold or being offered for sale in California
6 shall provide, upon request, a certification to a person who sells or offers for sale that
7 manufacturer’s general purpose lights. The certification shall attest that the general purpose lights
8 do not contain levels of hazardous substances that would result in the prohibition of those general
9 purpose lights being sold or offered for sale in California. Alternatively, the manufacturer may
10 display the certification required by this subdivision prominently on the shipping container or on
11 the packaging of general purpose lights.

12 **Absent comment, this proposed restatement of this provision will be presumed correct.**

13 **(2)** Public comment is requested on whether subdivisions (a) and (b) of existing Section 25210.9,
14 which would be continued by proposed Section 85530 (a) and (b), should be revised to delete the
15 references to the date when the prohibitions in the provisions took effect.

16 **§ 85535. Inapplicability of specified criminal penalties**

17 85535. Notwithstanding **Article 8 (commencing with Section 25180)**, a person
18 who violates this article shall not be subject to any criminal penalties imposed
19 pursuant to **Article 8 (commencing with Section 25180)**.

20 **Comment.** Section 85535 continues former Section 25210.12 without substantive change.
21 See Section 83295 (“person”).

22 Article 3. Discarded Appliances

23 **§ 85550. Definitions**

24 85550. For purposes of this article, the following terms have the following
25 meaning:

26 (a) “Certified appliance recycler” means a person or entity engaged in the
27 business of removing and properly managing materials that require special handling
28 from discarded major appliances, ~~and~~ who is certified pursuant to **Section 25211.4**
29 ~~and does not include~~ is not a person described in **subdivision (b) of Section**
30 **25211.2**.

31 (b) “CUPA” means a certified unified program agency, as defined in **subdivision**
32 **(b) of Section 25123.7**.

33 (c) “Major appliance” has the same meaning as defined in Section 42166 of the
34 Public Resources Code.

35 (d) “Materials that require special handling” has the same meaning as defined in
36 Section 42167 of the Public Resources Code.

37 (e) “Scrap recycling facility” means a facility where machinery and equipment
38 are used for processing and manufacturing scrap metal into prepared grades and
39 whose principal product is scrap iron or nonferrous metallic scrap for sale for

1 remelting purposes. ~~A scrap recycling facility includes~~ , including, but is not limited
2 to, a feeder yard, a metal shredding facility, a metal crusher, and a metal baler.

3 **Comment.** Section 85550 continues former Section 25211 without substantive change.
4 See Sections 83110 (“CUPA”), 83295 (“person”), 83300 (“processing”).

5 **§ 85555. Prohibited removal of materials**

6 85555. (a) Except as provided in subdivision (b), ~~a person~~, no person other than a
7 certified appliance recycler, shall remove materials that require special handling
8 from a major appliance.

9 (b) An appliance service technician certified pursuant to Section 82.161 of Title
10 40 of the Code of Federal Regulations may remove refrigerant from major
11 appliances.

12 **Comment.** Section 85555 continues former Section 25211.1 without substantive change.
13 See Sections 83295 (“person”), 85550 (“certified appliance recycler,” “major appliance,”
14 “materials that require special handling”).

15 **§ 85560. Transfer of major appliances to scrap recycling facility**

16 85560. (a) Except as provided in subdivision (b), a person who transports,
17 delivers, or sells discarded major appliances to a scrap recycling facility shall
18 provide evidence that they are a certified appliance recycler, and at the time of the
19 transaction shall provide the facility with all of the following, on a form prepared
20 by the department:

21 (1) Certification that all materials that require special handling have been removed
22 from the appliances pursuant to **subdivision (a) of Section 25212**.

23 (2) The appliance recycler’s appliance recycler certificate number.

24 (3) The appliance recycler’s hazardous waste generator identification number.

25 (4) If the appliances have not been crushed, baled, or shredded by the appliance
26 recycler, the number and types of appliances being transported, delivered, or sold
27 by the appliance recycler.

28 (5) The facilities to which any materials requiring special handling that were
29 removed from the appliances were sent or are to be sent.

30 (b) A person who is not a certified appliance recycler may only transport, deliver,
31 or sell discarded major appliances to a scrap recycling facility that is a certified
32 appliance recycler, and all the conditions specified in either paragraph (1) or (2) are
33 met:

34 (1) The transported, delivered, or sold appliances have not been crushed, baled,
35 shredded, sawed ~~or~~ apart, sheared apart, or otherwise processed in ~~such~~ a manner
36 that could result in the release, or prevent the removal, of materials that require
37 special handling.

38 (2) The transported, delivered, or sold appliances have been crushed, baled,
39 shredded, sawed apart, sheared apart, or otherwise processed in a manner that could
40 result in the release, or prevent the removal, of materials that require special

1 handling, and the person transporting, delivering, or selling the appliances complies
2 with all the requirements specified in either subparagraph (A) or (B):

3 (A) At the time of the transaction, the person transporting, delivering, or selling
4 the appliances provides the scrap recycling facility with a written certification that
5 includes all of the following:

6 (i) Identification of all materials requiring special handling that were removed
7 from the appliances.

8 (ii) Certification that all materials requiring special handling that were removed
9 from the appliances were removed by a person authorized to do so pursuant to
10 **Section 25211.1.**

11 (iii) The certificate number of the appliance recycler or appliance service
12 technician that removed the materials requiring special handling.

13 (iv) The hazardous waste generator identification number of the appliance
14 recycler or appliance service technician that removed the materials requiring special
15 handling.

16 (v) The number and types of appliances being transported, delivered, or sold.

17 (vi) The facilities to which all materials requiring special handling that were
18 removed from the transported, delivered, or sold appliances were sent or are to be
19 sent.

20 (B) The person transporting, delivering, or selling the appliances provides the
21 scrap recycling facility with all of the following:

22 (i) A form of government issued identification identifying the person transporting,
23 delivering, or selling the appliances.

24 (ii) A declaration under penalty of perjury specifying the name, address, and
25 telephone number of the person transporting, delivering, or selling the appliances.

26 (iii) Written certification under penalty of perjury that the person transporting,
27 delivering, or selling the appliances obtained each appliance in its current condition,
28 and did not process the appliance, arrange to have it processed, or knowingly accept
29 the appliance from any other person who processed it or arranged to have it
30 processed.

31 (iv) The name and address of the person from whom each transported, delivered,
32 or sold appliance was obtained, or a statement in the written certification provided
33 pursuant to subparagraph (iii) explaining why some or all of that information is
34 unavailable.

35 (c) Appliances delivered to a scrap recycling facility by a local government
36 representative that were generated as part of the local government's waste
37 management activities are exempt from subdivision (b).

38 (d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B)
39 of paragraph (2) of subdivision (b) shall provide a monthly report to the department
40 and the local CUPA that includes both of the following:

41 (1) For each appliance received by the scrap recycling facility, the name and
42 address of the person who transported, delivered, or sold the appliance to the scrap
43 recycling facility.

1 (2) The total number of appliances received by the scrap recycling facility
2 pursuant to subparagraph (B) of paragraph (2) of subdivision (b).

3 **Comment.** Section 85560 restates former Section 25211.2 without substantive change.

4 See Sections 83110 (“CUPA”), 83160 (“department”), 83295 (“person”), 85550 (“certified
5 appliance recycler,” “major appliance,” “materials that require special handling,” “scrap recycling
6 facility”).

7 **Staff Notes. (1)** Proposed Section 85560 would restate existing Section 25211.2, which currently
8 reads as follows:

9 25211.2. (a) Except as provided in subdivision (b), a person who transports, delivers, or sells
10 discarded major appliances to a scrap recycling facility shall provide evidence that he or she is a
11 certified appliance recycler and shall certify, on a form prepared by the department and provided
12 to the facility at the time of the transaction, that all materials that require special handling have
13 been removed from the appliances pursuant to subdivision (a) of Section 25212. Information on
14 the form shall include, but not be limited to, the appliance recycler certificate number, the appliance
15 recycler’s hazardous waste generator identification number, the number and types of appliances
16 included in the shipment, and the facilities to which the materials that require special handling and
17 that were removed from the appliances were sent or are to be sent. If the appliances have been
18 crushed, baled, or shredded by the certified appliance recycler, the requirement to include the
19 number and types of appliances included in the shipment on the form shall not apply.

20 (b) A person who is not a certified appliance recycler may transport, deliver, or sell discarded
21 major appliances to a scrap recycling facility only if the scrap recycling facility is a certified
22 appliance recycler and only if either of the following conditions specified is met:

23 (1) The appliances have not been crushed, baled, shredded, sawed or sheared apart, or otherwise
24 processed in such a manner that could result in the release, or prevent the removal, of materials that
25 require special handling.

26 (2) The appliances have been crushed, baled, shredded, or sawed or sheared apart, or otherwise
27 processed in such a manner that could result in the release, or prevent the removal, of materials that
28 require special handling, and that person does one of the following:

29 (A) Provides the scrap recycling facility with a written certification, at the time of the transaction,
30 that identifies any materials that require special handling that have been removed from the
31 appliance and certifies that all of these materials were removed by a person authorized under
32 Section 25211.1. The certification shall include the appliance recycler or appliance service
33 technician certificate number, the appliance recycler or appliance service technician’s hazardous
34 waste generator identification number, the number and types of appliances included in the
35 shipment, and the facilities to which the materials that require special handling that were removed
36 from the appliances were sent or are to be sent.

37 (B) Presents a form of government issued identification and, under penalty of perjury, provides
38 the scrap recycling facility his or her name, address, telephone number, and written certification
39 that he or she obtained the appliance in its current condition and did not process the appliance or
40 arrange to have it processed or knowingly accept the appliance from any other person who
41 processed it or arranged to have it processed. That person shall also provide the name and address
42 of the person from whom the appliance was obtained, or include in the written certification the
43 reason that the information is unavailable.

44 (c) Appliances delivered to a scrap recycling facility by a local government representative that
45 were generated as part of the local government’s waste management activities are exempt from
46 subdivision (b).

1 (d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B) of paragraph
2 (2) of subdivision (b) shall provide a monthly report to the department and the local CUPA that
3 includes both of the following:

4 (1) For each appliance received by the scrap facility, the name and address of the person who
5 transported, delivered, or sold the appliance to the scrap recycling facility.

6 (2) The total number of appliances received pursuant to the conditions provided in subparagraph
7 (B) of paragraph (2) of subdivision (b).

8 **The staff welcomes comment on whether this restatement of existing Section 25211.2(b)(2)**
9 **improves its clarity without substantively changing its meaning.**

10 (2) The staff seeks clarification of the intended meaning and/or reference of the word “generated”
11 as used in Section 25211.2(c), which would be continued by proposed Section 85560(c).

12 § 85565. Retention of records demonstrating compliance

13 85565. (a) A certified appliance recycler, and any person who is not a certified
14 appliapresentingce recycler who is subject to **subdivision (b) of Section 25211.2**,
15 shall retain onsite records demonstrating compliance with applicable requirements
16 of this article and Section 42175 of the Public Resources Code.

17 (b) The records shall be retained for three years and shall be made available for
18 inspection, upon the request of a representative of the department or a CUPA.

19 (c) The records shall be retained, after that three-year period, during the course of
20 an unresolved enforcement action, or as requested by the department or CUPA.

21 (d) The records shall include, but not be limited to, all of the following
22 information:

23 (a) (1) The amount, by volume or weight or both, of each material that required
24 special handling.

25 (b) (2) The method used by the appliance recycler to recycle, dispose of, or
26 otherwise manage each material that required special handling, ~~including the~~ .

27 (3) The name and address of the facility to which each material was sent.

28 (e) (4) The number and types of appliances from which materials that require
29 special handling are removed each year.

30 (d) (5) The reports required pursuant to **subdivision (c) of Section 25211.2**.

31 **Comment.** Section 85565 continues former Section 25211.3 without substantive change.

32 See Sections 83110 (“CUPA”), 83160 (“department”), 85550 (“certified appliance recycler,”
33 “materials that require special handling”).

34 § 85570. Obtaining required certification

35 85570. (a) On and after January 1, 2008, a person wishing to operate as a certified
36 appliance recycler, ~~except other than a person having with~~ a certification issued
37 before January 1, 2008, ~~until that certification expires through the expiration of that~~
38 certification, shall submit an initial or a renewal application to operate as a certified
39 appliance recycler to the department, and obtain or renew certification from the
40 department, pursuant to this section.

1 **(b)** The department shall make available on its Internet Web site an application
2 for certification as a certified appliance recycler that requires all of the following
3 information:

4 (1) The business name under which the appliance recycler operates, the telephone
5 number, ~~the~~ physical address, and mailing address of the business, and if different,
6 ~~and~~ the business owner's name, address, and telephone number.

7 (2) A hazardous waste generator identification number issued by the department
8 pursuant to **this chapter**.

9 (3) A statement indicating that the applicant has either filed an application for a
10 stormwater permit or is not required to obtain a stormwater permit.

11 (4) A statement indicating that the applicant has either filed a hazardous materials
12 business plan or is not required to file the plan.

13 (5) The tax identification number assigned by the Franchise Tax Board.

14 (6) A copy of a business license and any conditional use permits issued by the
15 appropriate city or county.

16 (7) A description of the ability of the applicant to properly remove and manage
17 all materials that require special handling, including, but not limited to, a technical
18 description of how each material requiring special handling will be removed and a
19 description of how each material requiring special handling will be managed by the
20 applicant consistent with applicable laws.

21 (8) Any other information that the department may determine to be necessary to
22 carry out this article.

23 ~~(b)~~ **(c)** A person wishing to operate as a certified appliance recycler shall submit
24 to the department, under penalty of perjury, the information required pursuant to
25 subdivision (a).

26 **(d)** The department shall review the application for completeness and, upon
27 determining that the application is complete and meets the requirements of this
28 section, shall issue a numbered certificate to the applicant.

29 **(e)** The department shall notify an applicant whose application fails to meet the
30 requirements for certification of the reason why the department denied the
31 certification.

32 **(f)** The department may revoke or suspend a certification issued pursuant to this
33 section, in accordance with the procedures specified in **Sections 25186.1 and**
34 **25186.2**, for any of the grounds specified in **Section 25186**.

35 ~~(e)~~ **(g)** The certificate issued by the department shall include the issuance date and
36 the expiration date, which shall be three years after the issuance date.

37 **(h)** A person whose certification has expired, and who has not applied for and
38 obtained a new current certification, is no longer a certified appliance recycler and
39 may no longer operate as a certified appliance recycler.

40 ~~(d)~~ **(i)** Upon issuance of a certificate, the department shall transmit the application
41 and certification of the certified appliance recycler to the certified uniform program
42 agency in whose jurisdiction the person is located, which shall, as soon as is
43 practicable, inspect the certified appliance recycling facility to determine whether

1 the recycler is capable of properly removing and managing materials that require
2 special handling from major appliances.

3 (j) In making the determination required by subdivision (i), the certified uniform
4 program agency shall consider various factors, including, but not limited to, the
5 working condition of equipment used to remove the materials, the technical ability
6 of employees of the business to operate the equipment proficiently, and the facility’s
7 compliance with existing applicable laws.

8 **Comment.** Section 85570 continues former Section 25211.4 without substantive change.

9 See Sections 83110 (“certified uniform program agency”), 83160 (“department”), 83295
10 (“person”), 85550 (“certified appliance recycler”).

11 **Staff Note.** The second sentence of existing Section 25211.4, which is proposed to be continued
12 by proposed Section 85570(b) specifies information that must be submitted on an application for a
13 recycler certification pursuant to this section, including the identification of a “telephone number,
14 mailing address, and physical address.” However, the section does not make clear whether that
15 specified information is intended to correspond to the applicant or to the business under which the
16 recycler operates.

17 **Public comment is requested on this issue.**

18 **§ 85575. Treatment of materials requiring special handling**

19 85575. (a) Materials ~~that require~~ requiring special handling that are contained in
20 major appliances shall not be disposed of at a solid waste facility and shall be
21 removed from major appliances in which they are contained prior to the appliance
22 being crushed, baled, shredded, sawed or sheared apart, disposed of, or otherwise
23 processed in a manner that could result in the release or prevent the removal of
24 materials that require special handling.

25 (b) A person who, pursuant to subdivision (a), removes from a major appliance
26 any material that requires special handling, ~~that and~~ is a hazardous waste under this
27 chapter, is a hazardous waste generator, and shall comply with all provisions of **this**
28 **chapter** applicable to generators of hazardous waste.

29 (c) All materials ~~that require~~ requiring special handling that have been removed
30 from a major appliance pursuant to subdivision (a), and ~~that~~ are hazardous wastes,
31 shall be managed in accordance with **this chapter**.

32 (d) A person who fails to comply with subdivision (a) is in violation of **this**
33 **chapter**.

34 (e) ~~(1)~~ The department or a local health officer or other public officer authorized
35 pursuant to **Article 8 (commencing with Section 25180)**, including, when
36 applicable, a certified unified program agency (CUPA) or a unified program agency
37 within the jurisdiction of a CUPA, shall incorporate both of the following into ~~the~~
38 their existing inspection and enforcement activities of the department:

39 ~~(A)~~ (1) The regulation of materials ~~that require~~ requiring special handling that,
40 when removed from a major appliance, is are hazardous waste wastes.

41 ~~(B)~~ (2) The enforcement of subdivision (a).

1 ~~(2)~~ (f) The department, local health officers, or other public officers shall
2 coordinate their activities as needed to identify and regulate materials ~~that require~~
3 requiring special handling that, when removed from major appliances, are
4 hazardous wastes that are transported from one jurisdiction to another.

5 **Comment.** Section 85575 continues former Section 25212 without substantive change.

6 See Sections 83110 (“CUPA”), 83160 (“department”), 83210 (“hazardous waste”), 83240
7 (“local health officer”), 83295 (“person”), 83375 (“unified program agency”), 85550 (“certified
8 appliance recycler,” “major appliance,” “materials that require special handling”).

9 **Staff Notes. (1)** Paragraph (1) of subdivision (e) of existing Section 25212, which is proposed
10 to be continued by proposed Section 85575(e), indicates that it applies to “[t]he department or a
11 local health officer or other public officer authorized pursuant to Article 8 (commencing with
12 Section 25180).”

13 **Public comment is requested on whether the inclusion of any commas in this text would be**
14 **appropriate to clarify its intended meaning.**

15 **(2)** Public comment is requested on whether the restatement of paragraph (1) of subdivision (e)
16 of existing Section 25212 as set forth in proposed Section 85575(e) would substantively change the
17 intended meaning of the existing paragraph.

18 **§ 85580. Department facilitation of removal of materials requiring special handling**

19 85580. (a) To implement **subdivision (c) of Section 25212**, the department shall,
20 based on reasonably available information, develop a statewide list of appliance
21 recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others
22 who may remove from major appliances, or do business with those who remove,
23 from major appliances, materials that require special handling. ~~The department shall~~
24 , and notify persons on the list of the requirements of **this chapter** and the steps that
25 will be required to be taken to comply with **this chapter**.

26 (b) The department shall transmit a copy of the Appliance Recycling Guide,
27 published by the California Integrated Waste Management Board, and any other
28 materials determined to be necessary by the department to ensure compliance with
29 this chapter, to the following persons and agencies:

30 (1) Persons who apply for a generator identification number indicating that they
31 are involved with any activities regulated pursuant to this article.

32 (2) The local officers and agencies authorized to enforce **this chapter** pursuant
33 to **subdivision (a) of Section 25180**.

34 (c) The department shall transmit the generator identification number of any
35 person identified pursuant to paragraph (1) of subdivision (b) and the statewide list
36 developed pursuant to subdivision (a) to the appropriate local officers and agencies
37 authorized to enforce **this chapter** pursuant to **subdivision (a) of Section 25180**.

38 **Comment.** Section 85580 continues former Section 25213 without substantive change.

39 See Sections 83160 (“department”), 83295 (“person”), 85550 (“major appliance,” “materials that
40 require special handling”).

1 (e) "Inaccessible" means not physically exposed by reason of a sealed covering
2 or casing and does not become physically exposed through reasonably foreseeable
3 use and abuse of the product, including swallowing, mouthing, breaking, or other
4 children's activities, and the aging of the product. For purposes of this article, paint,
5 coatings, or electroplating do not render substrate material inaccessible to a child.

6 (f) "Jewelry" means any of the following:

7 (1) Any of the following ornaments worn by a person:

8 (A) An anklet.

9 (B) Arm cuff.

10 (C) Bracelet.

11 (D) Brooch.

12 (E) Chain.

13 (F) Crown.

14 (G) Cuff link.

15 (H) Hair accessory.

16 (I) Earring.

17 (J) Necklace.

18 (K) Pin.

19 (L) Ring.

20 (M) Tie clip.

21 (N) Body piercing jewelry.

22 (O) Jewelry placed in the mouth for display or ornament.

23 (2) Any bead, chain, link, pendant, or other component of an ornament specified
24 in paragraph (1).

25 (3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing
26 that can be removed and may be used as a component of an ornament specified in
27 paragraph (1).

28 (4) A watch in which a timepiece is a component of an ornament specified in
29 paragraph (1), excluding the timepiece itself if the timepiece can be removed from
30 the ornament.

31 (g) (1) "Surface coating" means a fluid, semifluid, or other material, with or
32 without a suspension of finely divided coloring matter, that changes to a solid film
33 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or
34 other surface.

35 (2) "Surface coating" does not include a printing ink or a material that actually
36 becomes a part of the substrate, including, but not limited to, pigment in a plastic
37 article, or a material that is actually bonded to the substrate, such as by electroplating
38 or ceramic glazing.

39 **Comment.** Section 85650 continues former Section 25214.1 without substantive change.

40 **§ 85655. Nonapplication of article**

41 85655. (a) This article does not do any of the following:

1 (1) Affect a duty or other requirement otherwise imposed under federal or state
2 law.

3 (2) Alter or diminish a legal obligation otherwise required in common law, by
4 statute, or by regulation.

5 (3) Create or enlarge a defense to an action to enforce a legal obligation otherwise
6 required in common law, by statute, or by regulation.

7 (b) The Legislature finds and declares that the addition of this section during the
8 2007–08 Regular Session of the Legislature is declaratory of existing law.

9 **Comment.** Section 85655 continues former Section 25214.1.5 without substantive change.

10 **§ 85660. Required material for specified jewelry**

11 85660. (a) ~~For jewelry that is not children’s jewelry,~~ a A person shall not
12 manufacture, ship, sell, offer for sale, or offer for promotional purposes ~~such~~ jewelry
13 that is not children’s jewelry for retail sale or promotional purposes in the state,
14 unless the jewelry is made entirely from one or more than one of the following
15 materials:

16 (1) Stainless or surgical steel.

17 (2) Karat gold.

18 (3) Sterling silver.

19 (4) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

20 (5) Natural or cultured pearls.

21 (6) Glass, ceramic, or crystal decorative components, including cat’s eye, cubic
22 zirconia, including cubic zirconium or CZ, rhinestones, and cloisonné.

23 (7) A gemstone that is cut and polished for ornamental purposes, excluding
24 aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
25 phosgenite, samarskite, vanadinite, and wulfenite.

26 (8) Elastic, fabric, ribbon, rope, or string that does not contain intentionally added
27 lead.

28 (9) All natural decorative material, including amber, bone, coral, feathers, fur,
29 horn, leather, shell, or wood, that is in its natural state and is not treated in a way
30 that adds lead.

31 (10) Adhesive.

32 (11) Electroplated metal containing less than 0.05 percent (500 parts per million)
33 lead by weight.

34 (12) Unplated metal not otherwise listed containing less than 0.05 percent (500
35 parts per million) lead by weight.

36 (13) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and
37 polyvinyl chloride (PVC) containing less than 0.02 percent (200 parts per million)
38 lead by weight.

39 (14) A dye or surface coating containing less than 0.05 percent (500 parts per
40 million) lead by weight.

41 (15) Any other material that contains less than 0.05 percent (500 parts per million)
42 lead by weight.

1 (b) ~~For body piercing jewelry that is not children’s jewelry,~~ a A person shall not
2 manufacture, ship, sell, offer for sale, or offer for promotional purposes ~~such jewelry~~
3 body piercing jewelry that is not children’s jewelry for retail sale or promotional
4 purposes in the state, unless the jewelry is made of one or more of the following
5 materials:

- 6 (1) Surgical implant stainless steel.
- 7 (2) Surgical implant grade of titanium.
- 8 (3) Niobium (Nb).
- 9 (4) Solid 14 karat or higher white or yellow nickel-free gold.
- 10 (5) Solid platinum.

11 (6) A dense low-porosity plastic, including, but not limited to, Tygon or
12 polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

13 (c) ~~(1) For children’s jewelry,~~ a A person shall not manufacture, ship, sell, offer
14 for sale, or offer for promotional purposes ~~such~~ children’s jewelry for retail sale or
15 promotional purposes in the state, unless the jewelry meets all of the following
16 requirements:

17 ~~(A)~~ (1) Every component of the jewelry contains no more than 0.01 percent (100
18 parts per million) lead by weight, excluding inaccessible component parts.

19 ~~(B)~~ (2) The jewelry has a surface coating that contains no more than 0.009 percent
20 (90 parts per million) lead by weight.

21 ~~(2)~~ (d) The department may establish guidance on what component parts in
22 children’s jewelry shall be considered to be inaccessible for purposes of paragraph
23 (1) of subdivision (c).

24 (e) In the absence of the establishment of that guidance from the department
25 pursuant to subdivision (d), a determination of whether a component part of
26 children’s jewelry is inaccessible shall be made in accordance with Section 1500.87
27 of Title 16 of the Code of Federal Regulations, as it may be amended from time to
28 time.

29 ~~(d)~~ (1) ~~For children’s jewelry,~~ a (f) A person shall not manufacture, ship, sell,
30 offer for sale, or offer for promotional purposes ~~such~~ children’s jewelry that meets
31 either of the following descriptions:

32 (A) The jewelry contains a component or is made of a material that is more than
33 0.03 percent (300 parts per million) cadmium by weight.

34 (B) The jewelry has a surface coating that contains more than 0.0075 percent (75
35 parts per million) soluble cadmium by weight.

36 ~~(2)~~ This subdivision (g) Subdivision (f) shall not apply to any toy regulated for
37 cadmium exposure under the federal Consumer Product Safety Improvement Act of
38 2008 (Public Law 110-314).

39 ~~(e)~~ (h) The department may establish a standard for children’s jewelry or for a
40 component of children’s jewelry that is more protective of public health, of sensitive
41 subpopulations, or of the environment than the standards established pursuant to
42 subdivisions (c) ~~and (d)~~ , (f), and (g).

43 ~~(f)~~ (i) This section shall become operative on June 1, 2020.

1 **Comment.** Section 85660 continues former Section 25214.2 without substantive change.
2 See Sections 83160 (“department”), 83295 (“person”), 85650 (“body piercing jewelry,”
3 “children’s jewelry,” “component,” “inaccessible,” “jewelry,” “surface coating”).

4 **§ 85665. Administrative and civil enforcement of article**

5 85665. (a) Except as provided in **Sections 25214.3.3 and 25214.3.4**, a person who
6 violates this article shall not be subject to criminal penalties imposed pursuant to
7 **this chapter** and shall only be subject to the administrative or civil penalty specified
8 in subdivision (b).

9 (b) ~~(1)~~ A person who violates this article shall be liable for an administrative or a
10 civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for
11 each violation. ~~That~~

12 ~~(c) That~~ An administrative or civil penalty for a violation of this article may be
13 assessed and recovered in an administrative action filed with the Office of
14 Administrative Hearings or in a civil action brought in any court of competent
15 jurisdiction.

16 ~~(2)~~ (d) In assessing the amount of an administrative or a civil penalty for a
17 violation of this article, the presiding officer or the court, as applicable, shall
18 consider all of the following:

19 ~~(A)~~ (1) The nature and extent of the violation.

20 ~~(B)~~ (2) The number of, and severity of, the violations.

21 ~~(C)~~ (3) The economic effect of the penalty on the violator.

22 ~~(D)~~ (4) Whether the violator took good faith measures to comply with this article
23 and the time these measures were taken.

24 ~~(E)~~ (5) The willfulness of the violator’s misconduct.

25 ~~(F)~~ (6) The deterrent effect that the imposition of the penalty would have on both
26 the violator and the regulated community as a whole.

27 ~~(G)~~ (7) Any other factor that justice may require.

28 ~~(e)~~ (e) Administrative and civil penalties collected pursuant to this article shall be
29 deposited in the Toxic Substances Control Account, for expenditure by the
30 department, upon appropriation by the Legislature, to implement and enforce this
31 article, except as provided in **Section 25192**.

32 ~~(d)(1)~~ (f) For the purpose of administering and enforcing this article, an
33 authorized representative of the department, upon obtaining consent or after
34 obtaining an inspection warrant pursuant to Title 13 (commencing with Section
35 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate
36 credentials and at a reasonable time, do any of the following:

37 ~~(A)~~ (1) Enter a factory, warehouse, or establishment where jewelry is
38 manufactured, packed, held, or sold; ~~enter~~ .

39 (2) Enter a vehicle that is being used to transport, hold, or sell jewelry; ~~or enter~~ .

40 (3) Enter a place where jewelry is being held or sold.

41 ~~(B)~~ (4) Inspect a factory, warehouse, establishment, vehicle, or place described in
42 ~~subparagraph (A)~~ paragraph (1), and all pertinent equipment, raw material, finished

1 and unfinished materials, containers, and labeling in the factory, warehouse,
2 establishment, vehicle, or place. ~~In the case of~~

3 (5) Inspect in a factory, warehouse, or establishment where jewelry is
4 manufactured, packed, held, or sold, ~~this inspection shall include~~ any record, file,
5 paper, process, control, and facility that has a bearing on whether the jewelry is
6 being manufactured, packed, held, transported, sold, or offered for sale or for
7 promotional purposes in violation of this article.

8 ~~(2)(A) (6) An authorized representative of the department may secure~~ Secure a
9 sample of jewelry when taking an action authorized pursuant to this subdivision. ~~If~~
10 ~~the representative obtains~~ , but if taking possession of a sample prior to leaving the
11 premises, ~~he or she~~ the representative shall leave a receipt describing the sample
12 obtained.

13 ~~(B) (g)~~ (g) The department shall return, upon request, a sample that is not destroyed
14 during testing when the department no longer has any purpose for retaining the
15 sample.

16 ~~(C) (h)~~ (h) A sample that is secured in compliance with this section and found to be
17 in compliance with this article that is destroyed during testing shall be subject to a
18 claim for reimbursement.

19 ~~(3) (i)~~ (i) An authorized representative of the department shall have access to all
20 records of a carrier in commerce relating to the movement in commerce of jewelry,
21 or the holding of that jewelry during or after the movement, and the quantity,
22 shipper, and consignee of the jewelry.

23 (j) A carrier shall not be subject to the other provisions of this article by reason of
24 its receipt, carriage, holding, or delivery of jewelry in the usual course of business
25 as a carrier.

26 ~~(4) (k)~~ (k) An authorized representative of the department shall be deemed to have
27 received implied consent to enter a retail establishment, for purposes of this section,
28 if the authorized representative enters the location of that retail establishment where
29 the public is generally granted access.

30 **Comment.** Section 85665 continues former Section 25214.3 without substantive change.
31 See Sections 83160 (“department”), 83295 (“person”), 85650 (jewelry”).

32 **Staff Notes. (1)** Public comment is requested on whether the phrase “has a bearing on” in
33 paragraph (1) of subdivision (e) of existing Section 25212 (which would be continued by proposed
34 Section 85575(e) would substantively change the intended meaning of the existing paragraph.

35 (2) Public comment is requested on whether the restatement of subparagraph (A) of paragraph
36 (2) of subdivision (d) of existing Section 25214.3, as set forth in proposed Section 25214.3(f)(6),
37 would substantively change the intended meaning of the existing provision.

38 § 85670. Compliance documentation

39 85670. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or
40 offered for promotional purposes shall prepare and, at the request of the department,
41 submit to the department no more than 28 days after the date of the request, technical

1 documentation or other information showing that the jewelry is in compliance with
2 the requirements of this article.

3 (b) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered
4 for promotional purposes shall prepare a certification. ~~This certification shall attest~~
5 ~~that the jewelry does not contain a level of lead or cadmium that prohibits the~~
6 ~~jewelry from being sold or offered for sale pursuant to this article and that shall do~~
7 all of the following:

8 (1) Attest that the jewelry does not contain a level of lead or cadmium that
9 prohibits the jewelry from being sold or offered for sale pursuant to this article.

10 ~~(1)~~ (2) Identify the jewelry covered by the certificate, including a description of
11 the jewelry that is sufficiently detailed to match the certificate to each product
12 covered by the certificate and that could not be used to describe any jewelry that is
13 not covered by the certificate.

14 ~~(2)~~ (3) Cite to each separate rule or standard for which the jewelry is being
15 certified.

16 ~~(3)~~ (4) Identify the manufacturer or supplier certifying compliance of the jewelry,
17 including the name, full mailing address, and telephone number of the manufacturer
18 or supplier.

19 ~~(4)~~ (5) Include the contact information for the person maintaining records of the
20 test results of jewelry tested for purposes of this article, including the name, full
21 mailing address, email address, and telephone number of that person.

22 ~~(5)~~ (6) Include the date on which the jewelry was manufactured, including at least
23 the month and year.

24 ~~(6)~~ (7) Include the location where the jewelry was manufactured, including at least
25 the city or administrative region, state, if applicable, and country where the product
26 was manufactured or finally assembled. ~~If, and if~~ the same manufacturer operates
27 more than one location in the same city, the street address of the factory ~~shall be~~
28 ~~included.~~

29 ~~(7)~~ (8) Include the date or dates on which, and the location or locations where, the
30 jewelry was tested for purposes of certification.

31 ~~(8)~~ (9) Identify any third-party laboratory that performed the testing for purposes
32 of certification, including the name, full mailing address, and telephone number of
33 the laboratory.

34 (c) A manufacturer or supplier of jewelry sold or offered for promotional purposes
35 in this state shall do either of the following:

36 (1) Provide the certification required by subdivision (b) to a person who sells or
37 offers for sale that manufacturer's or supplier's jewelry.

38 (2) Display the certification required by subdivision (b) prominently on the
39 shipping container or on the packaging of jewelry.

40 **Comment.** Section 85670 continues former Section 25214.3.1 without substantive change.
41 See Sections 83160 ("department"), 83295 ("person"), 85650 (jewelry").

1 **§ 85675. Exemption from penalty**

2 85675. (a) Except as provided in subdivision (b), a person who sells jewelry at
3 retail or offers jewelry for retail sale shall not be subject to an administrative or civil
4 penalty for a violation of this article if the person proves, by a preponderance of
5 evidence, all of the following:

6 (1) The person received a certificate of compliance for the jewelry from the
7 manufacturer or supplier.

8 (2) The certificate of compliance received pursuant to paragraph (1) stated that
9 the jewelry is in compliance with the requirements of this article.

10 (3) The person relied on the certificate of compliance and did not know, and had
11 no reason to know, that the jewelry was in violation of this article.

12 (4) Upon receiving a notice of violation from the department, the person took
13 corrective action by immediately removing the jewelry from commerce.

14 (b) The affirmative defense specified in subdivision (a) does not apply to, and
15 may not be raised by, a person who has been found in violation of this article on at
16 least two prior occasions in the preceding three years from the filing date of the
17 current action.

18 **Comment.** Section 85675 continues former Section 25214.3.2 without substantive change.
19 See Sections 83160 (“department”), 83295 (“person”), 85650 (jewelry”).

20 **§ 85680. Criminal liability relating to jewelry containing lead or cadmium**

21 85680. A manufacturer or supplier of jewelry who knowingly and intentionally
22 manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry
23 containing lead or cadmium in violation of this article is guilty of a misdemeanor
24 punishable by a fine of not less than five thousand dollars (\$5,000) nor more than
25 one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not
26 more than one year, or by both that fine and imprisonment.

27 **Comment.** Section 85680 continues former Section 25214.3.3 without substantive change.
28 See Section 85650 (jewelry”).

29 **§ 85685. Criminal liability relating to falsifying document**

30 85685. A manufacturer or supplier of jewelry who knowingly and with intent to
31 deceive, falsifies any document or certificate required to be kept or produced
32 pursuant to this article is subject to a fine of not more than fifty thousand dollars
33 (\$50,000), by imprisonment in a county jail for not more than one year, or by both
34 that fine and imprisonment.

35 **Comment.** Section 85685 continues former Section 25214.3.4 without substantive change.
36 See Section 85650 (jewelry”).

37 **§ 85690. Conflict with independent department authority**

38 85690. (a) This article does not limit, supersede, duplicate, or otherwise conflict
39 with the authority of the department to fully implement **Article 14 (commencing**

1 **with Section 25251**), including the authority of the department to include products
2 in its product registry.

3 (b) Notwithstanding **subdivision (c) of Section 25257.1**, cadmium-containing
4 jewelry shall not be considered as a product category already regulated or subject to
5 pending regulation for purposes of **Article 14 (commencing with Section 25251)**.

6 **Comment.** Section 85690 continues former Section 25214.3.5 without substantive change.
7 See Sections 83160 (“department”), 85650 (jewelry”).

8 **§ 85695. Test methods and procedures for determining compliance**

9 85695. (a) The test methods for determining compliance with this article shall be
10 conducted using the EPA reference methods 3050B, 3051A, or 3052, as specified
11 in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-
12 846 (Third Edition, or subsequent update, as applicable) for lead and cadmium in
13 the material being tested, except as otherwise provided in subdivision (b) and
14 **Sections 24214.4.1 and 25214.4.2**, and shall be conducted in accordance with all
15 of the following procedures:

16 (1) When preparing a sample, the laboratory shall make every effort to ensure that
17 the sample removed from a jewelry piece is representative of the component to be
18 tested, and is free of contamination from extraneous dirt and material not related to
19 the jewelry component to be tested.

20 (2) All jewelry component samples shall be washed prior to testing using standard
21 laboratory detergent, rinsed with laboratory reagent grade deionized water, and
22 dried in a clean ambient environment.

23 (3) If a component is required to be cut or scraped to obtain a sample, the metal
24 snips, scissors, or other cutting tools used for the cutting or scraping shall be made
25 of stainless steel and washed and rinsed before each use and between samples.

26 (4) A sample shall be digested in a container that is known to be free of lead and
27 cadmium and with the use of an acid that is not contaminated by lead or cadmium,
28 including analytical reagent grade digestion acids and reagent grade deionized
29 water.

30 (5) Method blanks, consisting of all reagents used in sample preparation handled,
31 digested, and made to volume in the same exact manner and in the same container
32 type as samples, shall be tested with each group of 20 or fewer samples tested.

33 (6) The results for the method blanks shall be reported with each group of sample
34 results, and shall be below the stated reporting limit for sample results to be
35 considered valid.

36 (7) Test methods selected shall be those that best demonstrate they can achieve
37 total digestion of the sample material being analyzed.

38 (8) Test methods shall not be used if they are inconsistent with the specified
39 application of the test method or do not demonstrate the best performance or
40 proficiency for achieving total digestion of the sample material.

41 (b) Notwithstanding **subdivision (a) and Section 25214.4.1**, test methods for
42 determining compliance with the limits for lead in children’s jewelry in **subdivision**

1 (c) of Section 25214.2 include those permissible to demonstrate compliance with
 2 the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-
 3 314).

4 (c) The test method for determining compliance with **subparagraph (B) of**
 5 **paragraph (1) of subdivision (d) of Section 25214.2** shall be the same test method
 6 used to demonstrate compliance with Section 2056b of Title 15 of the United States
 7 Code.

8 ~~(e) (d)~~ Digested samples shall be analyzed according to the specification of an
 9 approved and validated methodology using inductively coupled plasma optical
 10 emission spectroscopy. ~~Other analytical~~

11 (e) Analytical methods not identified in subdivision (d), such as inductively
 12 coupled plasma mass spectrometry, flame atomic absorption spectroscopy, graphite
 13 furnace atomic absorption spectroscopy, or other technology, may be used under
 14 appropriate conditions, using applicable, recognized analytical techniques for the
 15 alternative method to achieve a reported quantitation limit no greater than 0.001
 16 percent (10 parts per million) for samples.

17 ~~(d) (f)~~ All testing for determining compliance with this article shall be performed
 18 by a laboratory that conforms to the requirements in **Article 8.5 (commencing with**
 19 **Section 25198)**.

20 **Comment.** Section 85695 continues former Section 25214.4 without substantive change.
 21 See Sections 85650 (“children’s jewelry,” “component”).

22 **§ 85700. Additional procedures for specified materials**

23 85700. In addition to the requirements of **Section 25214.4**, the following
 24 procedures shall be used for testing the following materials:

25 (a) For testing a metal plated with suitable undercoats and finish coats, the
 26 following protocols shall be observed:

27 (1) Digestion shall be conducted using hot concentrated nitric acid with the option
 28 of using hydrochloric acid or hydrogen peroxide.

29 (2) The sample size shall be 0.050 gram to one gram.

30 (3) The digested sample may require dilution prior to analysis.

31 (4) All necessary dilutions shall be made to ensure that measurements are made
 32 within the calibrated range of the analytical instrument.

33 (b) For testing unplated metal and metal substrates that are not a material listed in
 34 **paragraphs (1) to (10), inclusive, of subdivision (a) of Section 25214.2**, the
 35 following protocols shall be observed:

36 (1) Digestion shall be conducted using hot concentrated nitric acid with the option
 37 of using hydrochloric acid or hydrogen peroxide.

38 (2) The sample size shall be 0.050 gram to one gram.

39 (3) The digested sample may require dilution prior to analysis.

40 (4) All necessary dilutions shall be made to ensure that measurements are made
 41 within the calibrated range of the analytical instrument.

1 (c) For testing polyvinyl chloride (PVC), the following protocols shall be
2 observed:

3 (1) The digestion shall be conducted using hot concentrated nitric acid with the
4 option of using hydrochloric acid or hydrogen peroxide.

5 (2) The sample size shall be a minimum of 0.05 gram if using microwave
6 digestion or 0.5 gram if using hotplate digestion, and shall be chopped or
7 comminuted prior to digestion.

8 (3) Digested samples may require dilution prior to analysis.

9 (4) All necessary dilutions shall be made to ensure that measurements are made
10 within the calibrated range of the analytical instrument.

11 (d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including
12 acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be
13 observed:

14 (1) The digestion shall be conducted using hot concentrated nitric acid with the
15 option of using hydrochloric acid or hydrogen peroxide.

16 (2) The sample size shall be a minimum of 0.05 gram if using microwave
17 digestion or 0.5 gram if using hotplate digestion, and shall be chopped or
18 comminuted prior to digestion.

19 (3) Plastic beads or stones shall be crushed prior to digestion.

20 (4) Digested samples may require dilution prior to analysis.

21 (5) All necessary dilutions shall be made to ensure that measurements are made
22 within the calibrated range of the analytical instrument.

23 (e) For testing coatings on glass and plastic pearls, the following protocols shall
24 be observed:

25 (1) The coating of glass or plastic beads shall be scraped onto a surface free of
26 dust, including a clean weighing paper or pan, using a clean stainless steel razor
27 blade or other clean sharp instrument that will not contaminate the sample with lead
28 or cadmium. The substrate pearl material shall not be included in the scrapings.

29 (2) The razor blade or sharp instrument shall be rinsed with deionized water,
30 wiped to remove particulate matter, rinsed again, and dried between samples.

31 (3) The scrapings shall be weighed and not less than 50 micrograms of scraped
32 coating shall be used for analysis.

33 (4) If less than 50 micrograms of scraped coating is obtained from an individual
34 pearl, multiple pearls from that sample shall be scraped and composited to obtain a
35 sufficient sample amount.

36 ~~(4)~~ (5) The number of pearls used to make the composite shall be noted.

37 ~~(5)~~ (6) The scrapings shall be digested according to EPA reference method 3050B
38 or 3051 or an equivalent procedure for hot acid digestion in preparation for trace
39 lead or cadmium analysis.

40 ~~(6)~~ (7) The digestate shall be diluted in the minimum volume practical for
41 analysis.

42 ~~(7)~~ (8) The sample result shall be reported within the calibrated range of the
43 instrument.

1 (9) If the initial test of the sample is above the highest calibration standard, the
2 sample shall be diluted and reanalyzed within the calibrated range of the instrument.

3 (f) For testing dyes, paints, coatings, varnish, printing inks, or ceramic glazes, the
4 following testing protocols shall be observed:

5 (1) The digestion shall use hot concentrated nitric acid with the option of using
6 hydrochloric acid or hydrogen peroxide.

7 (2) The sample size shall be not less than 0.050 gram, and shall be chopped or
8 comminuted prior to digestion.

9 (3) The digested sample may require dilution prior to analysis.

10 (4) All necessary dilutions shall be made to ensure that measurements are made
11 within the calibrated range of the analytical instrument.

12 (g) For testing glass and crystal, the following protocols shall be used:

13 ~~(1) For determining weight:~~

14 ~~(A) A component shall be free of any extraneous material, including adhesive,
15 before it is weighed.~~

16 ~~(B) The scale used to weigh a component shall be calibrated annually by a
17 qualified vendor using reference mass standards that are traceable to the National
18 Institute of Standards and Technology (NIST) of the Department of Commerce or
19 the International System of Units (SI) and shall be verified daily before weighing
20 the component.~~

21 ~~(C) The calibration of the scale shall be accurate to within 0.0001 gram.~~

22 ~~(2) Both of the following testing protocols shall be observed:~~

23 ~~(A) (1) The glass and crystal component shall be crushed or grounded to powder
24 form before digestion and shall be digested according to the United States
25 Environmental Protection Agency Test Method 3052 using hydrofluoric acid in a
26 microwave or an equivalent method to yield complete digestion.~~

27 ~~(B) (2) The digestate shall be diluted in the minimum volume practical for
28 analysis.~~

29 (h) For determining the weight of glass and crystal, the following protocols shall
30 be used:

31 (1) A component shall be free of any extraneous material, including adhesive,
32 before it is weighed.

33 (2) The scale used to weigh a component shall be calibrated annually by a
34 qualified vendor using reference mass standards that are traceable to the National
35 Institute of Standards and Technology (NIST) of the Department of Commerce or
36 the International System of Units (SI) and shall be verified daily before weighing
37 the component.

38 (3) The calibration of the scale shall be accurate to within 0.0001 gram.

39
40 **Comment.** Section 85700 restates former Section 25214.4.1 without substantive change.

41 **Note.** Proposed Section 85700(g) would restate existing Section 25214.4.1(g) for clarity. The
42 existing section reads as follows:

1 “(g) For testing glass and crystal, the following protocols shall be used:

2 (1) For determining weight:

3 (A) A component shall be free of any extraneous material, including adhesive, before it is
4 weighed.

5 (B) The scale used to weigh a component shall be calibrated annually by a qualified vendor
6 using reference mass standards that are traceable to the National Institute of Standards and
7 Technology (NIST) of the Department of Commerce or the International System of Units (SI) and
8 shall be verified daily before weighing the component.

9 (C) The calibration of the scale shall be accurate to within 0.0001 gram.

10 (2) Both of the following testing protocols shall be observed:

11 (A) The glass and crystal component shall be crushed or grounded to powder form before
12 digestion and shall be digested according to the United States Environmental Protection Agency
13 Test Method 3052 using hydrofluoric acid in a microwave or an equivalent method to yield
14 complete digestion.

15 (B) The digestate shall be diluted in the minimum volume practical for analysis.”

16 **Absent comment, this proposed restatement of this provision will be presumed correct.**

17 **§ 85705. Adoption of regulations**

18 85705. The department may adopt regulations to implement this article, including,
19 but not limited to, adopting regulations that modify the testing protocols specified
20 in **Sections 25214.4 and 25214.4.1**, as it deems necessary to further the purposes of
21 this article.

22 **Comment.** Section 85705 continues former Section 25214.4.2 without substantive change.

23 See Section 83160 (“department”).

24 **Article 5. Lead Plumbing**

25 **§ 85750. Monitoring and compliance**

26 85750. (a) Lead plumbing monitoring and compliance testing shall be undertaken
27 by the department, as a part of the department’s ongoing program for reducing toxic
28 substances from the environment.

29 (b) For purposes of implementing this article, the department shall, based on its
30 available resources and staffing, annually select not more than 75 drinking water
31 faucets or other drinking water plumbing fittings and fixtures for testing and
32 evaluation, including the locations from which to select the faucets, fittings, and
33 fixtures, to determine compliance with Section 116875.

34 (c) In implementing this article, the department shall use test methods, protocols,
35 and sample preparation procedures that are adequate to determine total lead
36 concentration in a drinking water plumbing fitting or fixture to determine
37 compliance with the standards for the maximum allowable total lead content set
38 forth in Section 116875.

39 (d) In selecting drinking water faucets and other drinking water plumbing fittings
40 and fixtures to test and evaluate pursuant to this article, the department shall exercise
41 its judgment regarding the specific drinking water plumbing fittings or fixtures to
42 test.

1 (e) This article does not require the department’s selection to be either random or
2 representative of all available plumbing fittings or fixtures.

3 (f) The department shall acquire its samples of fittings and fixtures from locations
4 that are readily accessible to the public at either retail or wholesale sources.

5 (g) The department shall annually post the results of the testing and evaluation
6 conducted pursuant to this article on its Internet Web site and shall transmit these
7 results in an annual report to the State Department of Public Health.

8 **Comment.** Section 85750 continues former Section 25214.4.3 without substantive change.
9 See Section 83160 (“department”).

10 Article 6. Motor Vehicle Switches

11 § 85775. “Mercury-containing motor vehicle light switch”

12 85775. For purposes of this article, “mercury-containing motor vehicle light
13 switch” means any motor vehicle light switch found in the hood or trunk of a motor
14 vehicle that contains mercury.

15 **Comment.** Section 85775 continues former Section 25214.5 without substantive change.

16 § 85780. Applicable laws and regulations

17 85780. Any mercury-containing motor vehicle light switch removed from a motor
18 vehicle is subject to Chapter 23 (commencing with Section 66273.1) of Division 4.5
19 of Title 22 of the California Code of Regulations, and any other applicable
20 regulation adopted by the department pursuant to **this chapter**, including, but not
21 limited to, standards for the handling of hazardous waste, standards for destination
22 facilities, requirements for the tracking of universal waste shipments, import
23 requirements, and the regulations governing different products.

24 **Comment.** Section 85780 continues former Section 25214.6 without substantive change.
25 See Section 83160 (“department”).

26 § 85785. Department responsibilities

27 85785. The department shall do all of the following with regard to this article:

28 (a) Coordinate with local agencies to provide technical assistance to businesses
29 engaged in the dismantling or crushing of motor vehicles concerning the safe
30 removal and proper disposal of mercury-containing light switches from motor
31 vehicles, including information about vehicle makes and models that contain
32 mercury light switches and entities that provide mercury recycling services.

33 (b) Coordinate and encourage entities, such as associations representing motor
34 vehicle repair shops, to offer to the public the replacement and recycling of mercury-
35 containing motor vehicle light switches.

36 (c) Make available to the public information concerning services to replace and
37 recycle mercury-containing motor vehicle light switches.

38 **Comment.** Section 85785 continues former Section 25214.7 without substantive change.
39 See Section 83160 (“department”).

1 § 85790. Reports to Legislature

2 85790. On or before January 1, 2004, the department shall report to the
3 appropriate policy and fiscal committees of the Legislature on both of the following:

4 (a) The success of efforts to remove mercury-containing vehicle light switches
5 from vehicles pursuant to **Section 25214.6**.

6 (b) Compliance with the requirement to remove mercury-containing appliance
7 switches pursuant to Section 42175 of the Public Resources Code.

8 **Comment.** Section 85790 continues former Section 25214.8 without substantive change.

9 See Section 83160 (“department”).

10 Article 7. Mercury-Added Equipment

11 § 85810. Definitions

12 85810. For purposes of this article, the following definitions shall apply:

13 ~~(1)~~ (a) “Mercury-added product” means any product or device that contains
14 mercury.

15 ~~(2)~~ (b)(1) “Mercury-added thermostat” means a product or device that uses a
16 mercury switch to sense and control room temperature through communication with
17 heating, ventilating, or air-conditioning equipment.

18 (2) “Mercury-added thermostat” includes thermostats used to sense and control
19 room temperature in residential, commercial, industrial, and other buildings ~~but~~.

20 (3) “Mercury-added thermostat” does not include a thermostat used to sense and
21 control temperature as part of a manufacturing process.

22 (c) “Mercury diostat” means a mercury switch that controls a gas valve in an oven
23 or oven portion of a gas range.

24 ~~(3)~~ (d)(1) “Mercury relay” means a mercury-added product or device that opens
25 or closes electrical contacts to effect the operation of other devices in the same or
26 another electrical circuit.

27 (2) “Mercury relay” includes, but is not limited to, mercury displacement relays,
28 mercury wetted reed relays, and mercury contact relays.

29 (4) (e)(1) “Mercury switch” means a mercury-added product or device that opens
30 or closes an electrical circuit or gas valve.

31 (A) (2) A mercury switch includes, but is not limited to, ~~mercury~~ all of the
32 following:

33 (A) Mercury float switches actuated by rising or falling liquid levels, ~~mercury~~.

34 (B) Mercury tilt switches actuated by a change in the switch position, ~~mercury~~.

35 (C) Mercury pressure switches actuated by a change in pressure, ~~mercury~~.

36 (D) Mercury temperature switches actuated by a change in temperature, ~~and~~
37 ~~mercury~~.

38 (E) Mercury flame sensors.

39 ~~(B)~~ (3) A mercury switch does not include a mercury-added thermostat or a
40 mercury diostat.

1 ~~(C) "Mercury diostat" means a mercury switch that controls a gas valve in an oven~~
2 ~~or oven portion of a gas range.~~

3 **Comment.** Section 85810 continues former Section 25214.8.1(b) without substantive change.

4 **§ 85815. Legislative declarations**

5 85815. ~~(a)~~ The Legislature finds and declares all of the following:

6 ~~(1) (a) Once mercury~~ Mercury released into the environment can change to methyl
7 mercury, a highly toxic compound.

8 (b) Methyl mercury is easily taken up in living tissue and bioaccumulates over
9 time, causing serious health effects, including neurological and reproductive
10 disorders in humans and wildlife.

11 ~~(c) Since mercury does not break down in the environment, it~~ Mercury has become
12 a significant health threat to humans and wildlife because it does not break down in
13 the environment.

14 ~~(2) (d) Due to the bioaccumulation of mercury and other contaminants in fish, the~~
15 The California Environmental Protection Agency has issued a warning advising that
16 adults and women who are pregnant or who may become pregnant should limit their
17 fish intake from several state waterways due to the bioaccumulation of mercury and
18 other contaminants in fish

19 ~~(3) (e)~~ Increasingly stringent mercury discharge limits for wastewater treatment
20 plants make the identification and elimination of unnecessary sources of mercury a
21 critical task, because the cost of mercury removal at a wastewater treatment plant is
22 far greater than the societal benefits of continuing use of mercury-containing
23 products, as currently formulated.

24 ~~(4) (f)~~ Thermostats and other switches and relays are among the largest remaining
25 sources of mercury in consumer products that can be legally sold in California.

26 ~~(5) (g)~~ Most thermostats contain 3,000 milligrams of mercury and have a 35-year
27 lifespan.

28 ~~(6) (h)~~ Many other mercury-containing switches hold up to 4 grams of mercury,
29 and mercury relays hold as much as 153 grams.

30 ~~(7) (i)~~ Esophageal dilators contain as much as two pounds of mercury.

31 ~~(8) (j)~~ Mercury thermostats, switches, relays, measuring devices, esophageal
32 dilators, and gastrointestinal tubes ~~are~~ constitute hazardous waste when discarded;
33 ~~and on.~~

34 (k) On and after January 1, 2006, ~~all disposal of mercury thermostat thermostats,~~
35 ~~switch switches, relay relays, measuring device devices, esophageal dilator dilators,~~
36 and gastrointestinal tube wastes ~~will be prohibited from disposal~~ in a solid waste
37 landfill is prohibited under the regulations adopted pursuant to this ~~chapter~~ division.

38 ~~(i) (l)~~ Economical alternatives to mercury thermostats, relays, switches,
39 measuring devices, esophageal dilators, and gastrointestinal tubes are available for
40 commercial and, when applicable, residential applications.

41 **Comment.** Section 85815 continues former Section 25214.8.1(a) without substantive change.

42 See Sections 85810(d) ("mercury relay"), 85810(e) ("mercury switch").

1 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
2 25214.8.1(a) in proposed Section 85815 substantively changes the meaning of the existing section.

3 **§ 85820. Mercury-added thermostats**

4 85820. On and after January 1, 2006, a person shall not sell, offer to sell, or
5 distribute for promotional purposes in this state, a mercury-added thermostat, unless
6 the mercury-added thermostat meets either of the following criteria:

7 (a) The mercury-added thermostat will be used for a manufacturing or industrial
8 ~~purposes~~ purpose.

9 (b) The mercury-added thermostat will be used by a blind or visually impaired
10 person.

11 **Comment.** Section 85820 continues former Section 25214.8.2 without substantive change.
12 See Sections 85610(b) (“mercury-added thermostat”).

13 **Staff Note.** The staff welcomes comment on whether the operational date of this provision
14 should continue to be included in the recodification of Section 25214.8.2.

15 **§ 85825. Sale or distribution of mercury-added products**

16 85825. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person
17 shall not sell, offer to sell, or distribute for promotional purposes in this state, any
18 of the following new or refurbished mercury-added products:

19 (1) A barometer.

20 (2) An esophageal dilator, bougie tube, or gastrointestinal tube.

21 (3) A flow meter.

22 (4) A hydrometer.

23 (5) A ~~hydrometer~~ or psychrometer.

24 (6) A manometer.

25 (7) A pyrometer.

26 (8) A sphygmanometer.

27 (9) A thermometer.

28 (b) Subdivision (a) does not apply to the sale of a mercury-added product if the
29 use of the product is required under a federal law or federal contract specification,
30 or if the only mercury-added component in the product is a button cell battery.

31 **Comment.** Section 85825 continues former Section 25214.8.3 without substantive change.
32 See Sections 85810(a) (“mercury-added product”).

33 **§ 85830. Prohibited sale or distribution of mercury switch or mercury relay**

34 85630. ~~(a) Except as provided in subdivisions (b) to (e), inclusive, and or in~~
35 ~~Section 25214.8.5, on On~~ or after July 1, 2006, a person shall not sell, offer to sell,
36 or distribute for promotional purposes in this state, a new or refurbished mercury
37 switch or mercury relay individually or as a product component, except as provided
38 in Section 85835, 85840, 85845, 85850, 85655, or 85860.

39 **Comment.** Section 85830 continues former Section 25214.8.4(a) without substantive change.
40 See Sections 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

1 **Staff Note.** The staff welcomes comment on whether the operational date of this provision
2 should continue to be included in the recodification of Section 25214.8.4(a).

3 **§ 85835. Exemption relating to mercury switch or mercury relay based on specified use as**
4 **component in larger product**

5 85835. ~~Subdivision (a)~~ The prohibition in Section 85830 does not apply if the a
6 mercury switch or mercury relay that is sold, offered to be sold, or distributed for
7 promotional purposes in this state is used to replace a switch or relay that is a
8 component in a larger product in use prior to July 1, 2006, and at least one of the
9 following applies:

10 (1) (a) The larger product is used in manufacturing.

11 (2) (b) The mercury switch or mercury relay is integrated in and not physically
12 separate from other components of the larger product.

13 **Comment.** Section 85835 continues former Section 25214.8.4(b) without substantive change.
14 See Sections 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

15 **§ 85840. Exemption relating to mercury switch or mercury relay based on federal law or**
16 **federal contract exemption**

17 85640. ~~(e) Subdivision (a)~~ The prohibition in Section 85830 does not apply to the
18 sale of a mercury switch or mercury relay if use of the switch or relay is required
19 under federal law or federal contract specification.

20 **Comment.** Section 85840 continues former Section 25214.8.4(c) without substantive change.
21 See Sections 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

22 **§ 85845. Exemption relating to mercury switch or mercury relay based on minimal quantity**
23 **of mercury**

24 85845. ~~(d) Subdivision (a)~~ The prohibition in Section 85830 does not apply to a
25 mercury switch or a mercury relay that contains less than 1 milligram of mercury,
26 if the all of the following has occurred:

27 (a) The manufacturer of the ~~mercury~~ switch or relay has notified the department
28 of its plans to operate under an exemption pursuant to this ~~subdivision~~ section.

29 (b) The notification ~~shall be~~ has been resubmitted to the department every three
30 years.

31 (c) The initial and subsequent notifications ~~shall be~~ are signed and dated, and ~~shall~~
32 include all of the following:

33 (1) The name of the manufacturer and the name, position, and contact information
34 for the person who is the manufacturer’s contact person on all matters concerning
35 the exemption.

36 (2) An identification and description of the mercury switch or mercury relay to
37 which the exemption applies.

38 (3) A statement that the manufacturer certifies all of the following:

39 (A) The mercury switch or mercury relay is hermetically sealed by the
40 manufacturer.

1 (B) The mercury switch or mercury relay is intended for industrial use in test and
2 measurement instruments or in systems for monitoring and control applications.

3 (C) There is no substantially equivalent nonmercury alternative technology for
4 the intended use of the mercury switch or mercury relay, considering all aspects of
5 electrical performance, size, power consumption, product life, and cost.

6 (D) ~~(4)~~ The manufacturer, individually, or in conjunction with an industry or trade
7 group, has developed and implemented an ongoing program ~~for the~~ incorporating
8 the following:

9 (i) The proper end-of-life collection, transportation, and management of exempted
10 mercury switches or relays sold in this state, including the removal of the mercury
11 switch or mercury relay from the product in which it is contained.

12 ~~(2) The program includes a~~ (ii) A consumer information component to ensure that
13 users of the products that contain the mercury switches or mercury relays are aware
14 of available collection opportunities and legal requirements for management of the
15 mercury switch or mercury relay, and the products that contain the mercury switches
16 or mercury relays, once the mercury switch or mercury relay, or the product
17 containing the mercury switch or mercury relay, becomes a waste.

18 (E) The manufacturer recognizes that the exemption provided by this ~~subdivision~~
19 section becomes null and void if and when either of the following occurs:

20 (i) The manufacturer fails to submit a new exemption notification meeting the
21 requirements of this subdivision within three years following submission of the prior
22 exemption notification.

23 (ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no
24 longer satisfied.

25 **Comment.** Section 85845 continues former Section 25214.8.4(d) without substantive change.

26 See Sections 83160 (“department”), 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

27 **§ 85850. Exemption relating to mercury switch or mercury relay based on resale of**
28 **refurbished imaging and therapy system**

29 85650. ~~(e) Subdivision (a)~~ The prohibition in Section 85630 does not apply to the
30 resale of a refurbished imaging and therapy system utilized for medical diagnostic
31 purposes that includes a mercury switch or mercury relay if the manufacturer of the
32 imaging and therapy system has ~~notified~~ submitted a signed and dated notification
33 to the department of its plans to operate under an exemption pursuant to this
34 subdivision. The notification shall be signed and dated, and shall include section
35 that includes all of the following:

36 ~~(1)~~ (a) The name of the manufacturer ~~and the~~ of the imaging and therapy system.

37 (b) The name, position, and contact information for the person who is the
38 manufacturer’s contact person on all matters concerning the exemption.

39 ~~(2)~~ (c) An identification and description of the imaging and therapy system to
40 which the exemption applies.

41 ~~(3)~~ (d) A statement that the manufacturer certifies all of the following:

1 (A) (1) The mercury switch or mercury relay is integrated in, and not physically
2 separate from, other components of the larger product.

3 ~~(B)~~ (2) The larger product was initially manufactured prior to July 1, 2006.

4 ~~(C)~~ (3) The manufacturer, individually, or in conjunction with an industry or trade
5 group, has developed and implemented an ongoing program for the proper end-of-
6 life collection, transportation, and management of mercury switches or mercury
7 relays contained in exempted imaging and therapy systems sold in this state,
8 including ~~the~~ both of the following:

9 (A) The proper removal of the mercury switch or mercury relay from the product
10 in which it is contained.

11 ~~(2) The program includes a~~ (B) A consumer information component to ensure that
12 users of the products that contain the mercury switches or mercury relays are aware
13 of available collection opportunities and legal requirements for management of the
14 mercury switch or mercury relay, and the products that contain the mercury switches
15 or mercury relays, once the switch or relay or the product becomes a waste.

16 ~~(D)~~ (4) The manufacturer recognizes that the exemption provided by this
17 subdivision becomes null and void if and when any of the conditions set forth in
18 ~~subparagraphs (A) and (B)~~ paragraphs (1) and (2) are no longer satisfied.

19 **Comment.** Section 85850 restates former Section 25214.8.4(e) without substantive change.
20 See Sections 83160 (“department”), 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

21 **Staff Note.** Proposed Section 85850 would restate existing Section 25214.8.4(e) to improve
22 readability. The existing section provides:

23 25214.8.4(e). Subdivision (a) does not apply to the resale of a refurbished imaging and therapy
24 system utilized for medical diagnostic purposes that includes a mercury switch or relay if the
25 manufacturer of the imaging and therapy system has notified the department of its plans to operate
26 under an exemption pursuant to this subdivision. The notification shall be signed and dated, and
27 shall include all of the following:

28 (1) The name of the manufacturer and the name, position, and contact information for the person
29 who is the manufacturer’s contact person on all matters concerning the exemption.

30 (2) An identification and description of the imaging and therapy system to which the exemption
31 applies.

32 (3) A statement that the manufacturer certifies all of the following:

33 (A) The mercury switch or relay is integrated in, and not physically separate from, other
34 components of the larger product.

35 (B) The larger product was initially manufactured prior to July 1, 2006.

36 (C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has
37 developed and implemented an ongoing program for the proper end-of-life collection,
38 transportation, and management of mercury switches or relays contained in exempted imaging and
39 therapy systems sold in this state, including the removal of the mercury switch or mercury relay
40 from the product in which it is contained.

41 (2) The program includes a consumer information component to ensure that users of the products
42 that contain the mercury switches or relays are aware of available collection opportunities and legal
43 requirements for management of the mercury switch or relay, and the products that contain the
44 mercury switches or relays, once the switch or relay or the product becomes a waste.

1 (D) The manufacturer recognizes that the exemption provided by this subdivision becomes null
2 and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer
3 satisfied.

4 **Absent comment, the proposed restatement of this provision will be presumed correct.**

5 **§ 85855. Exemption relating to mercury switch or mercury relay granted by department**

6 85855. (a) A The prohibition in Section 85830 does not apply to a product
7 containing a mercury switch or a mercury relay is exempt from subdivision (a) of
8 Section 25214.8.4, if the manufacturer of the product, or a trade group representing
9 the manufacturer, has obtained an exemption, pursuant to the process described in
10 subdivision (b), for the product pursuant to the process described in subdivision (d).

11 (b) An exemption from the prohibition in Section 85830 granted under
12 subdivision (b) pursuant to this section may apply to all or only to limited uses of
13 the product.

14 (c) An exemption from the prohibition in Section 85830 granted under subdivision
15 (b) pursuant to this section also applies to the sale to the product manufacturer of
16 the mercury switch or relay to be contained in the product covered by the exemption.

17 (b) (d) The department shall grant or renew an exemption from subdivision (a) of
18 Section 25214.8.4 the prohibition in Section 85630 for a period of three years only
19 if all of the following conditions are met:

20 (1) The manufacturer of the product, or a trade group representing the
21 manufacturer, submits a request for an initial or renewed exemption to the
22 department that specifies the use or uses of the product for which an exemption is
23 requested, along with supporting information that ~~complies with the requirements~~
24 set forth in subdivision (e). includes all of the following:

25 (A) The name of the manufacturer, or the names of the trade group and the
26 manufacturers represented by the trade group, requesting the exemption.

27 (B) The name, position, and contact information for the person who is the
28 manufacturer's or trade group's contact person on all matters concerning the
29 exemption.

30 (C) An identification and description of the product, and the use or uses of the
31 product, for which the exemption is requested.

32 (D) An identification and description of the mercury switch or mercury relay,
33 including identification of the manufacturer of the mercury switch or mercury relay,
34 and an explanation of the need for, and functioning of, the mercury switch or
35 mercury relay in the product.

36 (E) (i) For each use for which an exemption is requested, information that fully
37 and clearly demonstrates there is no technically feasible alternative to the use of the
38 mercury switch or mercury relay in the product, for the purpose intended, at a
39 reasonable cost.

40 (ii) This information shall include, but is not limited to, a description of past,
41 current, and planned future efforts to seek or develop those alternatives, a

1 description of all alternatives that have been considered, and an explanation of the
2 technical or economic reasons as to why each alternative is not satisfactory.

3 (F) Information that fully and clearly demonstrates that the mercury switch or
4 mercury relay or the product is constructed so as to prevent the release of mercury
5 to the environment.

6 (G) A copy of all similar exemption requests, including supporting
7 documentation, submitted by the applicant to another state, and a copy of that state's
8 response to the exemption request.

9 (H) (i) A feasible, effective, detailed, and complete plan for the proper collection,
10 transportation, and management of the product at the end of its useful life, including
11 removal and proper management of the mercury switch or mercury relay contained
12 in the product, and information fully and clearly demonstrating that the
13 manufacturer, individually or in conjunction with an industry or trade group, is
14 committed to and capable of implementing the plan.

15 (ii) The plan shall include an education and outreach component to ensure that
16 users of the product are aware of available collection opportunities and legal
17 requirements for management of the product once it becomes a waste.

18 (2) A The request made by the manufacturer or trade group may submit a request
19 only pursuant to paragraph (1) is for a product and use for which there is no technical
20 feasible alternative, available at a reasonable cost, to the use of the mercury switch
21 or mercury relay in the product for purposes of that use, for the purpose intended,
22 at a reasonable cost.

23 ~~(2)~~ (3) The supporting information submitted by the manufacturer or trade group
24 pursuant to paragraph (1) demonstrates that the product is eligible for the exemption.

25 ~~(3)~~ (4) The manufacturer or trade group requesting the exemption pursuant to
26 paragraph (1) enters into a cost reimbursement agreement with the department,
27 pursuant to subdivision ~~(d)~~ (e), and complies with the terms of that agreement.

28 ~~(e) The supporting information that a manufacturer or trade group submits to the~~
29 ~~department, before the department may grant an exemption pursuant to subdivision~~
30 ~~(b), shall include all of the following:~~

31 ~~(1) The name of the manufacturer, or the trade group and the manufacturers~~
32 ~~represented by the trade group, requesting the exemption and the name, position,~~
33 ~~and contact information for the person who is the manufacturer's or trade group's~~
34 ~~contact person on all matters concerning the exemption.~~

35 ~~(2) An identification and description of the product, and the use or uses of the~~
36 ~~product, for which the exemption is requested.~~

37 ~~(3) An identification and description of the mercury switch or mercury relay,~~
38 ~~including identification of the manufacturer of the switch or relay, and an~~
39 ~~explanation of the need for, and functioning of, the mercury switch or mercury relay~~
40 ~~in the product.~~

41 ~~(4) For each use for which an exemption is requested, information that fully and~~
42 ~~clearly demonstrates that there is no technically feasible alternative, available at a~~
43 ~~reasonable cost, to the use of the mercury switch or mercury relay in the product for~~

1 purposes of that use. This shall include, but is not limited to, a description of past,
2 current, and planned future efforts to seek or develop those alternatives, and a
3 description of all alternatives that have been considered and an explanation of the
4 technical or economic reasons as to why each alternative is not satisfactory.

5 (5) Information that fully and clearly demonstrates that the switch or relay or the
6 product is constructed so as to prevent the release of mercury to the environment.

7 (6) A feasible, effective, detailed, and complete plan for the proper collection,
8 transportation, and management of the product at the end of its useful life, including
9 removal and proper management of the mercury switch or mercury relay contained
10 in the product, and information fully and clearly demonstrating that the
11 manufacturer, individually, or in conjunction with an industry or trade group, is
12 committed to and capable of implementing the plan. The plan shall include an
13 education and outreach component to ensure that users of the product are aware of
14 available collection opportunities and legal requirements for management of the
15 product once it becomes a waste. An exemption granted pursuant to subdivision (b)
16 shall become null and void if the manufacturer, individually, or in conjunction with
17 an industry or trade group, has not implemented the plan submitted in support of the
18 exemption request within six months of the effective date of the exemption.

19 (7) A copy of all similar exemption requests, including supporting documentation,
20 submitted by the applicant to another state, and a copy of that state's response to the
21 exemption request.

22 (d) (e) A manufacturer or trade group that requests an exemption or an exemption
23 renewal pursuant to subdivision (b) paragraph (1) of subdivision (d) shall enter into
24 a written agreement with the department pursuant to the procedures set forth in
25 **Article 9.2 (commencing with Section 25206.1)**; to reimburse all costs incurred by
26 the department in processing and responding to the request.

27 (e) (f) Trade secrets, as defined in **Section 25173**, that are identified at the time of
28 submission of information pursuant to paragraph (1) of subdivision (d) by a
29 manufacturer or trade group, shall be treated as confidential as to the extent required
30 by department procedures established pursuant to Section 25173.

31 (g) Any information submitted by a manufacturer or trade group pursuant to
32 paragraph (1) of subdivision (d) that is not a trade secret, as defined in **Section**
33 **25173**, or that has not been identified by the manufacturer as a trade secret, shall be
34 made available to the public upon request pursuant to the California Public Records
35 Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government
36 Code).

37 (f) (1) (h) The department shall grant or deny an exemption requested pursuant to
38 subdivision (b) paragraph (1) of subdivision (d) no later than 180 calendar days after
39 receiving the exemption request and all information determined by the department
40 to be necessary to determine if all of the conditions specified in subdivision (b)
41 paragraph (1) are met, unless the applicant and the department mutually agree to an
42 extension of that time limit.

1 ~~(2) (i)~~ An exemption requested pursuant to paragraph (1) of subdivision (d) shall
2 not be deemed to be granted if the department fails to grant or deny the exemption
3 request within the time limit specified in ~~paragraph (1) subdivision (h)~~.

4 ~~(3) Nothing in this subdivision shall preclude the applicant and the department~~
5 ~~from mutually agreeing to an extension of the time limit specified in paragraph (1).~~

6 **Comment.** Section 85655 restates former Section 25214.8.5 without substantive change.

7 See Sections 83160 (“department”), 85810(c) (“mercury relay”), 85810(d) (“mercury switch”).

8 **Staff Note.** Proposed Section 85855 would restate existing Section 25214.8.5 to improve
9 readability. The existing section provides:

10 25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from
11 subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group
12 representing the manufacture, has obtained an exemption, pursuant to the process described in
13 subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or
14 only to limited uses of the product. An exemption granted under subdivision (b) also applies to the
15 sale to the product manufacturer of the mercury switch or relay to be contained in the product
16 covered by the exemption.

17 (b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4
18 for a period of three years only if all of the following conditions are met:

19 (1) The manufacturer of the product, or a trade group representing the manufacturer, submits a
20 request for an initial or renewed exemption to the department that specifies the use or uses of the
21 product for which an exemption is requested along with supporting information that complies with
22 the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request
23 only for a product and use for which there is no technical feasible alternative, available at a
24 reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of
25 that use.

26 (2) The supporting information submitted by the manufacturer or trade group demonstrates that
27 the product is eligible for the exemption.

28 (3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement
29 agreement with the department, pursuant to subdivision (d), and complies with the terms of that
30 agreement.

31 (c) The supporting information that a manufacturer or trade group submits to the department,
32 before the department may grant an exemption pursuant to subdivision (b), shall include all of the
33 following:

34 (1) The name of the manufacturer, or the trade group and the manufacturers represented by the
35 trade group, requesting the exemption and the name, position, and contact information for the
36 person who is the manufacturer’s or trade group’s contact person on all matters concerning the
37 exemption.

38 (2) An identification and description of the product, and the use or uses of the product, for which
39 the exemption is requested.

40 (3) An identification and description of the mercury switch or mercury relay, including
41 identification of the manufacturer of the switch or relay, and an explanation of the need for, and
42 functioning of, the mercury switch or mercury relay in the product.

43 (4) For each use for which an exemption is requested, information that fully and clearly
44 demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the
45 use of the mercury switch or mercury relay in the product for purposes of that use. This shall
46 include, but is not limited to, a description of past, current, and planned future efforts to seek or
47 develop those alternatives, and a description of all alternatives that have been considered and an
48 explanation of the technical or economic reasons as to why each alternative is not satisfactory.

1 (5) Information that fully and clearly demonstrates that the switch or relay or the product is
2 constructed so as to prevent the release of mercury to the environment.

3 (6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and
4 management of the product at the end of its useful life, including removal and proper management
5 of the mercury switch or mercury relay contained in the product, and information fully and clearly
6 demonstrating that the manufacturer, individually, or in conjunction with an industry or trade
7 group, is committed to and capable of implementing the plan. The plan shall include an education
8 and outreach component to ensure that users of the product are aware of available collection
9 opportunities and legal requirements for management of the product once it becomes a waste. An
10 exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer,
11 individually, or in conjunction with an industry or trade group, has not implemented the plan
12 submitted in support of the exemption request within six months of the effective date of the
13 exemption.

14 (7) A copy of all similar exemption requests, including supporting documentation, submitted by
15 the applicant to another state, and a copy of that state's response to the exemption request.

16 (d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant
17 to subdivision (b) shall enter into a written agreement with the department pursuant to the
18 procedures set forth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all
19 costs incurred by the department in processing and responding to the request.

20 (e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a
21 manufacturer or trade group, shall be treated as confidential as required by department procedures
22 established pursuant to Section 25173. Any information that is not a trade secret, as defined in
23 Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made
24 available to the public upon request pursuant to the California Public Records Act (Division 10
25 (commencing with Section 7920.000) of Title 1 of the Government Code).

26 (f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no
27 later than 180 calendar days after receiving the exemption request and all information determined
28 by the department to be necessary to determine if all of the conditions specified in subdivision (b)
29 are met.

30 (2) An exemption shall not be deemed to be granted if the department fails to grant or deny the
31 exemption request within the time limit specified in paragraph (1)

32 (3) Nothing in this subdivision shall preclude the applicant and the department from mutually
33 agreeing to an extension of the time limit specified in paragraph (1).

34 **Absent comment, the proposed restatement of this provision will be presumed correct.**

35 **§ 85860. Mercury diostats**

36 85860. On or after January 1, 2008, a person shall not sell, offer to sell, or
37 distribute for promotional purposes in this state, a mercury diostat, or a new or
38 refurbished oven or gas range containing a mercury diostat.

39 **Comment.** Section 85860 continues former Section 25214.8.6 without substantive change.

40 See Section 85810(c) ("mercury diostat").

41 **Article 8. Mercury Thermostat Collection Act of 2021**

42 **§ 85875. Name of act**

43 85875. This article shall be known, and may be cited, as the Mercury Thermostat
44 Collection Act of 2021.

1 **Comment.** Section 85875 continues former Section 25214.8.10 without substantive change.

2 **§ 85880. Definitions**

3 85880. For purposes of this article, the following definitions apply:

4 (a) "Act" means the Mercury Thermostat Collection Act of 2021.

5 (b) "Department" means the Department of Toxic Substances Control.

6 (c) "Manufacturer" means a business concern that owns or owned a name brand
7 of mercury-added thermostats sold in this state before January 1, 2006.

8 (d) "Mercury-added thermostat" has the same meaning as defined in **paragraph**
9 **(2) of subdivision (b) of Section 25214.8.1.**

10 (e) "Out-of-service mercury-added thermostat" means a mercury-added
11 thermostat that is removed from a building or facility in this state and is intended to
12 be discarded.

13 (f) (1) "Program" means a system for the collection, transportation, recycling, and
14 disposal of out-of-service mercury-added thermostats that is financed, as well as
15 managed or provided, by a manufacturer or collectively by a group of manufacturers
16 pursuant to this act.

17 (2) "Program" also includes the education and outreach campaign conducted by a
18 qualified third party to inform appropriate entities about the out-of-service mercury-
19 added thermostat collection opportunities provided by the program.

20 (g) "Qualified third party" means a nonprofit organization, exempt from taxation
21 pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26
22 U.S.C. Sec. 501(c)(3)), that is selected by a manufacturer, or group of
23 manufacturers, pursuant to ~~Section 25214.8.11.4~~ to implement the program
24 specified in Section 25214.8.11.4.

25 (h) "Retailer" means a person, including a wholesaler as defined in subdivision
26 (j), who sells thermostats of any kind directly to a consumer through a selling or
27 distribution mechanism, including, but not limited to, a sale using catalogs or the
28 internet. A retailer may be a wholesaler if the person meets the definition of a
29 wholesaler set forth in subdivision (j).

30 (i) (1) "Thermostat" means a product or device that uses a switch to sense and
31 control room temperature through communication with heating, ventilating, or air-
32 conditioning equipment.

33 (2) "Thermostat" includes a thermostat used to sense and control room
34 temperature in residential, commercial, industrial, and other buildings, but does not
35 include a thermostat used to sense and control temperature as part of a
36 manufacturing process.

37 (j) "Wholesaler" means a person, other than a manufacturer as defined in
38 subdivision (c), engaged in the distribution and wholesale selling of who sells at
39 wholesale and distributes heating, ventilation, and air-conditioning components to
40 contractors who install heating, ventilation, and air-conditioning components, and
41 whose total wholesale sales account for 80 percent or more of total sales. A
42 ~~manufacturer, as defined in subdivision (c), is not a wholesaler.~~

1 **Comment.** Section 85880 continues former Section 25214.8.11 without substantive change.

2 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
3 25214.8.11 in proposed Section 85680 substantively changes the meaning of the existing section.

4 **§ 85885. Payment obligations of manufacturers**

5 85885. (a) ~~(1)-(A)~~ On or before September 30, 2022, and on or before September
6 30 of each year thereafter until September 30, 2028, each manufacturer shall, in
7 accordance with this section, individually, or collectively with a group of
8 manufacturers, do ~~both~~ all of the following:

9 ~~(i)~~ (1) Pay to the department an ~~aggregate total~~, amount calculated in accordance
10 with paragraph ~~(2)~~ (e), ~~and~~ but not to exceed four hundred thousand dollars
11 (\$400,000), to cover in aggregate the actual and reasonable regulatory costs incurred
12 by the department to administer, implement, and enforce this act for the fiscal year
13 in which the payment is made.

14 ~~(ii)~~ (2) Pay to ~~the~~ a qualified third party the amount required pursuant to the
15 annual payment schedule outlined in ~~paragraph (1) of subdivision (e) and provide~~
16 **subdivision (h) of Section 85890.**

17 (3) Provide to the department written notice of each payment made to the
18 department pursuant to this subdivision.

19 ~~(B)~~ (b) On or before September 30, 2022, each manufacturer shall, in accordance
20 with this section, individually, or collectively with a group of manufacturers, pay to
21 the department an amount equal to the department's actual and reasonable
22 regulatory costs incurred to administer, implement, and enforce this act from
23 January 1, 2022, to June 30, 2022, inclusive.

24 ~~(C)~~ (c) If September 30 falls on a Saturday or Sunday, a payment required
25 pursuant to ~~subparagraphs (A) and (B)~~ subdivision (a) shall be due on the following
26 Monday.

27 ~~(D)~~ (d) A late payment pursuant to ~~clause (i) of subparagraph (A) or subparagraph~~
28 ~~(B)~~ paragraph (1) of subdivision (a), or pursuant to subdivision (b), shall be subject
29 to interest, beginning October 1, 2022, at a rate of 10 percent per annum, pursuant
30 to subdivision (a) of Section 79655.

31 ~~(2)~~ (e) The total aggregate amount required to be paid to the department pursuant
32 to ~~clause (i) of subparagraph (A) of paragraph (1)~~ paragraph (1) of subdivision (a)
33 shall be based on the sum of both of the following, less the amount of any fees paid
34 by a manufacturer, or group of manufacturers, for the prior fiscal year that exceeded
35 the department's actual and reasonable regulatory costs to administer, implement,
36 and enforce this act for that prior fiscal year:

37 ~~(A)~~ (1) An amount that conforms to the total amount of moneys appropriated by
38 the Legislature for expenditure that fiscal year from the fund, which shall not exceed
39 the department's actual and reasonable regulatory costs to administer, implement,
40 and enforce this act for that fiscal year.

1 ~~(B)~~ (2) An amount necessary to ensure a reasonable reserve in the fund that fiscal
2 year for contingencies, including to ensure that funded programs will not be
3 adversely affected by additional baseline expenditure adjustments that may occur in
4 that fiscal year, as determined by the Department of Finance.

5 ~~(3)~~ ~~(A)~~ (f) The department shall deposit all moneys paid by a manufacturer, or
6 group of manufacturers, to the department pursuant to ~~clause (i) of subparagraph~~
7 ~~(A) of paragraph (1) and subparagraph (B) of paragraph (1)~~ paragraph (1) of
8 subdivision (a), and pursuant to subdivision (b), into the Mercury Thermostat
9 Collection Program Fund, which is hereby established.

10 ~~(B)~~ (g) Upon appropriation by the Legislature, moneys in the Mercury Thermostat
11 Collection Program Fund shall be used only for the following purposes:

12 ~~(i)~~ (1) The department’s actual and reasonable regulatory costs in administering,
13 implementing, and enforcing this act.

14 ~~(ii)~~ (2) Reimbursement of any loans made to the Mercury Thermostat Collection
15 Program Fund or repayment of any expenditures made from any other fund to
16 finance the department’s actual and reasonable regulatory costs incurred to
17 administer, implement, and enforce this act from January 1, 2022, to June 30, 2022,
18 inclusive.

19 ~~(iii)~~ (3) The actual and reasonable regulatory costs incurred by any other agency
20 assisting the department in administering, implementing, and enforcing this act.

21 ~~(C)~~ (h) Notwithstanding any other law, moneys in the Mercury Thermostat
22 Collection Program Fund shall not be loaned to or borrowed by any other special
23 fund or the General Fund.

24 ~~(D)~~ (i) Moneys in the Mercury Thermostat Collection Program Fund shall not be
25 expended for any purpose not enumerated in this act.

26 **Comment.** Section 85885 continues former Section 25214.8.11.2(a) without substantive change.

27 See Sections 85880(a) (“act”), 85880(c) (“manufacturer”), 85880(f) (“program”), 85880(g)
28 (“qualified third party”).

29 **Staff Note.** Existing Section 25214.8.11.2(a)(1)(A)(ii) (which would be continued by proposed
30 Section 85885(a)(2)) specifies various payments that manufacturers must make to “*the* qualified
31 third party.” (Emphasis added.) The use of the word “the” (rather than “a”) makes the identity of
32 this referenced qualified third party confusing, as this is the first reference to a qualified third party
33 in the section.

34 **The staff welcomes comment on whether (1) the article “the” in this reference can be**
35 **changed to “a” without substantively changing the meaning of the provision, or (2) the**
36 **reference is to a qualified third party identified in another code section, and should therefore**
37 **be cross-referenced in this section.**

38 **§ 85890. Remittance of payment by manufacturers**

39 85890. ~~(b)~~ (1) ~~(a)~~ A manufacturer may individually An individual manufacturer
40 or group of manufacturers may remit a payment required pursuant to subparagraph
41 ~~(A) or (B) of paragraph (1) of subdivision (a)~~ subdivision (a) or (b) of Section 85885;
42 ~~or a group of manufacturers may remit a payment on behalf of a group of~~
43 manufacturers.

1 (b) Manufacturers shall apportion a payment or payments required pursuant to
2 ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a)~~ subdivision (a) or (b)
3 of Section 85885 among themselves in a fair and reasonable manner.

4 ~~(2) (c)~~ If a payment required pursuant to ~~subparagraph (A) or (B) of paragraph (1)~~
5 ~~of subdivision (a)~~ subdivision (a) or (b) of Section 85885 is made on behalf of a
6 group of manufacturers, the names of the manufacturers shall be included with the
7 payment and in the written notice to the department required pursuant to clause (ii)
8 of subparagraph (A) of paragraph (1) of subdivision (a) so the department can
9 determine each manufacturer's compliance with this act.

10 (d) If a manufacturer that is part of a group of manufacturers making a payment
11 required pursuant to ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a)~~
12 subdivision (a) or (b) of Section 85885 fails to make a payment, the group of
13 manufacturers shall provide to the department a written notice of the nonpaying
14 manufacturer's identity and the apportioned payment amount for which the
15 nonpaying manufacturer is responsible.

16 ~~(e) (e)~~ If a manufacturer fails to make a payment pursuant to ~~subparagraphs (A)~~
17 ~~and (B) of paragraph (1) of subdivision (a)~~ subdivision (a) or (b) of Section 85885
18 in accordance with this section, or pursuant to subdivision ~~(f) (j)~~, the manufacturer's
19 thermostats shall be subject to a sales ban pursuant to **subdivision (b) of Section**
20 **25214.8.12**.

21 ~~(d) (1)) (f)~~ The Legislature intends that, by timely making all payments required
22 pursuant to ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a)~~
23 subdivision (a) or (b) of Section 85885 and all payments required pursuant to
24 subdivision ~~(f) (j)~~, a manufacturer shall be deemed to have satisfied, and will have
25 discharged or be released from, any liability, obligation, or violation established or
26 alleged pursuant to this article, including the regulations adopted by the department
27 pursuant to former Section 25214.8.17, as it existed before January 1, 2022.

28 ~~(2) (g)~~ If a manufacturer timely makes all payments required pursuant to
29 ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a)~~ subdivision (a) or (b)
30 of Section 85885 and all payments required pursuant to subdivision ~~(f) (j)~~, any
31 consent order, summary of violation or violations, or other instrument or document,
32 including, but not limited to, the February 10, 2016, Consent Order entered into
33 between the department and 25 mercury-added thermostat manufacturers pursuant
34 to **Section 25187** and former Section 25214.8.17, establishing or alleging liability,
35 obligations, or violations of that manufacturer pursuant to this article, including the
36 regulations adopted by the department pursuant to former Section 25214.8.17 as it
37 existed before January 1, 2022, shall be deemed stayed prior to the expiration of this
38 act and deemed satisfied, discharged, released, or terminated upon the expiration of
39 this act.

40 ~~(e) (1) (h)~~ A manufacturer, or group of manufacturers, shall ~~do all of the following~~
41 provide to the qualified third party the following amounts for the following
42 purposes:

1 ~~(A) (1) Provide to the a qualified third party two~~ Two million dollars (\$2,000,000)
2 in the first program year to effectively and efficiently develop and implement the
3 education and outreach campaign required pursuant to **subdivisions (c) to (f),**
4 **inclusive, of Section 25214.8.11.5.**

5 ~~(B) (2) Provide to the qualified third party one~~ One million two hundred thousand
6 dollars (\$1,200,000) annually in each of the subsequent five program years to carry
7 out the education and outreach campaign required pursuant to **subdivisions (c) to**
8 **(f), inclusive, of Section 25214.8.11.5.**

9 ~~(C) (3) Provide to the qualified third party one~~ One million one hundred thousand
10 dollars (\$1,100,000) in the seventh program year to carry out the education and
11 outreach campaign required pursuant to **subdivisions (c) to (f), inclusive, of**
12 **Section 25214.8.11.5.**

13 ~~(D) (4) Provide to the qualified third party an~~ An amount equal to the annual costs
14 estimated by the qualified third party to develop and implement the program
15 pursuant to this act.

16 ~~(2) (i)~~ (i) Any funds provided to the qualified third party pursuant to paragraph (1)
17 subdivision (h) that are not expended by the qualified third party in the program
18 year in which the funds were received may be used by the qualified third party the
19 following program year for the education and outreach campaign required pursuant
20 to subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.

21 ~~(F) (j)~~ (j) A manufacturer, or group of manufacturers, on or before January 1, 2023,
22 and on or before January 1 of each year thereafter until January 1, 2029, shall
23 provide to the qualified third party an amount equal to the actual costs incurred by
24 the qualified third party that exceed the amount provided to the qualified third party
25 pursuant to subparagraph (D) of paragraph (1) of subdivision (e) paragraph (4) of
26 subdivision (h).

27 **Comment.** Section 85890 continues former Section 25214.8.11.2(b)-(f) without substantive
28 change.

29 See Sections 83160 (“department”), 85880(c) (“manufacturer”), 85880(g) (“qualified third
30 party”).

31 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
32 25214.8.11.2(b)-(f) in proposed Section 85890 substantively changes the meaning of the existing
33 section.

34 **§ 85895. Manufacturer obligation to implement act**

35 85895. (a) On or before March 1, 2022, a manufacturer, or group of
36 manufacturers, shall contract with or retain a qualified third party to develop and
37 implement a convenient, cost-effective, and efficient program consistent with this
38 act.

39 (b) A Prior to compliance with subdivision (a), each manufacturer, or group of
40 manufacturers, shall issue a request for proposals for a qualified third party to
41 develop and implement the program required pursuant to this act.

1 (c) When selecting the qualified third party to develop and implement the
2 program, the manufacturer, or group of manufacturers, shall consider all of the
3 following factors when selecting a qualified third party to develop and implement
4 the program:

5 (1) The qualified third party's history and success of operating product takeback
6 collection programs.

7 (2) The qualified third party's ability to identify and provide information to
8 consumers about out-of-service mercury-added thermostat collection locations.

9 (3) The qualified third party's ability to ensure that transportation systems move
10 waste safely and effectively.

11 (4) The qualified third party's history of working with recycling or disposal
12 experts, manufacturers, state and local governments, and retailers.

13 (5) The qualified third party's ability to implement an effective education and
14 outreach campaign.

15 (6) The qualified third party's presence in the state and ability to adequately
16 engage with stakeholders in the state to develop and implement the program.

17 (7) Any other factors determined by the manufacturer, or group of manufacturers,
18 to be relevant to the selection of a qualified third party to develop and implement
19 the program.

20 **Comment.** Section 85895 continues former Section 25214.8.14 without substantive change.

21 See Sections 85880(a) ("act"), 85880(c) ("manufacturer"), 85880(e) ("out-of-service mercury-
22 added thermostat"), 85880(f) ("program"), 85880(g) ("qualified third party").

23 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
24 25214.8.14 in proposed Section 85895 substantively changes the meaning of the existing section.

25 **§ 85900. Obligations of qualified third party**

26 85900. A qualified third party selected by a manufacturer or group of
27 manufacturers to develop and implement the program shall do all of the following:

28 (a) Collect, handle, and arrange for the appropriate management of out-of-service
29 mercury-added thermostats in compliance with this act, unless these activities are
30 performed by a manufacturer, or group of manufacturers, pursuant to **paragraph**
31 **(1) of subdivision (a) of Section 25214.8.13.**

32 (b) (1) Ensure that the locations and methods established pursuant to the program
33 to collect out-of-service mercury-added thermostats are sufficiently convenient in
34 all parts of the state, including within rural communities, disadvantaged
35 communities, as identified by the California Environmental Protection Agency
36 pursuant to Section 39711, and low-income communities, as defined in paragraph
37 (2) of subdivision (d) of Section 39713, to encourage the collection of out-of-service
38 mercury-added thermostats.

39 (2) For the purpose of this paragraph (1), "sufficiently convenient" means requires
40 both of the following:

41 (A) For at least 90 percent of state residents, a collection location is located within
42 15 miles of their residence.

1 (B) At least one collection location in each county in the state, unless there is no
2 collection location in the county that is required to participate under this act or
3 willing to participate voluntarily.

4 ~~(2)~~ (3) The qualified third party may, in its discretion, provide for and establish a
5 greater number of collection locations than required pursuant to paragraph (1) to
6 maximize convenience and encourage the collection of out-of-service mercury-
7 added thermostats.

8 (c) On or before July 1, 2022, develop and implement, and update as necessary, a
9 statewide educational and outreach campaign to inform appropriate entities about
10 all of the following:

11 (1) ~~the~~ The importance of safe recycling and disposal of out-of-service mercury-
12 added thermostats, ~~where.~~

13 (2) Where and how to access out-of-service mercury-added thermostat collection
14 locations, ~~and how.~~

15 (3) How to access available out-of-service mercury-added thermostat collection
16 incentives, ~~as well as to coordinate.~~

17 (d) On or before July 1, 2022, coordinate program activities with various
18 stakeholders, including, but not limited to, all of the following:

19 (1) The Contractors State License Board.

20 (2) Heating, ventilation, and air-conditioning contractors.

21 (3) Demolition and environmental contractors, and related associations.

22 (4) Municipal utility districts.

23 (5) Household hazardous waste collection programs.

24 (6) Apartment and property management associations and organizations.

25 (7) Homeowners.

26 (8) Rural districts.

27 (9) Retailers.

28 (10) Disadvantaged communities, as identified by the California Environmental
29 Protection Agency pursuant to Section 39711, or low-income communities, as
30 defined in paragraph (2) of subdivision (d) of Section 39713.

31 (11) The general public.

32 (12) The Public Utilities Commission.

33 (13) The State Energy Resources Conservation and Development Commission.

34 ~~(d)~~ (1) (e) On or before July 1, 2022, create and distribute informational materials
35 about the program that include, but are not limited to, all of the following:

36 ~~(A)~~ (1) Signage that is prominently displayed and easily visible to consumers and
37 contractors.

38 ~~(B)~~ (2) Written materials and templates of materials for reproduction by retailers
39 and wholesalers to be provided to consumers at the time of purchase, delivery, or
40 both purchase and delivery of a thermostat.

41 (3) The materials described in paragraph (2) shall include information on all of
42 the following:

1 (A) The prohibition of improper disposal of out-of-service mercury-added
2 thermostats, requirements.

3 (B) Requirements for the proper management of out-of-service mercury-added
4 thermostats, out-of-service.

5 (C) Out-of-service mercury-added thermostat collection locations, and the .

6 (D) The availability of out-of-service mercury-added thermostat collection bins.

7 ~~(C)~~ (4) Advertising or other promotional materials, or both, that include
8 references to out-of-service mercury-added thermostat collection opportunities.

9 ~~(D)~~ (5) Materials to be used in direct communications with consumers and
10 contractors at the time of purchase of a thermostat.

11 ~~(E)~~ (6) A public service announcement promoting the proper management of out-
12 of-service mercury-added thermostats, and a plan for a public service campaign
13 using the public service announcement that includes the media and markets into
14 which the public service announcement is to be distributed and aired on behalf of
15 the program. Copies of the public service announcement copies of which shall be
16 provided to the department for its use and promotion.

17 (7) A plan for a public service campaign using the public service announcement
18 required by paragraph (5) that includes the media and markets into which the public
19 service announcement is to be distributed and aired on behalf of the program.

20 ~~(F)~~ (8) Written materials, signage, and other advertising and promotional
21 materials that provide information to consumers about how to access the available
22 out-of-service mercury-added thermostat collection incentives.

23 ~~(2)~~ (f)(1) The informational materials created and distributed by the qualified third
24 party pursuant to this subdivision (e) shall be made available in a manner necessary
25 to ensure that the informational materials are available to and accessible by all state
26 residents, and.

27 (2) The informational materials shall also be translated into Spanish, Chinese,
28 Tagalog, Vietnamese, and Korean when distributed where any of these languages
29 are spoken by a substantial number of the public to which the materials are being
30 distributed.

31 ~~(e)~~ ~~(1)~~ (g) On or before July 1, 2022, establish an internet website for the program
32 that is accessible to the public. The qualified third party shall post and on which all
33 of the following on the internet website shall be posted:

34 ~~(A)~~ (1) Templates of educational materials, in a form and format that can be easily
35 downloaded.

36 ~~(B)~~ (2) Location information, by county, of all established out-of-service
37 mercury-added thermostat collection sites in the state. Location information, which
38 shall be posted and updated in a manner that allows members of the public to easily
39 identify the most convenient location for collection of out-of-service mercury-added
40 thermostats.

41 ~~(C)~~ (3) Information about accessing available out-of-service mercury-added
42 thermostat collection incentives.

1 ~~(2) The department shall display on its internet website a link to the internet~~
2 ~~website for the program established by the qualified third party pursuant to~~
3 ~~paragraph (1).~~

4 ~~(f)~~ (h) On or before July 1, 2022, develop strategies to work with all of the
5 following to encourage their participation in the collection and proper management
6 of out-of-service mercury-added thermostats:

7 (1) (A) State utilities participating in demand response programs involving the
8 replacement of thermostats.

9 ~~(B) These strategies~~ Strategies relating to these utilities may include an
10 educational insert in their customers' utility bills.

11 (2) Wholesalers of thermostats in the state.

12 (3) Retailers and other outlets that sell thermostats directly to consumers in the
13 state.

14 (4) Household hazardous waste collection facilities to partner with local take-back
15 centers, including retailers and wholesalers, to facilitate convenient out-of-service
16 mercury-added thermostat collection options for community members.

17 ~~(g)~~ (i) (1) Provide out-of-service mercury-added thermostat collection incentives
18 to consumers of no less than thirty dollars (\$30) per out-of-service mercury-added
19 thermostat collected, and educate contractors, service technicians, and residents on
20 the availability of ~~the~~ these incentives.

21 (2) ~~(A)~~ A collection incentive available pursuant to paragraph (1) shall be
22 available only to a consumer or service technician that attests, under penalty of
23 perjury, to both of the following:

24 ~~(i)~~ (A) Their California state residency.

25 ~~(ii)~~ (B) That the returned out-of-service mercury-added thermostat or thermostats
26 were removed from a building or facility in the state.

27 ~~(B)~~ (3) For the purpose of ~~subparagraph (A)~~ paragraph (2), “consumer” means an
28 individual resident of the state who returns an out-of-service mercury-added
29 thermostat to an established collection location and who is not a retailer or
30 wholesaler.

31 ~~(h)~~ (j) Notwithstanding any other provision in this act, the qualified third party
32 shall only be required to implement subdivisions (c) ~~to (f)~~ through (h), inclusive,
33 after January 1, 2029, if unspent funds from previous program years are available
34 to further the implementation of these subdivisions.

35 **Comment.** Section 85900 continues former Section 25214.8.11.5(a) through (d), (e)(1), and (f)
36 through (h) without substantive change.

37 See Sections 85880(a) (“act”), 85880(c) (“manufacturer”), 85880(e) (“out-of-service mercury-
38 added thermostat”), 85880(f) (“program”), 85880(g) (“qualified third party”).

39 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
40 25214.8.11.5(a) through (d), (e)(1), and (f) through (h) in proposed Section 85900 substantively
41 changes the meaning of the existing section.

1 **§ 85905. Required internet display of program by department**

2 85905. The department shall display on its internet website a link to the internet
3 website for the program established by a qualified third party pursuant to
4 **subdivision (g) of Section 85900.**

5 **Comment.** Section 85905 continues former Section 25214.8.11.5(e)(2) without substantive
6 change.

7 See Sections 83160 (“department”), 85880(g) (“qualified third party”).

8 **§ 85910. Department review of qualified third party plan**

9 85910. (a) On or before June 1, 2022, the qualified third party shall provide to the
10 department for review and approval the plan developed by the qualified third party
11 to carry out the program elements identified in **Sections 25214.8.11.5 and**
12 **25214.8.13.**

13 (b) (1) Within 30 days of receipt of the qualified third party’s plan pursuant to
14 subdivision (a), the department shall review the plan, determine whether the plan is
15 complete, and notify the qualified third party, in writing, of the department’s
16 determination.

17 (2) For the purpose of the department’s determination pursuant to paragraph (1),
18 the qualified third party’s plan shall be deemed complete if the plan addresses each
19 program element identified in **Sections 25214.8.11.5 and 25214.8.13.**

20 ~~(2)~~ (c)(1) If the department determines that ~~the~~ a plan submitted pursuant to
21 subdivision (a) or revised plan submitted pursuant to paragraph (2) is incomplete,
22 the department shall identify, and notify the qualified third party in writing, as to
23 what additional information or modifications must be submitted to the department
24 to complete the plan.

25 (2) ~~The~~ A qualified third party that receives a written notification from the
26 department pursuant to paragraph (1) shall submit to the department a revised plan
27 within 30 days of the date of the department’s written notification.

28 ~~(e)~~ (d) (1) If the department determines that the plan submitted pursuant to
29 subdivision (a) or revised plan submitted pursuant to paragraph (2) of subdivision
30 ~~(b)~~ (c) is complete, the department shall have 30 days from the date of its
31 determination to review and approve the plan or revised plan.

32 (2) The department shall review ~~the~~ a plan or revised plan determined to be
33 complete for compliance with this act, and shall thereafter do any of the following:

34 (A) Approve the plan or revised plan, in which case the department shall provide
35 written notification to the qualified third party of the department’s approval of the
36 plan.

37 (B) (i) Conditionally approve the plan or revised plan, in which case the
38 department shall provide written notification to the qualified third party of the
39 department’s conditional approval of the plan.

40 (ii) The department shall include in its written notification the basis for its
41 conditional approval and describe, in detail, the requirements with which the

1 qualified third party needs to comply in order to proceed to implement the plan in
2 compliance with this act.

3 (C) (i) Disapprove the plan or revised plan, in which case the department shall
4 provide written notification to the qualified third party of the department's
5 disapproval of the plan.

6 (ii) The department shall include in its written notification the basis for its
7 disapproval, and require the qualified third party to submit to the department a
8 revised plan within 30 days of the date of the department's written notification
9 disapproving the plan.

10 ~~(e) (1) The department shall review the~~ If a revised plan is submitted to the
11 department pursuant to subparagraph (C) of paragraph (2) of subdivision (d), the
12 department shall review the plan within 15 days of receipt.

13 ~~(ii) (2) If the department determines after review that the revised plan submitted~~
14 ~~pursuant to clause (i) does not comply with this act, the manufacturer, or group of~~
15 ~~manufacturers, that contracted with or retained the qualified third party shall not be~~
16 ~~deemed to be in compliance with this act until the qualified third party submits, and~~
17 ~~the department approves or conditionally approves, a plan that complies with the~~
18 ~~requirements of this act.~~

19 ~~(d) (f)~~ (f) The time taken by the department to review and approve the qualified third
20 party's plan or revised plan pursuant to this section shall toll the qualified third
21 party's July 1, 2022, deadline to develop and implement the statewide educational
22 and outreach campaign required pursuant to **subdivisions (c) to (f), inclusive, of**
23 **Section 25214.8.11.5** and the July 1, 2022, deadlines pursuant to **clauses (ii) to (iv),**
24 **inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section**
25 **25214.8.13.**

26 ~~(e) (g)~~ (g) The program required by this article as it existed before January 1, 2022,
27 shall remain in effect until the plan submitted by the qualified third party pursuant
28 to this section is approved by the department and fully implemented by the qualified
29 third party.

30 **Comment.** Section 85910 restates former Section 25214.8.11.6 without substantive change.

31 See Sections 85880(a) ("act"), 83160 ("department"), 85880(c) ("manufacturer"), 85880(f)
32 ("program"), 85880(g) ("qualified third party").

33 **Staff Note.** The staff welcomes comment on whether the proposed revision of Section
34 25214.8.11.6 in proposed Section 85910 in any way substantively changes the meaning of the
35 existing section.

36 **§ 85915. Ban on sale of thermostats produced by noncompliant manufacturer**

37 85915. (a) A manufacturer that fails to have a plan submitted by the qualified third
38 party approved by the department pursuant to Section **25214.8.11.6** or a
39 manufacturer that fails to make a payment required pursuant to either subparagraph
40 **(A) or (B) of paragraph (1) of subdivision (a) or subdivision (f) of Section**
41 **25214.8.11.2** ~~shall be subject to the sales ban pursuant to subdivision (b)~~ is not in
42 compliance with this act.

1 (b) On or before July 1, 2023, and on or before January 1 and July 1 of each year
2 thereafter, the department shall post a notice on its internet website listing
3 manufacturers that are not in compliance with this act.

4 (c) (1) A person shall not sell or offer for sale in this state a thermostat ~~that is~~
5 produced by a manufacturer that is not in compliance with this act.

6 (2) The sales prohibition in paragraph (1) shall be effective on the 120th day after
7 the notice described in subdivision ~~(e) listing noncompliant manufacturers~~ (b) is
8 posted on the department’s internet website and shall remain in effect until the
9 manufacturer is no longer listed on the department’s internet website.

10 ~~(e) On or before July 1, 2023, and on or before January 1 and July 1 of each year~~
11 ~~thereafter, the department shall post a notice on its internet website listing~~
12 ~~manufacturers that are not in compliance with this act.~~

13 (d) A wholesaler or a retailer that distributes or sells mercury-added thermostats
14 shall monitor the department’s internet website to determine if the sale of a
15 manufacturer’s thermostats is in compliance with subdivision ~~(b)~~ (c).

16 **Comment.** Section 85915 restates former Section 25214.8.12 without substantive change.

17 See Sections 85880(a) (“act”), 83160 (“department”), 85880(c) (“manufacturer”), 85880(d)
18 (“mercury-added thermostat”), 85880(g) (“qualified third party”).

19 **Staff Note.** The staff welcomes comment on whether the proposed revision of Section
20 25214.8.12 in proposed Section 85915 in any way substantively changes the meaning of the
21 existing section.

22 **§ 85920. Collection of out-of-service mercury-added thermostats**

23 85920. ~~(a) (1) (A) Subject to paragraph (2), each~~ Each manufacturer, or group of
24 manufacturers, shall do all of the following, or retain a qualified third party to do all
25 of the following:

26 ~~(i)~~ (a) Collect, handle, and arrange for the appropriate management of out-of-
27 service mercury-added thermostats in compliance with this act.

28 ~~(ii)~~ (b) On and after July 1, 2022, provide collection bins for out-of-service
29 mercury-added thermostat collection at no cost to a wholesaler in the state that sells
30 thermostats.

31 ~~(iii)~~ (c) On and after July 1, 2022, provide collection bins for out-of-service
32 mercury-added thermostat collection at no cost to a retailer in the state that sells
33 thermostats and requests a collection bin.

34 ~~(iv)~~ (d) On and after July 1, 2022, provide collection bins for out-of-service
35 mercury-added thermostat collection at no cost to a local governmental agency that
36 requests a collection bin for use at a household hazardous waste collection facility
37 or household hazardous waste event, and at no cost to a licensed contractor that
38 requests a collection bin.

39 ~~(v)~~ (e) ~~Either arrange~~ Arrange for pickup of the collection bins or pay for the costs
40 of shipping the collection bins provided pursuant to ~~clauses (ii) to (iv)~~ subdivisions
41 (b) to (d), inclusive, for proper handling and recycling or disposal of the out-of-
42 service mercury-added thermostats.

1 (f) (1) On or before June 1, 2022, provide to the department for review and
2 approval the plan developed by the manufacturer, or group of manufacturers, to
3 carry out the requirements of this section.

4 (2) The department shall review the plan in accordance with the procedures and
5 timeframes outlined in subdivisions (b) to (d), inclusive, of Section 25214.8.11.6.

6 ~~(vi)~~ (g)(1) On or before April 1, 2023, and on or before April 1 of each year
7 thereafter, submit an annual report to the department covering the one-year period
8 ending December 31 of the previous calendar year.

9 (2) Each report shall also be posted on the internet website created by the qualified
10 third party pursuant to **subdivision (e) of Section 25214.8.11.5.**

11 (3) The annual report required by paragraph (1) shall include all of the following:

12 ~~(H)~~ (A) The number of out-of-service mercury-added thermostats collected in the
13 state during the previous calendar year.

14 ~~(H)~~ (B) The estimated total amount of mercury contained in the collected out-of-
15 service mercury-added thermostats.

16 ~~(H)~~ (C) The number of incentives provided to consumers and the total amount of
17 incentives paid to consumers pursuant to the program during the previous calendar
18 year.

19 ~~(IV)~~ (D) An evaluation of the effectiveness of the program and the extent to
20 which each element of the planned activities has been successful or could be
21 modified to improve the effectiveness of the program.

22 ~~(V)~~ (E) An accounting of the program administrative costs, including the most
23 recent copy of Internal Revenue Service Form 990 for the qualified third party.

24 ~~(VI)~~ (F) A description of the outreach strategies employed to increase
25 participation, convenience, and collection rates, including dedicated outreach to
26 rural communities, disadvantaged communities, as identified by the California
27 Environmental Protection Agency pursuant to Section 39711, and low-income
28 communities, as defined in paragraph (2) of subdivision (d) of Section 39713, and
29 an assessment of the effectiveness of those outreach strategies.

30 ~~(VII)~~ (G) Examples of outreach and educational materials used, including:

31 ~~(aa)~~ (i) A description of the education and outreach conducted for each of the
32 groups identified in **subdivision (c) of Section 25214.8.11.5.**

33 ~~(ab)~~ (ii) The date and form of education and outreach conducted for or at each
34 collection location.

35 ~~(ae)~~ (iii) Data describing the scope, by medium, of all education and outreach
36 conducted by the qualified third party, including, as applicable, online, digital,
37 social, print, broadcast, or other media.

38 ~~(VIII)~~ (H) Names and locations of all participating out-of-service mercury-added
39 thermostat collection locations.

40 ~~(IX)~~ (I) The number of out-of-service mercury-added thermostats collected at
41 each collection location.

1 ~~(X)~~ (J) The address for the internet website created by the qualified third party
2 pursuant to **subdivision (e) of Section 25214.8.11.5** where the annual report may
3 be viewed online.

4 ~~(XI)~~ (K) A description of how the collected out-of-service mercury-added
5 thermostats were managed.

6 ~~(XII)~~ (L) The results and analysis of the annual survey conducted by the qualified
7 third party pursuant to **Section 25214.8.13.5**.

8 ~~(XIII)~~ (M) Proposed modifications to the program.

9 ~~(XIV)~~ (N) A description of the qualified third party's expenditures incurred in
10 developing and implementing the program.

11 ~~(b) Subject to paragraph (2), on or before June 1, 2022, a manufacturer, or group~~
12 ~~of manufacturers, shall provide to the department for review and approval the plan~~
13 ~~developed by the manufacturer, or group of manufacturers, to carry out the~~
14 ~~requirements of this paragraph. The department shall review the plan in accordance~~
15 ~~with the procedures and timeframes outlined in subdivisions (b) to (d), inclusive, of~~
16 ~~Section 25214.8.11.6.~~

17 ~~(2) A manufacturer, or group of manufacturers, may retain, but is not required to~~
18 ~~retain, the qualified third party to implement the requirements of paragraph (1).~~

19 **Comment.** Section 85920 continues former Section 25214.8.13(a) without substantive change.

20 See Sections 85880(a) (“act”), 83160 (“department”), 85880(c) (“manufacturer”), 85880(e)
21 (“out-of-service mercury-added thermostat”), 85880(f) (“program”), 85880(g) (“qualified third
22 party”), 85880(h) (“retailer”).

23 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
24 25214.8.13(a) in proposed Section 85820 substantively changes the meaning of the existing section.

25 **§ 85925. Department report on status of program**

26 85925. ~~(b)~~ (1) On or before January 1, 2028, the department shall submit a report
27 to the Legislature on the status of the program:

28 ~~(2) The department shall submit its report pursuant to paragraph (1) in compliance~~
29 with Section 9795 of the Government Code.

30 **Comment.** Section 85925 continues former Section 25214.8.13(b) without substantive change.

31 See Sections 83160 (“department”), 85880(f) (“program”).

32 **§ 85930. Education and outreach campaign survey**

33 85930. (a) No later than July 1, 2023, and no later than July 1 of each year
34 thereafter until July 1, 2028, the qualified third party shall conduct an annual survey
35 of the groups listed in **subdivision (c) of Section 25214.8.11.5** to evaluate the
36 effectiveness of the education and outreach campaign developed by the qualified
37 third party pursuant to that subdivision and to obtain collection data.

38 (b) The qualified third party shall transmit the annual survey results to the
39 department by September 1 of the same year.

40 ~~(b)~~ (c) The qualified third party shall post the results of the annual survey on the
41 internet website created pursuant to **subdivision (e) of Section 25214.8.11.5** and

1 allow public comment on the survey for up to 30 calendar days after the survey is
2 posted on the internet website.

3 (d) The department shall provide on its internet website a link to the qualified
4 third party's survey results and public comments.

5 (e) (e) Until December 31, 2028, the qualified third party shall review the annual
6 survey responses and public comments and, if warranted, by November 1 of the
7 same year, submit to the department for its review and approval proposals to modify
8 the program.

9 (f) The department shall evaluate the qualified third party's proposals, provide
10 feedback on the proposals to the qualified third party, and render a decision on the
11 proposed modifications no later than December 1 of the same year.

12 (g) The modified plan shall be implemented the following calendar year to ensure
13 that all out-of-service mercury-added thermostat collection locations are thoroughly
14 informed about the program and its collection tools, and are provided with any
15 technical assistance that may be needed to increase the program's effectiveness at
16 ~~out-of-service mercury-added thermostat collection~~ those locations, where
17 warranted.

18 **Comment.** Section 85930 continues former Section 25214.8.13.5 without substantive change.
19 See Sections 83160 ("department"), 85880(e) ("out-of-service mercury-added thermostat"),
20 85880(f) ("program"), 85880(g) ("qualified third party").

21 § 85935. Responsibilities of wholesalers and retailers

22 85935. (a) A wholesaler that distributes new thermostats and ~~that~~ has a physical
23 location in the state shall act as a collection location for out-of-service mercury-
24 added thermostats.

25 (b) A retailer or wholesaler that distributes new thermostats by mail to buyers in
26 the state shall include with the sale of the new thermostat, an internet website
27 address and a toll-free telephone number with instructions on obtaining a prepaid
28 mail-in label that a consumer may use to send an out-of-service mercury-added
29 thermostat to a collection location.

30 (c) A wholesaler that distributes new thermostats shall distribute the educational
31 and outreach materials developed by the qualified third party pursuant to **Section**
32 **25214.8.11.5** to the wholesaler's customers.

33 **Comment.** Section 85935 continues former Section 25214.8.14 without substantive change.
34 See Sections 85880(e) ("out-of-service mercury-added thermostat"), 85880(h) ("retailer"),
35 85880(i) ("thermostat"), 85880(j) ("wholesaler").

36 § 85940. Heating, ventilation, and air-conditioning contractor responsibility

37 85940. A contractor who installs heating, ventilation, and air-conditioning
38 components and ~~who~~ removes a mercury-added thermostat shall take the out-of-
39 service mercury-added thermostat to a location that is authorized to collect out-of-
40 service mercury-added thermostats.

41 **Comment.** Section 85940 continues former Section 25214.8.15 without substantive change.

1 See Sections 85880(d) (“mercury-added thermostat”), 85880(e) (“out-of-service mercury-added
2 thermostat”).

3 **§ 85945. Demolition responsibilities**

4 85945. A person who demolishes a building shall remove any mercury-added
5 thermostats from the building before demolition in accordance with all applicable
6 statutes and regulations, and take the out-of-service mercury-added thermostat to a
7 location that is authorized to collect out-of-service mercury-added thermostats.

8 **Comment.** Section 85945 continues former Section 25214.8.16 without substantive change.

9 See Sections 85880(d) (“mercury-added thermostat”), 85880(e) (“out-of-service mercury-added
10 thermostat”).

11 **§ 85950. Repeal of chapter of California Code of Regulations**

12 85950. The department shall repeal Chapter 24 (commencing with Section
13 66274.1) of Division 4.5 of Title 22 of the California Code of Regulations.

14 **Comment.** Section 85950 continues former Section 25214.8.17 without substantive change.

15 See Section 83160 (“department”).

16 **Staff Note.** The chapter of the California Code of Regulations referenced in this section appears
17 to have been [repealed](#) in 2023. Comment is invited on whether existing Section 25214.8.17 should
18 nevertheless be continued in this recodification.

19 **§ 85955. Responsibilities related to out-of-service mercury-added thermostats**

20 85955. (a) The collection, handling, storage, and management of out-of-service
21 mercury-added thermostats pursuant to this act shall be performed in compliance
22 with this ~~chapter~~ division and its implementing regulations.

23 (b) Nothing in this act shall be construed as affecting or modifying a person’s
24 responsibility to otherwise comply with this ~~chapter~~ division, including its
25 implementing regulations, with respect to hazardous waste.

26 (c) Except as provided, nothing in this act shall limit or restrict the department’s
27 enforcement authority pursuant to this ~~chapter~~ division and its implementing
28 regulations.

29 (d) Notwithstanding any other law, a qualified third party shall not be liable
30 pursuant to this ~~chapter~~ division for violations of this act.

31 **Comment.** Section 85955 continues former Section 25214.8.18 without substantive change.

32 See Sections 85880(a) (“act”), 83160 (“department”), 83210 (“hazardous waste”).

33 **§ 85960. Effective end date for obligations imposed by article**

34 85960. (a) Unless otherwise provided in this article, the obligations imposed by
35 this article shall remain in effect until January 1, 2030.

36 (b) The Mercury Thermostat Collection Program Fund created by **subparagraph**
37 **(A) of paragraph (3) of subdivision (a) of Section 25214.8.11.2** shall be abolished
38 on November 30, 2032.

39 (c) Any unencumbered moneys remaining in the fund on November 30, 2032,
40 shall be refunded to the manufacturer, or group of manufacturers, that paid to the

1 department the fees required pursuant to **clause (i) of subparagraph (A) of**
2 **paragraph (1) of subdivision (a) and subparagraph (B) of paragraph (1) of**
3 **subdivision (a) of Section 25214.8.11.2.**

4 (d) This article shall remain in effect only until January 1, 2033, and as of that
5 date is repealed.

6 **Comment.** Section 85960 continues former Section 25214.8.19 without substantive change.
7 See Sections 83160 (“department”), 85680(c) (“manufacturer”).

8 Article 9. Electronic Waste

9 § 86000. Incorporation of other provisions and standards

10 86000. (a) The requirements and other provisions of Chapter 8.5 (commencing
11 with Section 42460) of Part 3 of Division 30 of the Public Resources Code are
12 incorporated by reference as requirements and provisions of this ~~chapter~~ division.

13 (b) To the extent consistent with the federal act, the department may, by
14 regulation, establish management standards as an alternative to one or more of the
15 standards in this ~~chapter~~, division for any specified activity that involves the
16 management of an electronic waste.

17 **Comment.** Section 86000 continues former Section 25214.9 without substantive change.
18 See Sections 83160 (“department”), 83200 (“federal act”).

19 § 86005. Regulation of covered electronic devices

20 86005. (a) (1) For purposes of this section, “electronic device” has the same
21 meaning as a “covered electronic device,” as defined in subparagraph (A) of
22 paragraph (1) of subdivision (g) of Section 42463 of the Public Resources Code.

23 (2) For purposes of this section, “~~Covered~~ covered electronic device” does not
24 include a covered battery-embedded product, as defined in subparagraph (B) of
25 paragraph (1) of subdivision (g) of Section 42463 of the Public Resources Code.

26 (b) The department shall adopt regulations in accordance with this section that
27 prohibit an electronic device from being sold or offered for sale in this state if the
28 electronic device is prohibited from being sold or offered for sale in the European
29 Union on and after its date of manufacture, to the extent that Directive 2002/95/EC,
30 adopted by the European Parliament and the Council of the European Union on
31 January 27, 2003, and as amended thereafter by the Commission of European
32 Communities, prohibits that sale due to the presence of certain heavy metals.

33 (c) The regulations adopted pursuant to subdivision (b) shall take effect January
34 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European
35 Parliament and the Council of the European Union on January 27, 2003, takes effect,
36 whichever date is later.

37 (d) The department shall exclude, from the regulations adopted pursuant to this
38 section, the sale of an electronic device that contains a substance that is used to
39 comply with the consumer, health, or safety requirements that are required by the
40 Underwriters Laboratories, the federal government, or the state.

1 (e) In adopting regulations pursuant to this section, the department shall not
2 require the manufacture or sale of an electronic device that is different than, or
3 otherwise not prohibited by, the European Union under Directive 2002/95/EC,
4 adopted by the European Parliament and the Council of the European Union on
5 January 27, 2003.

6 (f) (1) The department shall not adopt any regulations pursuant to this section that
7 impose any requirements or conditions that are in addition to, or more stringent than,
8 the requirements and conditions expressly authorized by this section.

9 (2) In complying with this subdivision, the department shall use, in addition to
10 any other information deemed relevant by the department, the published decisions
11 of the Technical Adaptation Committee and European Union member states that
12 interpret the requirements of Directive 2002/95/EC.

13 **Comment.** Section 86005 continues former Section 25214.10 without substantive change.
14 See Section 83160 (“department”).

15 **§ 86010. Regulation of video display devices**

16 86010. (a) For purposes of this section, the following definitions shall apply:

17 (1) “Electronic device” means a video display device, as defined in Section 42463
18 of the Public Resources Code, with a screen size of greater than four inches.

19 (2) “Covered electronic device” has the same meaning as a covered electronic
20 device, as defined in paragraph (1) of subdivision (g) of Section 42463 of the Public
21 Resources Code.

22 (3) “Manufacturer” and “retailer” have the same meaning as set forth in Section
23 42463 of the Public Resources Code.

24 (b) Notwithstanding the definition of “covered electronic device” in paragraph (2)
25 of subdivision (a), the obligations of the department established in subdivisions (c)
26 to (f), inclusive, apply only to covered electronic devices specified in subparagraph
27 (A) of paragraph (1) of subdivision (g) of Section 42463 of the Public Resources
28 Code.

29 (c) The department shall adopt regulations that identify electronic devices that the
30 department determines are presumed to be, when discarded, a hazardous waste
31 pursuant to this ~~chapter~~ division.

32 (d) (1) Except as provided in subdivision (f), a manufacturer of an electronic
33 device that is identified in the regulations adopted by the department shall send a
34 notice in accordance with the schedule specified in subparagraph (A) or (B), as
35 applicable, of paragraph ~~(2)~~ (3) to any retailer that sells that electronic device
36 manufactured by the manufacturer.

37 (2) The notice shall identify the electronic device, and ~~shall~~ inform the retailer
38 that the electronic device is a covered electronic device and is subject to a fee in
39 accordance with subdivision (e).

40 ~~(2)~~ (3) The notice required by this subdivision shall be sent in accordance with
41 the following schedule:

1 (A) On or before October 1, 2004, the manufacturer shall send a notice covering
2 any electronic device manufactured by that manufacturer ~~that is identified in the~~
3 regulations adopted by the department on or before July 1, 2004, ~~that identify the~~
4 identifying electronic devices ~~that~~ the department determines are presumed ~~to be,~~
5 when discarded; to be a hazardous waste pursuant to this chapter division.

6 (B) On or before April 1, 2005, and on or before every April 1 of each year
7 thereafter, the manufacturer shall send a notice covering any electronic device
8 ~~manufactured by that manufacturer~~ identified in the regulations adopted by the
9 department pursuant to subdivision (c) on or before December 31 of the prior year
10 that were manufactured by that manufacturer.

11 (3) ~~If a retailer sells a refurbished covered electronic device, the~~ The manufacturer
12 is required to comply with the notice requirement of this subdivision based on the
13 sale by a retailer of a refurbished covered electronic device only if the manufacturer
14 directly supplies supplied the refurbished covered electronic device to the retailer.

15 (e) (1) Except as provided in subdivision (f), a covered electronic device ~~that is~~
16 identified in ~~the~~ regulations adopted; by the department on or before July 1, 2004,
17 ~~by the department,~~ that identify electronic devices ~~that~~ the department determines
18 are presumed ~~to be~~ when discarded to be a hazardous waste pursuant to this chapter,
19 shall; on and after January 1, 2005, be subject to Chapter 8.5 (commencing with
20 Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the
21 covered electronic waste recycling fee imposed pursuant to Section 42464 of the
22 Public Resources Code.

23 (2) Except as provided in subdivision (f), a covered electronic device identified in
24 the regulations adopted by the department; pursuant to subdivision (c); shall, on and
25 after July 1 of the year subsequent to the year in which the covered electronic device
26 is first identified in the regulations, be subject to Chapter 8.5 (commencing with
27 Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the
28 covered electronic waste recycling fee imposed pursuant to Section 42464 of the
29 Public Resources Code.

30 (f) (1) If the manufacturer of an electronic device that is identified in ~~the~~
31 regulations adopted by the department pursuant to subdivision (c) obtains the
32 department's concurrence that an electronic device, when discarded, would not be
33 a hazardous waste, in accordance with procedures set forth in Section 66260.200 of
34 Title 22 of the California Code of Regulations, the electronic device shall cease to
35 be a covered electronic device and shall cease to be subject to subdivisions (d) and
36 (e) on the first day of the quarter that begins not less than 30 days after the date ~~that~~
37 the department provides the manufacturer with a written nonhazardous concurrence
38 for the electronic device pursuant to this subdivision.

39 (2) A manufacturer shall notify each retailer to which that manufacturer has sold
40 a covered electronic device that the device has been determined pursuant to this
41 subdivision to be nonhazardous and is no longer subject to a covered electronic
42 waste recycling fee.

1 ~~(2)~~ (3) No later than 10 days after the date that the department issues a written
2 nonhazardous concurrence to the manufacturer pursuant to paragraph (1), the
3 department shall do both of the following:

4 (A) Post on the department’s internet website a copy of the nonhazardous
5 concurrence, including, but not limited to, an identification and description of the
6 electronic device to which the concurrence applies.

7 (B) Send a copy of the nonhazardous concurrence, including, but not limited to,
8 an identification and description of the electronic device to which the concurrence
9 applies, to the Department of Resources Recycling and Recovery and to the
10 California Department of Tax and Fee Administration.

11 (g) Notwithstanding Section 42474 of the Public Resources Code, a fine or
12 penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale,
13 in this state a covered electronic device for which the covered electronic waste
14 recycling fee has not been collected or paid, if the failure to collect the fee was due
15 to the failure of the California Department of Tax and Fee Administration to inform
16 the retailer that the electronic device was subject to the fee.

17 **Comment.** Section 86010 continues former Section 25214.10.1 without substantive change.
18 See Sections 83160 (“department”), 83210 (“hazardous waste”).

19 **Staff Notes. (1)** The staff welcomes comment on whether any proposed revision of Section
20 25214.10.1 in proposed Section 86010 substantively changes the meaning of the existing section.

21 **(2)** Existing Section 25214.10.1(f)(1) — which would be continued by proposed Section
22 85810(f)(1) and (2) — indicates that a manufacturer of an electronic device who “obtains the
23 department’s concurrence that an electronic device, when discarded, would not be a hazardous
24 waste” is required to send a notice that the device has been determined to be nonhazardous to any
25 retailer to whom the manufacturer has sold the device, but only on a specified date after the
26 department provides the manufacturer *written* nonhazardous concurrence relating to that device.

27 Similarly, Section 25214.10.1(f)(2) — which would be continued by proposed Section
28 86010(f)(3) — imposes requirements on the department within a specified time after the issuance
29 of the written concurrence.

30 (a) Does the intended meaning of a manufacturer “obtaining” this nonhazardous concurrence, as
31 stated in Section 25214.10.1(f)(1), differ in some way from the manufacturer receiving *written*
32 *notice* of the concurrence, and if not, is there a reason the provision cannot be redrafted to simply
33 obligate the manufacturer to act after receiving a written nonhazardous concurrence?

34 (b) Is there text in another section or in regulation that calls for the department to act within a
35 specified time on a submitted request for a nonhazardous concurrence, which would be helpful to
36 add to this recodified section?

37 **The staff welcomes comment on these issues.**

38 **§ 86015. Emergency regulations**

39 86015. (a) A regulation adopted pursuant to this article may be adopted as an
40 emergency regulation in accordance with Chapter 3.5 (commencing with Section
41 11340) of Part 1 of Division 3 of Title 2 of the Government Code, ~~and for the~~
42 ~~purposes of that chapter~~

43 (b) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1
44 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of the

1 Government Code, the adoption of ~~these regulations~~ a regulation pursuant to
2 subdivision (a) is an emergency, and shall be considered by the Office of
3 Administrative Law as necessary for the immediate preservation of the public peace,
4 health, and safety, and general welfare.

5 (c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code, an emergency regulation adopted by
7 the department pursuant to this section shall be filed with, ~~but~~ and not be repealed
8 by, the Office of Administrative Law, and shall remain in effect for a period of two
9 years or until revised by the department, whichever occurs sooner.

10 **Comment.** Section 86015 continues former Section 25214.10.2 without substantive change.
11 See Section 83160 (“department”).

12 Staff Note. The staff welcomes comment on whether any proposed revision of Section 13 25214.10.2 in proposed Section 86015 substantively changes the meaning of the existing section. 14 Article 8. Electronic Waste (Article 10.3. Electronic Waste)

15 Article 10. Lead-Acid Batteries (Article 10.5. The Lead-Acid Battery Recycling
16 Act of 2016)

17 Article 11. Electronic Waste (Article 10.3. Electronic Waste)

18 Article 12. Lead Wheel Weights (Article 10.5.1. Lead Wheel Weights)

19 Article 13. Household Batteries (Article 10.6. Management of Small Household
20 Batteries)

21 Article 14. Paint (Article 10.7. Recyclable Latex Paint and Oil-Based Paint)

22 Article 15. Household and Generator Waste (Article 10.8. Household Hazardous
23 Waste and Small Quantity Generator Waste)

24 Article 16. Battery Management: Federal Regulation (Article 10.9)

25 Article 17. Treated Wood (Article 11.2)

26 PART 5. HAZARDOUS WASTE AND SPECIFIC
27 WASTES

28 CHAPTER 1. IDENTIFICATION OF HAZARDOUS WASTE

1 Article 1. Listing (*Article 4. Listings*)

2 Article 2. Identification and Management of Specific Hazardous Waste
3 (*Article 6.6. Hazardous Waste of Concern and Public Safety Act*)

4 CHAPTER 2. RULES FOR SPECIFIC WASTES

5 Article 1. Electronic Wastes (*Article 10.3. Electronic Waste*)

6 Article 2. Household Batteries (*Article 10.6. Management Of Small*
7 *Household Batteries*)

8 Article 3. Lead Acid Batteries (*Article 10.5. The Lead-Acid Battery*
9 *Recycling Act of 2016*)

10 Article 4. Mercury Thermostats (*Article 10.2.2. Mercury*
11 *Thermostat Collection Act Of 2008*)

12 Article 5. Motor Vehicle Switches (*Article 10.2. Motor Vehicle Switches*)

13 Article 6. Paint (*Article 10.7. Recyclable Latex Paint And Oil-Based Paint*)

14 Article 7. Photovoltaic Modules (*Article 17. Photovoltaic Modules*)

15 Article 8. Treated Wood Waste (part of *Article 5. Standards*)

16 Article 9. Used Oil (*Article 13. Management of Used Oil*)

17 Article 10. Waste From Discarded Appliances (*Article 10.1. Management of*
18 *Hazardous Wastes Removed from Discarded Appliances*)

19 CHAPTER 3. LABORATORY ANALYSIS

20 **Note.** Proposed Chapter 6 recodifies Section 25198. Subdivision (a) of this section defines “state
21 department” for the purposes of the section to mean the “State Department of Health Services.”
22 The term “state department” is only used once in the section. Given the term’s similarity to the
23 defined term “department” and the single use of the defined term “state department,” the proposed
24 legislation would not continue the definition for “state department” and would simply substitute
25 the full agency name in the one spot where “state department” is currently used.

26 Further, as indicated below, the reference to the “state department” appears to be out of date. See
27 Note to proposed Section 90000.

28 **Absent comment, the proposed elimination of the “state department” definition and**
29 **substitution of the full agency name will be presumed correct.**

1 **§ 90000. Laboratory accreditation for analyses**

2 90000. Except as provided in subdivision (a) of Section 90005, the analysis of any
 3 material required by this division shall be performed by a laboratory accredited by
 4 the State Water Resources Control Board pursuant to Article 3 (commencing with
 5 Section 100825) of Chapter 4 of Part 1 of Division 101.

6 **Comment.** Section 90000 restates the first part of former Section 25198(b) without substantive
 7 change. The reference to the “state department” (defined as the “State Department of Health
 8 Services”) in former Section 25198 has been replaced with a reference to the “State Water
 9 Resources Control Board.” Formerly, the State Department of Health Services was the state agency
 10 authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter
 11 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat.
 12 ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to
 13 accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

14 **Notes.** Subdivision (b) of Section 25198 provides as follows:

15 “Except as provided in subdivision (c), the analysis of any material required by this chapter shall
 16 be performed by a laboratory certified by the state department pursuant to Article 3 (commencing
 17 with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously
 18 issued a certificate under this section shall be deemed certified until the time that certification under
 19 Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either
 20 granted or denied, but not beyond the expiration date shown on the certificate previously issued
 21 under this section.”

22 **(1)** Proposed Section 90000 would restate the first part of this subdivision to make the
 23 terminology consistent with Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of
 24 Division 101.

25 In addition, proposed Section 90000 would replace a reference to the “state department” (defined
 26 as the “State Department of Health Services”) with a reference to the “State Water Resources
 27 Control Board.” Formerly, the State Department of Health Services had the accreditation authority
 28 under the referenced article. See former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat.
 29 ch. 406, § 2 (AB 1317). Currently, the State Water Resources Control Board is the agency granted
 30 the authority to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

31 **Absent comment, this restatement will be presumed correct.**

32 As in its prior work on Chapter 6.8, the Commission did not simply delete the agency name,
 33 which could prevent future discrepancies from arising if the accrediting agency changes. See
 34 proposed Section 78510 in *Hazardous Substance Account Recodification Act*, __ Cal. L. Revision
 35 Comm’n Reports __ (2021). The Commission concluded that deleting the agency name could
 36 potentially be substantive. The referenced article provides for a second form of accreditation (“TNI
 37 accreditation”), which is conducted by accrediting bodies recognized by a national nonprofit
 38 (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation would be
 39 sufficient for the purposes of laboratory analyses conducted under this division.

40 **The Commission welcomes comment on this issue.**

41 **(2)** Section 25198(b) includes a rule about the certification of a laboratory previously issued a
 42 certificate under “this section.” This rule is not proposed for continuation as it appears to be long
 43 obsolete.

44 The Commission researched prior versions of Section 25198 to determine which prior version
 45 of the statute authorized the issuance of laboratory certificates. Prior to 1988, Section 25198
 46 authorized the issuance of laboratory certifications under specified conditions, consistent with
 47 implementing regulations. See 1982 Cal. Stat. ch. 1209, § 2.

1 In 1988, the Environmental Laboratory Improvement Act of 1988 was enacted, which
2 consolidated, reorganized, and revised the laboratory certification functions. See 1988 Cal. Stat.
3 ch. 894, § 1. At that time, Section 25198 was amended to refer to laboratories that were previously
4 issued certificates under the section. See 1988 Cal. Stat. ch. 894, § 6. The rule in Section 25198
5 deems laboratories previously issued a certificate under this section to be certified “until the time
6 that [the new] certification ... has been granted or denied, *but not beyond the expiration date shown*
7 *on the certificate previously issued under this section*” (emphasis added). It seems almost certain
8 that a laboratory certification issued over 30 years ago would have expired in the intervening years.
9 See former Section 25198.3, as enacted by 1982 Cal. Stat. ch. 1209, § 2 (“The department shall
10 issue a certificate valid for two years from the date of issue to a laboratory when the department
11 determines that the laboratory is competent and equipped to conduct the type of analysis for which
12 certification is sought.”).

13 **The Commission welcomes comment on whether the rule pertaining to laboratories**
14 **previously issued certification under Section 25198 has any ongoing validity.**

15 § 90005. Exceptions to certification requirements

16 90005. (a) The requirements of Section 90000 shall not apply to analyses
17 performed by a laboratory pursuant to the facility’s waste analysis plan if all of the
18 following conditions are met:

19 (1) The laboratory is owned or operated by the same person who owns or operates
20 the facility at which the waste will be managed, and the facility is a hazardous waste
21 treatment, storage, or disposal facility that is required to obtain a hazardous waste
22 facilities permit pursuant to **Article 9 (commencing with Section 25200)**.

23 (2) The analysis is conducted for any of the following purposes:

24 (A) To determine whether a facility will accept the hazardous waste for transfer,
25 storage, or treatment, as described in paragraph (3) of subdivision (a) of Section
26 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22
27 of the California Code of Regulations, as those sections read on January 1, 2001.

28 (B) To ensure that the analysis used to determine whether a facility will accept
29 the hazardous waste for transfer, storage, or treatment is accurate and up to date, as
30 described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph
31 (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of
32 Regulations, as those sections read on January 1, 2001.

33 (C) To determine whether the hazardous waste received at the facility for transfer,
34 storage, or treatment matches the identity of the hazardous waste designated on an
35 accompanying manifest or shipping paper, as described in paragraph (5) of
36 subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of
37 Section 66265.13 of, the California Code of Regulations, as those sections read on
38 January 1, 2001.

39 (3) The facility’s waste analysis plan is prepared in accordance with the
40 regulations adopted by the department pursuant to this division.

41 (b)(1) An analysis performed in accordance with subdivision (a) is not an analysis
42 performed for regulatory purposes within the meaning of paragraph (9) of
43 subdivision (c) of Section 100825.

(2) The exemption provided by subdivision (a) does not exempt the analyses of waste for purposes of disposal from the requirements of Section 90000 requiring certified laboratory analyses. The analyses described in subdivision (a) are not exempt from any other requirement of law, regulation, or guideline governing quality assurance and quality control.

Comment. Section 90005 restates former Section 25198(c), (d), and (e) without substantive change. An erroneous cross-reference to Section 100825(c)(19) was corrected to refer to Section 100825(c)(9).

See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83250 (“manifest”), 83295 (“person”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

Notes. (1) The introductory clause of Section 25198(c) provides as follows:

“The requirements of subdivision (b) shall not apply to analyses performed by a laboratory pursuant to the facility’s waste analysis plan, that is prepared in accordance with the regulations adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:”

This provision is restated for readability and to make clear that the waste analysis plan being prepared in accordance with the regulations is a condition that must be satisfied for this rule to apply.

Absent comment, this proposed restatement will be presumed correct.

In addition, the reference to the “Department of Toxic Substances Control” in Section 25198(c) was replaced with the defined term “department.” See proposed Section 83160.

(2) Section 25198(d) refers to an “analysis performed for regulatory purposes within the meaning of paragraph (19) of subdivision (c) of Section 100825.” This reference appears to be erroneous, as the definition of “regulatory purposes” is found in paragraph (9) of Section 100825(c). The reference has been corrected accordingly.

Absent comment, this correction will be presumed correct.

(3) Section 25198(c)(1) refers to a “hazardous waste treatment, storage, or disposal facility.” This term is similar to the defined term “hazardous waste facility.” See proposed Section 83215; see also proposed Section 83180 (defining another similar term, “disposal site”). A “hazardous waste facility” means “all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.”

The Commission welcomes comment on whether the defined term “hazardous waste facility” could be substituted here or whether this reference intends a narrower set of facilities (e.g., not hazardous waste recycling facilities).

§ 90010. Certification required for contracts for laboratory analyses

90010. No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this division, unless the laboratory holds a valid certificate.

Comment. Section 90010 continues former Section 25198(f) without substantive change.

See Section 83295 (“person”).

1 **Note.** Section 25198(f) refers to a “person or public entity of the state.” “Person” is a defined
2 term, which seems to include public entities of the state. Specifically, proposed Section 83295
3 provides that “person” includes “the state or any department, agency, or political subdivision
4 thereof.” It is unclear what the “or public entity of the state” adds to this provision. It appears to be
5 redundant.

6 **The Commission welcomes comment on this issue.**

7 CHAPTER 4. HAZARDOUS WASTE REDUCTION, RECYCLING, AND TREATMENT
8 RESEARCH AND DEMONSTRATION ACT OF 1985

9 Article 1. Preliminary Provisions

10 **§ 90050. Short title**

11 90050. This chapter shall be known and may be cited as the Hazardous Waste
12 Reduction, Recycling, and Treatment Research and Demonstration Act of 1985.

13 **Comment.** Section 90050 continues former Section 25244 without substantive change.

14 **§ 90055. Legislative findings and intent**

15 90055. (a) The Legislature hereby finds and declares that, whenever possible, the
16 generation of hazardous waste is to be reduced or eliminated as expeditiously as
17 possible, and that waste that is generated should be recycled, treated, or disposed of
18 in a manner that minimizes any present or future threats to human health or the
19 environment.

20 (b) The Legislature further finds that there exist many promising but as yet
21 unproven technologies for the reduced generation of hazardous waste and for
22 recycling and treating hazardous waste.

23 (c) The Legislature further finds that financial commitment by public agencies
24 and private industry for the expeditious development and dispersion of hazardous
25 waste reduction, recycling, and treatment technologies depends upon further
26 research, as well as credible and timely demonstrations of the feasibility,
27 environmental acceptability, and reliability of those technologies.

28 (d) It is the intent of the Legislature, in enacting this chapter, to promote the
29 research, development, and expeditious demonstration of technologies that have the
30 potential to reduce, recycle, and treat hazardous waste, and to encourage private
31 sector participation in this program to the greatest extent possible.

32 **Comment.** Section 90055 continues former Section 25244.1 without substantive change.

33 See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”), 83395
34 (“waste”).

35 **§ 90060. “Hazardous waste reduction, recycling, and treatment technologies”**

36 90060. (a) For purposes of this chapter, “hazardous waste reduction, recycling,
37 and treatment technologies” means technologies and techniques that have as their

1 primary purpose the reduced generation of hazardous waste, the recycling of
2 hazardous waste, or the conversion of hazardous waste into a less hazardous form.

3 (b) For purposes of this chapter, “hazardous waste reduction, recycling, and
4 treatment technologies” does not include solidification or treatment occurring
5 directly in or on the land, such as techniques using evaporation, surface
6 impoundments, or land farming.

7 **Comment.** Section 90060 continues former Section 25244.2 without substantive change.

8 See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”).

9 Article 2. Department Responsibilities

10 § 90075. Department duty to implement contingent on funding

11 90075. (a) Except as provided in subdivision (b), the department’s duty to
12 implement this chapter is contingent upon, and limited to, the availability of
13 funding.

14 (b) Subdivision (a) does not apply to **Section 25244.4**.

15 **Comment.** Section 90075 continues former Section 25244.01 without substantive change.

16 See Section 83160 (“department”).

17 § 90080. Hazardous Waste Technology, Research, Development, and Demonstration

18 Program

19 90080. (a) The department shall establish a Hazardous Waste Technology,
20 Research, Development, and Demonstration Program, which shall consist of all of
21 the following elements:

22 (1) Contracting with, and providing grants to, universities, governmental
23 agencies, and private organizations for the research and development of hazardous
24 waste reduction, recycling, or treatment technologies pursuant to **Section 25244.10**.

25 (2) Providing grants, under specified conditions, to cities, counties, and private
26 organizations for the commercial demonstration of hazardous waste reduction,
27 recycling, or treatment technologies pursuant to **Section 25244.6**.

28 (b)(1) For purposes of this subdivision, “commercially successful technology”
29 means a hazardous waste reduction, recycling, or treatment technology that is
30 proven to be profitable, as determined by the department.

31 (2) The department shall require any university, governmental agency, or private
32 organization that receives a grant pursuant to paragraph (1) or (2) of subdivision (a)
33 to agree to do the following:

34 (i) Repay the amount of the grant to the department, if the grant results in the
35 development of a commercially successful technology.

36 (ii) Pay the department a percentage of any royalties derived from that technology,
37 as negotiated between the department and the grant recipient.

38 (3) The department shall deposit any funds it receives pursuant to this subdivision
39 in the Hazardous Waste Control Account, and upon appropriation by the Legislature
40 may expend those funds to carry out this chapter.

1 **Comment.** Section 90080 restates former Section 25244.5 without substantive change.
2 See Sections 83160 (“department”), 83210 (“hazardous waste”), 90060 (“hazardous waste
3 reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

4 **Notes. (1)** Subdivision (a)(3) of existing Section 25244.5, referencing grants for the development
5 of local hazardous waste reduction programs “pursuant to Section 25244.1101,” is proposed to be
6 discontinued, as Section 25244.1101 was renumbered as Section 25244.11.5 in 1994, and repealed
7 effective January 1, 2000. See 1994 Cal. Stat. ch. 370.

8 **The Commission welcomes comment on the proposed deletion of existing Section**
9 **25244.5(a)(3).**

10 **(2)** Proposed Section 90080(b)(2) would restate existing Section 25244.5(b)(2) to clarify that the
11 payment of royalties referenced in that subdivision to the department — as contrasted with the
12 referenced repayment of the amount of the received grant — is *not* contingent on the development
13 of “commercially successful technology.” The existing subdivision reads as follows:

14 “The department shall require any university, governmental agency, or private organization
15 which receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to repay the
16 department for the amount of the grant, if the grant results in the development of a commercially
17 successful technology, and to additionally pay the department a percentage of any royalties derived
18 from that technology, as negotiated between the department and the grant recipient.”

19 **The Commission welcomes comment on this restatement of existing Section 25244.5(b)(2).**

20 **(3)** Proposed Section 90080(b)(3) would restate existing Section 25244.5(b)(3) for clarity. The
21 existing subdivision reads as follows:

22 “The department shall deposit any repayments or royalties received by the department pursuant
23 to this subdivision in the Hazardous Waste Control Account, and those funds may be expended by
24 the department, upon appropriation by the Legislature, to carry out this article.”

25 **Absent comment to the contrary, the Commission will presume this proposed restatement**
26 **does not substantively change the meaning of the existing subdivision.**

27 **§ 90085. Department responsibilities requiring consultation with other agencies and parties**

28 90085. The department, in consultation with the State Water Resources Control
29 Board, the State Air Resources Board, and the California Waste Management
30 Board, shall do all of the following:

31 (a) Implement a program to research, develop, and demonstrate hazardous waste
32 reduction, recycling, and treatment technologies at appropriate locations throughout
33 the state.

34 (b) On or before January 1, 1987, in consultation with industry and interested
35 parties, adopt criteria for selecting projects that would receive grants for the
36 construction of equipment that would be used to demonstrate hazardous waste
37 reduction, recycling, or treatment technologies, including provisions requiring the
38 department in assessing each project to consider the feasibility of following matters:

39 (1) The project’s particular technology.

40 (2) The research and technical spinoffs likely to be generated by the project.

41 (3) The degree to which the findings of the projects can be disseminated and
42 evaluated for replication elsewhere.

1 (4) The consistency and contributions of the project to the state’s hazardous waste
2 management program.

3 (c) Using the criteria adopted pursuant to subdivision (b), select projects to
4 receive grants to construct equipment that would be used to demonstrate hazardous
5 waste reduction, recycling, or treatment technologies, and meet at least one of the
6 following requirements:

7 (1) The project has both onsite and offsite potential for the reduction, recycling,
8 or treatment of hazardous waste.

9 (2) The project has the potential to benefit or be utilized by small businesses.

10 (3) The project is applicable to a range of industries.

11 (d) A grant issued by the department pursuant to this section is not subject to
12 Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public
13 Contract Code, including, but not limited to, Section 10295 of the Public Contract
14 Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of
15 the Government Code.

16 **Comment.** Section 90085 restates former Section 25244.6 without substantive change.

17 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste
18 management”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325
19 (“recycling”), 83370 (“treatment”).

20 **Notes. (1)** Proposed Section 90085(b)(3) would restate existing Section 25244.6 for clarity. The
21 existing section reads as follows:

22 “The department, in consultation with the State Water Resources Control Board, the State Air
23 Resources Board, and the California Waste Management Board, shall do all of the following:

24 (a) Implement a program to research, develop, and demonstrate hazardous waste reduction,
25 recycling, and treatment technologies at appropriate locations throughout the state.

26 (b) On or before January 1, 1987, and, in consultation with industry and interested parties, adopt
27 criteria for selecting projects which would receive grants to pay for the construction of equipment
28 which would be used to demonstrate hazardous waste reduction, recycling, or treatment
29 technologies. The criteria shall include provisions which require that, in assessing each project, the
30 department consider the feasibility of the project’s particular technology, the research and technical
31 spinoffs likely to be generated by the project, the degree to which the findings of the projects can
32 be disseminated and evaluated for replication elsewhere, and the consistency of, and contributions
33 of, the project to the state’s hazardous waste management program.

34 (c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to
35 construct equipment which would be used to demonstrate hazardous waste reduction, recycling, or
36 treatment technologies. A grant issued by the department pursuant to this section is not subject to
37 Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but
38 not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section
39 4525) of Division 5 of Title 1 of the Government Code. The department shall select projects which
40 also meet at least one of the following requirements:

41 (1) The project has onsite, as well as offsite potential, for the reduction, recycling, or treatment
42 of hazardous waste.

43 (2) The project has the potential to benefit, or be utilized by, small businesses.

44 (3) The project is applicable to a range of industries.”

45 **The Commission welcomes comment on this restatement of existing Section 25244.6.**

1 (2) Existing Section 25244.6(b) requires the department to adopt specified criteria “on or before
2 January 1, 1987.” Is this requirement now obsolete, and if so, can the requirement in the subdivision
3 be deleted from proposed Section 90085 without creating any substantive change to any aspect of
4 existing law?

5 Article 3. Grants and Contracts

6 § 90100. Grants and contracts for research and development

7 90100. (a) The department may issue grants to, and enter into contracts with,
8 universities, governmental agencies, and private organizations to research and
9 develop hazardous waste reduction, recycling, or treatment technology.

10 (b) Grants issued pursuant to subdivision (a) may be applied to personnel,
11 equipment, and administrative costs and shall, to the extent possible, be used to
12 augment other sources of research and development funding, including federal and
13 private funds.

14 (c) Any grant issued by the department pursuant to this section is not subject to
15 Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public
16 Contract Code, including, but not limited to, Section 10295 of the Public Contract
17 Code.

18 (d) Any contract entered into pursuant to this section is subject to all applicable
19 state laws governing contracts.

20 **Comment.** Section 90100 continues former Section 25244.10 without substantive change.

21 See Sections 83160 (“department”), 83210 (“hazardous waste”), 90060 (“hazardous waste
22 reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

23 **Note.** Proposed Section 90100 would restate existing Section 25244.10 for clarity. The existing
24 section reads as follows:

25 “The department may issue grants to, and enter into contracts with, universities, governmental
26 agencies, and private organizations to research and develop hazardous waste reduction, recycling,
27 or treatment technology. These grants may be applied to personnel, equipment, and administrative
28 costs and shall, to the extent possible, be used to augment other sources of research and
29 development funding, including federal and private funds. Any grant issued by the department
30 pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of
31 the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code,
32 but a contract entered into pursuant to this section is subject to all applicable state laws governing
33 contracts.”

34 **Absent comment to the contrary, the Commission will presume this proposed restatement
35 does not substantively change the meaning of the existing section.**

36 § 90105. Grant funding for relevant equipment construction

37 90105. Grant funding for equipment construction needed for demonstration of
38 hazardous waste reduction, recycling, and treatment technologies shall be provided
39 to projects selected pursuant to **Section 25244.6** in four consecutive steps:

40 (a) Step I grants shall be made to study the feasibility of a proposed project, in
41 accordance with the following:

1 (1) Ninety percent of the costs of the feasibility study shall be eligible for grant
2 funding, up to a maximum of twenty-five thousand dollars (\$25,000) per grant.

3 (2) In activities funded by a step I grant, the applicant shall develop information
4 needed to select the waste reduction, recycling, or treatment alternative that would
5 be most cost effective.

6 (b) Step II grants shall be made for project design, in accordance with the
7 following:

8 (1) Seventy percent of the costs of the design of the project, or 90 percent if the
9 grant applicant is a small business, shall be eligible for grant funding, up to a
10 maximum of fifty thousand dollars (\$50,000) per grant.

11 (2) In activities funded by a step II grant, the applicant shall prepare detailed plans
12 and specifications for the selected facilities, establish schedules for implementation,
13 and obtain necessary permits.

14 (c) Step III grants shall be made for the construction of the facilities, in accordance
15 with the following:

16 (1) Fifty percent of the costs of constructing the project, or 80 percent if the grant
17 applicant is a small business, shall be eligible for grant funding, up to a maximum
18 of four hundred thousand dollars (\$400,000) per grant.

19 (2) As a condition of receiving a step III grant, the grantee shall allow the results
20 of the project to be evaluated and the information disseminated to other parties.

21 (3) In activities funded by a step III grant, the applicant shall construct the
22 facilities as designed under a step II grant, procure needed equipment, and obtain
23 necessary permits to operate the facility.

24 (d)(1) Step IV grants shall be made for the following activities:

25 (i) Evaluation of the effectiveness of grant-funded facilities.

26 (ii) Development of information on compliance with regulatory permits.

27 (iii) Assessment of applicability of the selected approach to other generators of
28 similar hazardous wastes.

29 (2) Ninety percent of the costs of the activities identified in paragraph (1), or 100
30 percent if the grant applicant is a small business, shall be eligible for grant funding,
31 up to a maximum of one hundred thousand dollars (\$100,000) per grant.

32 **Comment.** Section 90105 restates former Section 25244.8 without substantive change.

33 See Sections 83085 (“applicant”), 90060 (“hazardous waste reduction, recycling, and treatment
34 technologies”), 83325 (“recycling”), 83370 (“treatment”), 83395 (“waste”).

35 **Note.** Proposed Section 90105 would restate existing Section 25244.8 for clarity. The existing
36 section reads as follows:

37 “Grant funding for equipment construction needed for demonstration of hazardous waste
38 reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to
39 Section 25244.6 in four consecutive steps:

40 (a) Step I grants shall be made to study the feasibility of a proposed project. Ninety percent of
41 the costs of the feasibility study shall be eligible for grant funding up to a maximum of twenty-five
42 thousand dollars (\$25,000) per grant. In activities funded by a step I grant, the applicant shall
43 develop information needed to select the waste reduction, recycling, or treatment alternative, which
44 would be most cost-effective.

1 (b) Step II grants shall be made for project design. Seventy percent of the costs of the design of
2 the project shall be eligible for grant funding, except that a small business may be eligible for 90
3 percent of those costs, up to a maximum of fifty thousand dollars (\$50,000) per grant. In activities
4 funded by a step II grant, the applicant shall prepare detailed plans and specifications for the
5 selected facilities, establish schedules for implementation, and obtain necessary permits.

6 (c) Step III grants shall be made for the construction of the facilities. Fifty percent of the costs
7 of constructing the project shall be eligible for grant funding, except that a small business may be
8 eligible for 80 percent of those costs, up to a maximum of four hundred thousand dollars (\$400,000)
9 per grant. As a condition of receiving a step III grant, the grantee shall allow the results of the
10 project to be evaluated and the information disseminated to other parties. In activities funded by a
11 step III grant, the applicant shall construct the facilities as designed under a step II grant, procure
12 needed equipment, and obtain necessary permits to operate the facility.

13 (d) Step IV grants shall be made to evaluate the effectiveness of grant-funded facilities, develop
14 information on compliance with regulatory permits, and assess applicability of the selected
15 approach to other generators of similar hazardous wastes. Ninety percent of the costs of those
16 activities shall be eligible for grant funding, except that a small business may be eligible for 100
17 percent of those costs, up to a maximum of one hundred thousand dollars (\$100,000) per grant.”

18 **Absent comment to the contrary, the Commission will presume this proposed restatement**
19 **does not substantively change the meaning of the existing section.**

20 **§ 90110. Compilation and availability of project evaluations**

21 90110. (a) The department shall compile the results of all evaluations of projects
22 funded by step IV grants, as specified in **subdivision (d) of Section 25244.8**, or the
23 evaluations of any other project that are available to the department.

24 (b) The department shall notify any interested party of the availability of the
25 project evaluations, and make the evaluations available to interested parties as
26 expeditiously as possible.

27 **Comment.** Section 90110 restates former Section 25244.9 without substantive change.
28 See Section 83160 (“department”).

29 **Notes. (1)** Proposed Section 90110 would restate existing Section 25244.9 for clarity. The
30 existing section reads as follows:

31 “The department shall compile the results of all evaluations of projects funded by step IV grants,
32 as specified in subdivision (d) of Section 25244.8, or the evaluations of any other project which are
33 available to the department, and shall make them available to interested parties as expeditiously as
34 possible. The department shall notify any interested party of the availability of project evaluations.”

35 **Absent comment to the contrary, the Commission will presume this proposed restatement**
36 **does not substantively change the meaning of the existing section.**

37 **(2)** The Commission seeks comment on the intended meaning of the phrase in existing Section
38 25244.9 that reads as follows: “or the evaluations of any other project which are available to the
39 department.” Specifically,

40 (a) Is the use of the term “or” intended to provide the department an *alternative* to compiling the
41 results of evaluations of projects funded by step IV grants, or should the word “or” be replaced
42 with the word “and”?

43 (b) What “other projects” are contemplated by this clause?

1 **§ 90115. Contracting by department for services to carry out chapter**

2 90115. Consistent with Article VII of the California Constitution, the department
3 may contract for services to be performed to carry out this chapter, including but
4 not limited to environmental control assessment, feasibility analysis, review of
5 project design, field management responsibilities, and project scheduling and
6 control.

7 **Comment.** Section 90115 continues former Section 25244.7 without substantive change.
8 See Section 83160 (“department”).

9 Article 4. Generator Responsibilities

10 **§ 90130. Required waste reduction reports to department**

11 90130. Every generator of hazardous waste shall submit a report to the
12 department, at least once every two years, reporting the changes in volume and
13 toxicity of waste achieved through waste reduction during the period for which the
14 report is issued.

15 **Comment.** Section 90130 continues former Section 25244.4 without substantive change.
16 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83395 (“waste”).

17 PART 6. HAZARDOUS WASTE GENERATION
18 AND MANAGEMENT

19 CHAPTER 1. GENERAL PROVISIONS

20 Article 1. Hazardous Waste Management Plans (*Article 3.5.*
21 *Hazardous Waste Management Plans*)

22 Article 2. Land Use Restrictions (*Article 11.1. Institutional Control*)

23 Article 3. Cost Reimbursement (*Article 9.2. Cost Reimbursement*)

24 Article 4. Standards (*part of Article 5. Standards*)

25 CHAPTER 2. GENERATORS OF HAZARDOUS WASTE

26 Article 1. Obligations For Hazardous Waste Generation And
27 Management (*parts of Sections 25150-25158.1*)

28 CHAPTER 3. TRANSPORTATION OF HAZARDOUS WASTE

29 Article 1. Transportation (*Article 6. Transportation*)

30 Article 2. Haulers (*Article 6.5. Hazardous Waste Haulers*)

1 CHAPTER 4. DISPOSAL ON PUBLIC LAND (*ARTICLE 11.5. HAZARDOUS WASTE*)

2 CHAPTER 5. COLLECTION PROGRAMS

3 Article 1. Household Hazardous Waste and Conditionally Exempt
4 Small Quantity Generator Waste (*Article 10.8. Household*
5 *Hazardous Waste And Small Quantity Generator Waste*)

6 Article 2. Banned, Unregistered, or Outdated Agricultural Wastes (*Article 9.4.*
7 *Banned, Unregistered, or Outdated Agricultural Wastes*)

8 CHAPTER 7. DEVELOPMENT OF HAZARDOUS WASTE FACILITIES

9 Article 1. Approval Procedures for New Facilities (*Article 8.7.*
10 *Procedures For The Approval Of New Facilities*)

11 Article 2. Development of Facilities on Indian Country (*Article 8.6.*
12 *Development of Hazardous Waste Management Facilities on Indian*
13 *Country*)

14 CHAPTER 8. HAZARDOUS WASTE FACILITIES

15 Article 1. Permitting (*Article 9. Permitting of Facilities*)

16 Article 2. Existing Facilities as of May 1, 1981 (*Article 4.5. State*
17 *Regulation of Existing Hazardous Waste Facilities*)

18 CHAPTER 9. RULES FOR SPECIFIC TYPES OF FACILITIES OR TREATMENTS

19 Article 1. Hazardous Waste Treatment Reform Act of 1995 (*Article*
20 *7.7. Hazardous Waste Treatment Reform Act of 1995*)

21 Article 2. Land Treatment Units (*Article 9.6. Land Treatment Units*)

22 Article 3. Metal Shredding Facilities (*parts of Article 5. Standards*
23 *Re Metal Shredding Facilities*)

24 Article 4. Solar Evaporators For on-Farm Drainage Management
25 (*Article 9.7. Integrated on-Farm Drainage Management*)

26 Article 5. Surface Impoundments (*Article 9.5. Surface*
27 *Impoundments*)

28 Article 6. Toxic Injection Wells (*Article 5.6. The Toxic Injection*
29 *Well Control Act of 1985*)

PART 7. ENFORCEMENT

CHAPTER 1. AUTHORITY

§ 95000. General authority to enforce standards and regulations

95000. (a) Except as provided in subdivision (b), the standards in this division and the regulations adopted by the department to implement this division shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(b) The standards of this division listed in **paragraph (1) of subdivision (c) of Section 25404**, and the regulations adopted to implement the standards of this division listed in **paragraph (1) of subdivision (c) of Section 25404**, shall be enforced by the department and one of the following:

(1) If there is no CUPA, the officer or agency authorized, pursuant to **subdivision (f) of Section 25404.3**, to implement and enforce the requirements of this division listed in **paragraph (1) of subdivision (c) of Section 25404**.

(2) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this division and **Sections 25404.1 and 25404.2**.

(c) Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in **paragraph (1) of subdivision (c) of Section 25404**.

Comment. Section 95000 restates former Section 25180(a) without substantive change.

See Sections 83110 (“CUPA”), 83160 (“department”), 83165 (“director”), 83240 (“local health officer”), 83375 (“unified program agency”).

Staff Note. Proposed Section 95000 would restate Section 25180(a) for clarity. Currently, Section 25180(a) provides:

“25180. (a)(1) Except as provided in paragraph (2), the standards in this chapter and the regulations adopted by the department to implement this chapter shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(2) The standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, and the regulations adopted to implement the standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, shall be enforced by the department and one of the following:

(A) If there is no CUPA, the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this chapter and Sections 25404.1 and 25404.2. Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.”

Absent comment, this proposed restatement will be presumed correct.

§ 95005. Other persons authorized to enforce specific standards and regulations

95005. (a) In addition to the persons specified in Section 95000, any traffic officer, as defined by Section 625 of the Vehicle Code, and any peace officer specified in

1 Section 830.1 of the Penal Code, may enforce **Section 25160, subdivision (a) of**
2 **Section 25163, and Sections 25250.18, 25250.19, and 25250.23.**

3 (b) Traffic officers and peace officers are authorized representatives of the
4 department for purposes of enforcing the provisions set forth in this section.

5 (c)(1) A peace officer specified in subdivision (a) of Section 830.37 of the Penal
6 Code may, upon approval of the local district attorney, enforce the standards in this
7 division and regulations adopted by the department to implement this division.

8 (2) A peace officer authorized to enforce the standards and regulations referenced
9 in paragraph (1) pursuant to this subdivision shall perform those duties in
10 coordination with the appropriate local officer or agency authorized to enforce this
11 division pursuant to Section 95000, and shall complete a training program
12 equivalent to that required by the department for local officers and agencies
13 authorized to enforce this division pursuant to Section 95000.

14 **Comment.** Section 95005 continues former Section 25180(b) without substantive change.
15 See Section 83160 (“department”).

16 **§ 95010. Authority of California Highway Patrol**

17 95010. Notwithstanding any limitation in Section 95005, a member of the
18 California Highway Patrol may enforce **Sections 25185, 25189, 25189.2, 25189.5,**
19 **25191, and 25195, and Article 6 (commencing with Section 25160) and Article**
20 **6.5 (commencing with Section 25167.1),** as those provisions relate to the
21 transportation of hazardous waste.

22 **Comment.** Section 95010 continues former Section 25180(c) without substantive change.
23 See Section 83210 (“hazardous waste”).

24 **§ 95015. Authority of city attorney**

25 95015. Actions pursuant to **Sections 25189.5, 25189.6, 25189.7, 25190, and**
26 **25191** may be brought by any city attorney.

27 **Comment.** Section 95015 continues former Section 25191.2 without substantive change.

28 **§ 95020. Equal and consistent treatment of similar violations**

29 95020. In enforcing this division, including, but not limited to, the issuance of
30 orders imposing administrative penalties, the referral of violations to prosecutors
31 for civil or criminal prosecution, the settlement of cases, and the adoption of
32 enforcement policies and standards related to those matters, the department and the
33 local officers and agencies authorized to enforce this division pursuant to Section
34 95000 shall exercise their enforcement authority in such a manner that generators,
35 transporters, and operators of storage, treatment, transfer, and disposal facilities are
36 treated equally and consistently with regard to the same types of violations.

37 **Comment.** Section 95020 continues former Section 25180(d) without substantive change.
38 See Sections 83175 (“disposal”), 83355 (“storage”), 83370 (“treatment”).

39 **CHAPTER 2. PRIORITIES AND COORDINATION**

1 **§ 95050. Prioritization of actions affecting most impacted communities**

2 95050. The department shall prioritize an enforcement action authorized by this
3 division affecting communities that have been identified by the California
4 Environmental Protection Agency as being the most impacted environmental justice
5 communities.

6 **Comment.** Section 95050 continues former Section 25180.2 without substantive change.
7 See Section 83160 (“department”).

8 **§ 95055. Required notices to other entities**

9 95055. (a) The department, the State Water Resources Control Board, and the
10 California regional water quality control boards shall notify the local health officer
11 and director of environmental health of a county, city, or district, and the CUPA for
12 the jurisdiction, as specified in subdivision (c), within 15 days after any of the
13 following occur:

14 (1) The department’s or board’s employees are informed or discover that a
15 disposal of hazardous waste has occurred within that county, city, or district and
16 that the disposal violates a state or local law, ordinance, regulation, rule, license, or
17 permit or that the disposal is potentially hazardous to the public health or the
18 environment.

19 (2) The department or board proposes to issue an abatement order or a cease and
20 desist order, to file a civil or criminal action, or to settle a civil or criminal action,
21 concerning a disposal of hazardous waste within that county, city, or district.

22 (b) The notice given by the department or board pursuant to subdivision (a) shall
23 include all test results and any relevant information which the department or board
24 has obtained and which do not contain trade secrets, as defined by **Section 25173**,
25 as determined by the department or board.

26 (c) If the department or board determines that the test results or information cannot
27 be disseminated because of current or potential litigation, the department or board
28 shall inform the local health officer, the director of environmental health, and the
29 CUPA for the jurisdiction that the test results and information shall be used by the
30 local health officer, the director of environmental health, and the unified program
31 agencies only in connection with their statutory responsibilities, and shall not
32 otherwise be released to the public.

33 **Comment.** Section 95055 restates former Section 25180.5(a) and (b) without substantive
34 change.

35 See Sections 83110 (“CUPA”), 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous
36 waste”), 83240 (“local health officer”), 83375 (“unified program agency”).

37 **Staff Note.** Proposed Section 95055 would restate subdivisions (a) and (b) of Section 25180.5
38 for clarity. Currently, those subdivisions provide:

39 “25180.5. (a) The department, the State Water Resources Control Board, and the California
40 regional water quality control boards shall notify the local health officer and director of
41 environmental health of a county, city, or district, and the CUPA for the jurisdiction as specified in
42 subdivision (b), within 15 days after any of the following occur:

1 (1) The department’s or board’s employees are informed or discover that a disposal of hazardous
2 waste has occurred within that county, city, or district and that the disposal violates a state or local
3 law, ordinance, regulation, rule, license, or permit or that the disposal is potentially hazardous to
4 the public health or the environment.

5 (2) The department or board proposes to issue an abatement order or a cease and desist order, to
6 file a civil or criminal action, or to settle a civil or criminal action, concerning a disposal of
7 hazardous waste within that county, city, or district.

8 (b) The notice given by the department or board pursuant to subdivision (a) shall include all test
9 results and any relevant information which the department or board has obtained and which do not
10 contain trade secrets, as defined by Section 25173, as determined by the department or board. If
11 the department or board determines that the test results or information cannot be disseminated
12 because of current or potential litigation, the department or board shall inform the local health
13 officer, the director of environmental health, and the CUPA for the jurisdiction that the test results
14 and information shall be used by the local health officer, the director of environmental health, and
15 the unified program agencies, only in connection with their statutory responsibilities and shall not
16 otherwise be released to the public.”

17 **Absent comment, this proposed restatement will be presumed correct.**

18 **§ 95060. Coordination of agencies**

19 95060. The department, the State Water Resources Control Board, and the
20 California regional water quality control boards shall coordinate with the unified
21 program agencies regarding violations of this chapter, or violations of regulations
22 adopted pursuant to this chapter, at a unified program facility.

23 **Comment.** Section 95060 continues former Section 25180.5(c) without substantive change.

24 See Sections 83160 (“department”), 83375 (“unified program agency”), 83380 (“unified
25 program facility”).

26 **§ 95065. Obligations of prosecuting attorney**

27 95065. (a) In any case filed in any court or administrative tribunal, including, but
28 not limited to, the Office of Administrative Hearings, which alleges any violations
29 of this chapter or any statute, regulation, or requirement specified in **Section 25186**,
30 the prosecuting attorney shall, within 30 days of the date of filing, forward, to the
31 office of Attorney General located in the City of Los Angeles, a summary of the
32 case which provides all of the following information:

33 (1) The case name and court or administrative number.

34 (2) The court or administrative tribunal in which the case is being prosecuted.

35 (3) The agency prosecuting the case.

36 (4) The name, business address, and telephone number of the prosecuting
37 attorney.

38 (5) The statutes, regulations, or requirements which are alleged to have been
39 violated.

40 (6) The date of filing and date or dates of alleged violations.

41 (7) A brief summary of the action.

42 (8) The names, addresses, and telephone numbers of all respondents or defendants
43 in the action.

1 (9) The status of the case.

2 (b) Within 30 days of the conclusion of a case specified in subdivision (a) by
3 verdict, award, judgment, dismissal, or settlement, the prosecuting attorney shall
4 forward, to the office of the Attorney General located in the City of Los Angeles,
5 an update of the information required by subdivision (a), including a statement
6 describing the final outcome of the case.

7 (c) The cases subject to this section shall include those cases which are brought
8 for purposes of clarifying, enforcing, limiting, or overturning any case which arose
9 out of a violation of this chapter or statute, regulation, or requirement specified in
10 **Section 25186**, including, but not limited to, appeals, actions for contempt, and
11 revocations of probation.

12 **Comment.** Section 95065 continues former Section 25186.6 without substantive change.
13 See Section 83160 (“department”).

14 CHAPTER 3. PROCEDURES

15 Article 1. General Provisions

16 § 95075. Activities by authorized representative

17 95075. (a) In order to carry out the purposes of this chapter, any authorized
18 representative of the department or the local officer or agency authorized to enforce
19 this chapter pursuant to Section 95000, may, at any reasonable hour of the day, or
20 as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of
21 the Code of Civil Procedure, do any of the following:

22 (1) Enter and inspect a factory, plant, construction site, disposal site, transfer
23 facility, or any establishment or any other place or environment where hazardous
24 wastes are stored, handled, processed, disposed of, or being treated to recover
25 resources.

26 (2) Stop and inspect any vehicle reasonably suspected of transporting hazardous
27 wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

28 (3) Inspect and copy any records, reports, test results, or other information
29 required to carry out this chapter.

30 (4) Photograph any waste, waste container, waste container label, vehicle, waste
31 treatment process, waste disposal site, or condition constituting a violation of law
32 found during an inspection.

33 (5) Carry out any sampling activities necessary to carry out this chapter, including
34 obtaining samples from any individual or taking samples from the property of any
35 person or from any vehicle in which any authorized representative of the department
36 or the local officer or agency authorized to enforce this chapter pursuant to Section
37 95000 reasonably believes has transported or is transporting hazardous waste.

1 (b) Upon request, split samples obtained pursuant to paragraph (5) of subdivision
2 (a) shall be given to the person from whom, or from whose property or vehicle, the
3 samples were obtained.

4 **Comment.** Section 95075 restates former Section 25185(a) without substantive change.

5 See Sections 83160 (“department”), 83180 (“disposal site”), 83210 (“hazardous waste”), 83245
6 (“local officer”), 83370 (“treatment”), 83395 (“waste”).

7 **Staff Note.** Proposed Section 95075 would restate existing Section 25185(a) for clarity.
8 Currently, Section 25185(a) provides:

9 “25185. (a) In order to carry out the purposes of this chapter, any authorized representative of
10 the department or the local officer or agency authorized to enforce this chapter pursuant to
11 subdivision (a) of Section 25180, may, at any reasonable hour of the day, or as authorized pursuant
12 to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, do any of
13 the following:

14 (1) Enter and inspect a factory, plant, construction site, disposal site, transfer facility, or any
15 establishment or any other place or environment where hazardous wastes are stored, handled,
16 processed, disposed of, or being treated to recover resources.

17 (2) Carry out any sampling activities necessary to carry out this chapter, including obtaining
18 samples from any individual or taking samples from the property of any person or from any vehicle
19 in which any authorized representative of the department or the local officer or agency authorized
20 to enforce this chapter pursuant to subdivision (a) of Section 25180 reasonably believes has
21 transported or is transporting hazardous waste. However, upon request, split samples shall be given
22 to the person from whom, or from whose property or vehicle, the samples were obtained.

23 (3) Stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when
24 accompanied by a uniformed peace officer in a clearly marked vehicle.

25 (4) Inspect and copy any records, reports, test results, or other information required to carry out
26 this chapter.

27 (5) Photograph any waste, waste container, waste container label, vehicle, waste treatment
28 process, waste disposal site, or condition constituting a violation of law found during an
29 inspection.”

30 **Absent comment, this proposed restatement will be presumed correct.**

31 **§ 95080. Application for order enjoining or directing compliance**

32 95080. (a) If the department determines that a person has engaged in, is engaged
33 in, or is about to engage in any acts or practices that constitute or will constitute a
34 violation of this division, or any rule, regulation, permit, covenant, standard,
35 requirement, or order issued, promulgated, or executed thereunder, and when
36 requested by the department, the city attorney of the city in which those acts or
37 practices occur, occurred, or will occur, the county counsel or the district attorney
38 of the county in which those acts or practices occur, occurred, or will occur, or the
39 Attorney General may apply to the superior court for an order enjoining those acts
40 or practices, or for an order directing compliance, and upon a showing by the
41 department that the person has engaged in or is about to engage in those acts or
42 practices, a permanent or temporary injunction, restraining order, or other order may
43 be granted.

44 (b) If the unified program agency determines that a person has engaged in, is
45 engaged in, or is about to engage in any acts or practices which constitute or will

1 constitute a violation of this division, or any rule, regulation, permit, covenant,
2 standard, requirement, or order issued, promulgated, or executed thereunder, and
3 when requested by the unified program agency, the city attorney of the city in which
4 those acts or practices occur, occurred, or will occur, the county counsel or the
5 district attorney of the county in which those acts or practices occur, occurred, or
6 will occur, or the Attorney General, may apply to the superior court for an order
7 enjoining those acts or practices, or for an order directing compliance, and upon a
8 showing by the unified program agency that the person has engaged in or is about
9 to engage in those acts or practices, a permanent or temporary injunction, restraining
10 order, or other order may be granted.

11 (c) If a county counsel or the district attorney brings an action pursuant to
12 subdivision (a) or (b), the county counsel or the district attorney shall, within seven
13 days of the filing of the action, notify the district attorney or county counsel, as
14 applicable, of the county in which the acts or practices occur, occurred, or will occur.

15 **Comment.** Section 95080 continues former Section 25181 without substantive change.

16 See Sections 83160 (“department”), 83375 (“unified program agency”).

17 **§ 95085. Judgment to collect administrative penalty**

18 95085. (a) If any administrative order or decision that imposes a penalty is issued
19 pursuant to this division or Part 2 (commencing with Section 78000) of Division 45,
20 the administrative order or decision has become final, and, if applicable, a petition
21 for judicial review of the final order or decision has not been filed within the time
22 limits prescribed in Section 11523 of the Government Code, the department may
23 apply to the clerk of the appropriate court for a judgment to collect the
24 administrative penalty.

25 (b) The department’s application, which shall include a certified copy of the final
26 administrative order or decision, constitutes a sufficient showing to warrant issuance
27 of the judgment.

28 (c) The court clerk shall enter the judgment immediately in conformity with the
29 application.

30 (d) The judgment so entered has the same force and effect as, and is subject to all
31 the provisions of law relating to, a judgment in a civil action, and may be enforced
32 in the same manner as any other judgment of the court in which it is entered.

33 **Comment.** Section 95085 continues former Section 25184.1 without substantive change.

34 See Section 83160 (“department”).

35 **§ 95090. Reward for providing information**

36 95090. (a) A person who provides information that materially contributes to the
37 imposition of a civil penalty or criminal fine against a person for violating this
38 division shall be paid a reward pursuant to regulations adopted by the department
39 under subdivision (j).

1 (b) The reward shall be equal to 10 percent of the amount of the civil penalty or
2 criminal fine collected by the department, district attorney, county counsel, or city
3 attorney.

4 (c) The department shall pay the award to the person who provides information
5 that results in the imposition of a civil penalty, and the county shall pay the award
6 to the person who provides information that results in the imposition of a criminal
7 fine.

8 (d) No reward paid pursuant to this subdivision shall exceed five thousand dollars
9 (\$5,000).

10 (e) No informant shall be eligible for a reward for a violation known to the
11 department, unless the information materially contributes to the imposition of
12 criminal or civil penalties for a violation specified in this section.

13 (f) If there is more than one informant for a single violation, the first notification
14 received by the department shall be eligible for the reward.

15 (g) If the notifications are postmarked on the same day or telephoned notifications
16 are received on the same day, the reward shall be divided equally among those
17 informants.

18 (h) Public officers and employees of the United States, the State of California, or
19 counties and cities in California are not eligible for the reward pursuant to
20 subdivision (a), unless reporting those violations does not relate in any manner to
21 their responsibilities as public officers or employees.

22 (i) An informant who is an employee of a business and who provides information
23 that the business violated this division is not eligible for a reward if the employee
24 intentionally or negligently caused the violation or if the employee's primary and
25 regular responsibilities included investigating the violation, unless the business
26 knowingly caused the violation.

27 (j) The department shall adopt regulations that establish procedures for the receipt
28 and review of claims for payment of rewards.

29 (k) All decisions concerning the eligibility for an award and the materiality of the
30 provided information shall be made pursuant to these regulations.

31 (l) In each case brought under subdivision (a), the department, the office of the
32 city attorney, the county counsel, or the district attorney, whichever office brings
33 the action, shall determine whether the information materially contributed to the
34 imposition of civil or criminal penalties for violations of this division.

35 (m) The department shall continuously publicize the availability of the rewards
36 pursuant to this section for persons who provide information pursuant to this section.

37 (n) Claims may be submitted only for those referrals made on or after January 1,
38 1982.

39 **Comment.** Section 95090 continues former Section 25191.7 without substantive change.
40 See Section 83160 ("department").

Article 2. Inspections

§ 95100. Inspection requirements

95100. (a) During an inspection pursuant to Section 95075, the inspector shall comply with all reasonable security, safety, and sanitation measures, and reasonable precautionary measures specified by the operator.

(b) At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector.

(c) The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

(d) The department or the local officer or agency authorized to enforce this division pursuant to Section 95000 shall prepare an inspection report that shall fully detail all observations made at the facility or site, all alleged violations, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site.

(e) The department or the local officer or agency shall provide a copy of the inspection report to the operator within five days from the date of the preparation of the inspection report, and, in any event, not later than 65 days from the date of the inspection.

(f) The inspection report shall include all pertinent information, including, but not limited to, documents, photographs, and sampling results concerning the alleged violations.

(g) The department or the local officer or agency shall provide the information described in subdivision (f) to the operator with the inspection report, including all photographs taken by the department in the course of the inspection and all laboratory results obtained as a result of the inspection.

(h)(1) If sampling or laboratory results are not available at the time that the inspection report is prepared, that fact shall be contained in the report.

(2) The results referenced in paragraph (1) shall be provided to the operator within 10 working days of their receipt by the department or the local officer or agency.

Comment. Subdivision (a) of Section 95100 continues former Section 25185(b) without substantive change.

Subdivision (b) continues the first sentence of former Section 25185(c)(1) without substantive change.

Subdivision (c) continues the second sentence of former Section 25185(c)(1) without substantive change.

Subdivision (d) continues the first sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (e) continues the second sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (f) continues the third sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (g) continues the fourth sentence of former Section 25185(c)(2)(A) without substantive change.

1 Paragraph (1) of subdivision (h) continues the fifth sentence of former Section 25185(c)(2)(A)
2 without substantive change.

3 Paragraph (2) of subdivision (h) continues the sixth sentence of former Section 25185(c)(2)(A)
4 without substantive change.

5 See Sections 83160 (“department”), 83245 (“local officer”).

6 **§ 95105. Extension of time period**

7 95105. A time period specified in subdivision (e) or subdivision (h) of Section
8 95100 may be extended as a result of a natural disaster, inspector illness, or other
9 circumstances beyond the control of the department, or the local officer or agency,
10 if the department or the local officer or agency so notifies the operator within 70
11 days from the date of the inspection and provides the inspection report to the
12 operator in a timely manner after the reason for the delay is ended.

13 **Comment.** Section 95105 continues former Section 25185(c)(2)(B) without substantive change.
14 See Sections 83160 (“department”), 83245 (“local officer”).

15 **§ 95110. Withholding of information if necessary to investigation**

16 95110. Information from the inspection report, or the report itself, may be
17 withheld by the department or the local officer or agency if necessary to a criminal
18 investigation or other ongoing investigation in which the department or the local
19 officer or agency determines, in writing, that disclosure of the information will
20 result in a substantial probability of destruction of evidence, intimidation of
21 witnesses, or other obstruction of justice.

22 **Comment.** Section 95110 continues former Section 25185(c)(2)(C) without substantive change.
23 See Sections 83160 (“department”), 83245 (“local officer”).

24 **§ 95115. Discussion and review of inspection report**

25 95115. The department or the local officer or agency shall, at the operator’s
26 request, discuss the inspection report with the operator and shall, upon the request
27 of the operator, review the inspection report and determine whether the operator’s
28 responses and documented or proposed corrective actions would be sufficient to
29 comply with this division, or if any allegation of a violation is unwarranted.

30 **Comment.** Section 95115 continues former Section 25185(c)(2)(D) without substantive change.
31 See Sections 83160 (“department”), 83245 (“local officer”).

32 **§ 95120. Written response to inspection report**

33 95120. (a) The operator of the site or facility that receives an inspection report
34 pursuant to Section 95100 shall submit a written response to the department or the
35 local officer or agency authorized to enforce this division pursuant to Section 95000
36 within 60 days of receipt of the inspection report, or within a shorter time as the
37 department or the local officer or agency may reasonably require, which shall
38 include a statement documenting corrective actions taken by the operator or
39 proposing corrective actions that will be taken by the operator, for purposes of
40 compliance with this division, or disputing the existence of the violation.

1 (b) Upon receiving the written response from the operator, the department or the
2 local officer or agency shall, upon the request of the operator, meet and confer with
3 the operator regarding any questions, concerns, or comments that the operator may
4 have concerning the inspection report.

5 (c) The department or the local officer or agency shall, within 30 working days
6 from the date of receipt of a response that documents or proposes corrective action,
7 or which disputes the existence of a violation, determine whether the corrective
8 actions documented or proposed to be taken by the operator, if implemented as
9 stated or proposed, will achieve compliance with this division, or whether a
10 violation is still alleged, as applicable, and shall submit a written copy of that
11 determination to the operator, in the form of a report of violation or other appropriate
12 document.

13 (d) If the department or the local officer or agency fails to make the determination
14 and submit a copy of the determination within 30 working days from the date of
15 receipt of the operator’s response, the department or the local officer or agency may
16 not seek penalties for continuing violations or any alleged new violations caused by
17 the corrective actions taken by the operator, until the department or the local officer
18 or agency submits the determination to the operator and provides the operator with
19 a reasonable time in which to make necessary operational modifications that differ
20 from those proposed to the department or local officer or agency.

21 **Comment.** Subdivision (a) of Section 95120 continues the first sentence of former Section
22 25185(c)(3) without substantive change.

23 Subdivision (b) continues the second sentence of former Section 25185(c)(3) without substantive
24 change.

25 Subdivision (c) continues the third sentence of former Section 25185(c)(3) without substantive
26 change.

27 Subdivision (d) continues the fourth sentence of former Section 25185(c)(3) without substantive
28 change.

29 See Sections 83160 (“department”), 83245 (“local officer”).

30 **§ 95125. Trade secret issues**

31 95125. (a) Whenever information, including, but not limited to, documents,
32 photographs, and sampling results, has been gathered pursuant to Section 95075,
33 the department or the local officer or agency shall comply with all procedures
34 established pursuant to **Section 25173** and shall notify the person whose facility was
35 inspected prior to public disclosure of the information, and, upon request of that
36 person, shall submit a copy of any information to that person for the purpose of
37 determining whether trade secret information, as defined in **Section 25173**, or
38 facility security would be revealed by the information.

39 (b) “Public disclosure,” as used in this section, shall not include review of the
40 information by a court of competent jurisdiction or an administrative law judge,
41 which may be conducted in camera at the discretion of the court or judge.

42 **Comment.** Subdivision (a) of Section 95125 continues the first sentence of former Section
43 25185(d) without substantive change.

1 Subdivision (b) of Section 95125 continues the second and third sentences of former Section
2 25185(d) without substantive change.

3 See Sections 83160 (“department”), 83245 (“local officer”).

4 **§ 95130. Inspection of hazardous waste or border zone property**

5 95130. (a) For a property that is designated as a hazardous waste property or
6 border zone property pursuant to **the former Article 11 (commencing with Section**
7 **25220)**, an authorized representative of the department may, at any reasonable hour
8 of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50)
9 of Part 3 of the Code of Civil Procedure, enter and inspect any real property that is
10 within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and
11 do any of the following:

12 (1) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the
13 land.

14 (2) Set up and maintain monitoring equipment for the purpose of assessing or
15 measuring the actual or potential migration of hazardous wastes on, beneath, or
16 toward the land.

17 (3) Survey and determine the topography and geology of the land.

18 (4) Photograph any equipment, sample, activity, or environmental condition
19 described in paragraphs (1), (2), or (3), with the photographs subject to the
20 requirements of Section 95125.

21 (b) This section does not apply to any hazardous waste facility that is required to
22 be permitted pursuant to this division and that is subject to inspection pursuant to
23 Section 95075.

24 (c) An inspector who inspects pursuant to this section shall do all of the following:

25 (1) Make a reasonable effort to inform the owner or their authorized representative
26 of the inspection.

27 (2) Provide split samples to the owner or representative upon request.

28 (3) Comply with the provisions of subdivision (a) of Section 95100.

29 **Comment.** Section 95130 continues former Section 25185.5 without substantive change.

30 See Section 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

31 **Staff Note.** Proposed Section 95130 would restate existing Section 25185.5 for clarity.
32 Currently, Section 25185.5 provides:

33 “25185.5. For a property that is designated as a hazardous waste property or border zone property
34 pursuant to the former Article 11 (commencing with Section 25220), an authorized representative
35 of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13
36 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any
37 real property that is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property
38 and do any of the following:

39 (a) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

40 (b) Set up and maintain monitoring equipment for the purpose of assessing or measuring the
41 actual or potential migration of hazardous wastes on, beneath, or toward the land.

42 (c) Survey and determine the topography and geology of the land.

1 (d) Photograph any equipment, sample, activity, or environmental condition described in
2 subdivision (a), (b), or (c). The photographs shall be subject to the requirements of subdivision (d)
3 of Section 25185.

4 (e) This section does not apply to any hazardous waste facility that is required to be permitted
5 pursuant to this chapter and that is subject to inspection pursuant to Section 25185.

6 (f) An inspector who inspects pursuant to this section shall make a reasonable effort to inform
7 the owner or his or her authorized representative of the inspection and shall provide split samples
8 to the owner or representative upon request and shall comply with the provisions of subdivision (b)
9 of Section 25185.”

10 Absent comment, this proposed restatement will be presumed correct.

11 Article 3. Compelled Disclosure of Information

12 § 95150. Persons subject to compelled disclosure

13 95150. The department or a local officer or agency authorized to enforce this
14 division pursuant to Section 95000, in connection with any action authorized by this
15 division, may require any of the following persons to furnish and transmit, upon
16 reasonable notice, to the designated offices of the department or the local officer or
17 agency, any existing information relating to hazardous substances, hazardous
18 wastes, or hazardous materials:

19 (a) Any person who owns or operates any hazardous waste facility.

20 (b) Any person who generates, stores, treats, transports, disposes of, or otherwise
21 handles hazardous waste.

22 (c) Any person who has generated, stored, treated, transported, disposed of, or
23 otherwise handled hazardous waste.

24 (d) Any person who arranges, or has arranged, by contract or other agreement, to
25 store, treat, transport, dispose of, or otherwise handle hazardous waste.

26 (e) Any person who applies, or has applied, for any permit, registration, or
27 certification under this division.

28 **Comment.** Section 95150 continues former Section 25185.6(a)(1) without substantive change.
29 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

30 § 95155. Information relating to ability to pay for or perform corrective action

31 95155. (a) The department, or a local officer or agency authorized to enforce this
32 division pursuant to Section 95000, may require a person described in Section 95150
33 to furnish and transmit, upon reasonable notice, to the designated offices of the
34 department or the local officer or agency, any information relating to the person’s
35 ability to pay for, or to perform, a response or corrective action.

36 (b) Subdivision (a) applies only if there is a reasonable basis to believe that there
37 has been or may be a release or threatened release of a hazardous substance,
38 hazardous wastes, or hazardous material, and only for the purpose of determining
39 under this division how to finance a response or corrective action or otherwise for
40 the purpose of enforcing this division.

41 **Comment.** Section 95155 continues former Section 25185.6(a)(2) without substantive change.

1 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

2 **§ 95160. Activity relating to hazardous substances, waste or materials**

3 95160. (a) The department may require any person who has information regarding
4 the activities of a person described in Section 95150 relating to hazardous
5 substances, hazardous wastes, or hazardous materials to furnish and transmit, upon
6 reasonable notice, that information to the designated offices of the department.

7 (b) (1) The department may require any person who has information regarding the
8 activities of a person described in Section 95150 relating to the ability of the person
9 described in that section to pay for, or to perform, a response or corrective action,
10 upon reasonable notice, to furnish and transmit that information to the designated
11 offices of the department.

12 (2) This subdivision applies only if there is a reasonable basis to believe that there
13 has been or may be a release or threatened release of a hazardous substance,
14 hazardous wastes, or hazardous material, and only for the purpose of determining
15 under this division how to finance a response or corrective action or otherwise for
16 the purpose of enforcing this division.

17 **Comment.** Section 95160 continues former Section 25185.6(b) without substantive change.
18 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

19 **§ 95165. Costs of photocopying or transmitting information**

20 95165. Any person required to furnish information pursuant to this article shall
21 pay any costs of photocopying or transmitting this information.

22 **Comment.** Section 95165 continues former Section 25185.6(c) without substantive change.

23 **§ 95170. Trade secrets**

24 95170. (a) When requested by the person furnishing information pursuant to this
25 article, the department or the local officer or agency shall follow the procedures
26 established under **Section 25173**.

27 (b) A person providing information pursuant to this article shall, at the time of its
28 submission, identify all information that the person believes is a trade secret.

29 (c) Any information or record provided pursuant to this article that is not identified
30 as a trade secret pursuant is available to the public, unless exempted from disclosure
31 by other provisions of law.

32 (d) For purposes of this section, “trade secret” is defined as in **Section 25173**.

33 **Comment.** Subdivision (a) of Section 95170 continues former Section 25185.6(d) without
34 substantive change.

35 Subdivisions (b) through (d) restate former Section 25185.6(h) without substantive change.

36 See Sections 83160 (“department”), 83245 (“local officer”).

37 **Staff Note.** Proposed Section 95170 would restate existing Section 25185.6(d) and (h) for clarity.
38 The other subdivisions of existing Section 25185.6 are continued in other sections of this proposed
39 article.

40 Currently, Section 25185.6 in its entirety provides:

1 “25185.6. (a) (1) The department or a local officer or agency authorized to enforce this chapter
2 pursuant to subdivision (a) of Section 25180, in connection with any action authorized by this
3 chapter, may require any of the following persons to furnish and transmit, upon reasonable notice,
4 to the designated offices of the department or the local officer or agency any existing information
5 relating to hazardous substances, hazardous wastes, or hazardous materials:

6 (A) Any person who owns or operates any hazardous waste facility.

7 (B) Any person who generates, stores, treats, transports, disposes of, or otherwise handles
8 hazardous waste.

9 (C) Any person who has generated, stored, treated, transported, disposed of, or otherwise
10 handled hazardous waste.

11 (D) Any person who arranges, or has arranged, by contract or other agreement, to store, treat,
12 transport, dispose of, or otherwise handle hazardous waste.

13 (E) Any person who applies, or has applied, for any permit, registration, or certification under
14 this chapter.

15 (2) (A) The department, or a local officer or agency authorized to enforce this chapter pursuant
16 to subdivision (a) of Section 25180, may require a person described in paragraph (1) to furnish and
17 transmit, upon reasonable notice, to the designated offices of the department or the local officer or
18 agency, any information relating to the person’s ability to pay for, or to perform, a response or
19 corrective action.

20 (B) This paragraph applies only if there is a reasonable basis to believe that there has been or
21 may be a release or threatened release of a hazardous substance, hazardous wastes, or hazardous
22 material, and only for the purpose of determining under this chapter how to finance a response or
23 corrective action or otherwise for the purpose of enforcing this chapter.

24 (b) (1) The department may require any person who has information regarding the activities of a
25 person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) relating
26 to hazardous substances, hazardous wastes, or hazardous materials to furnish and transmit, upon
27 reasonable notice, that information to the designated offices of the department.

28 (2) (A) The department may require any person who has information regarding the activities of
29 a person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a),
30 relating to the ability of the person described in those subparagraphs to pay for, or to perform, a
31 response or corrective action, upon reasonable notice, to furnish and transmit that information to
32 the designated offices of the department.

33 (B) This paragraph applies only if there is a reasonable basis to believe that there has been or
34 may be a release or threatened release of a hazardous substance, hazardous wastes, or hazardous
35 material, and only for the purpose of determining under this chapter how to finance a response or
36 corrective action or otherwise for the purpose of enforcing this chapter.

37 (c) Any person required to furnish information pursuant to this section shall pay any costs of
38 photocopying or transmitting this information.

39 (d) When requested by the person furnishing information pursuant to this section, the department
40 or the local officer or agency shall follow the procedures established under Section 25173.

41 (e) If a person intentionally or negligently fails to furnish and transmit to the designated offices
42 of the department or the local officer or agency any existing information required pursuant to this
43 section, the department may issue an order pursuant to Section 25187 directing compliance with
44 the request.

45 (f) The department may disclose information submitted pursuant to this section to authorized
46 representatives, contractors, or other governmental agencies only in connection with the
47 department’s responsibilities pursuant to this chapter. The department shall establish procedures to
48 ensure that information submitted pursuant to this section is used only in connection with these
49 responsibilities and is not otherwise disseminated without the consent of the person who provided
50 the information to the department.

1 (g) The department may also make available to the United States Environmental Protection
2 Agency any and all information required by law to be furnished to that agency. The sharing of
3 information between the department and that agency pursuant to this section does not constitute a
4 waiver by the department or any affected person of any privilege or confidentiality provided by law
5 that pertains to the information.

6 (h) A person providing information pursuant to subdivision (a) or (b) shall, at the time of its
7 submission, identify all information that the person believes is a trade secret. Any information or
8 record not identified as a trade secret is available to the public, unless exempted from disclosure by
9 other provisions of law. For purposes of this subdivision, “trade secret” is defined as in Section
10 25173.

11 (i) Notwithstanding Section 25190, a person who knowingly and willfully disseminates
12 information protected by Section 25173 or procedures established by the department pursuant to
13 Section 25173 shall, upon conviction, be punished by a fine of not more than five thousand dollars
14 (\$5,000), imprisonment in a county jail not to exceed one year, or by both that fine and
15 imprisonment.”

16 **Absent comment, this proposed restatement will be presumed correct.**

17 **§ 95175. Order directing compliance for failure to provide information**

18 95175. If a person intentionally or negligently fails to furnish and transmit to the
19 designated offices of the department or the local officer or agency any existing
20 information required pursuant to this article, the department may issue an order
21 pursuant to Article 3 (commencing with Section 95350) directing compliance with
22 the request.

23 **Comment.** Section 95175 continues former Section 25185.6(e) without substantive change.
24 See Sections 83160 (“department”), 83245 (“local officer”).

25 **§ 95180. Disclosure of information by department**

26 95180. (a) The department may disclose information submitted pursuant to this
27 article to authorized representatives, contractors, or other governmental agencies
28 only in connection with the department’s responsibilities pursuant to this division.

29 (b) The department shall establish procedures to ensure that information
30 submitted pursuant to this article is used only in connection with these
31 responsibilities and is not otherwise disseminated without the consent of the person
32 who provided the information to the department.

33 (c)(1) The department may also make available to the United States
34 Environmental Protection Agency any and all information required by law to be
35 furnished to that agency.

36 (2) The sharing of information between the department and that agency pursuant
37 to this article does not constitute a waiver by the department or any affected person
38 of any privilege or confidentiality provided by law that pertains to the information.

39 **Comment.** Subdivision (a) of Section 95180 continues the first sentence of former Section
40 25186.5(f) without substantive change.

41 Subdivision (b) continues the second sentence of former Section 25186.5(f) without substantive
42 change.

43 Subdivision (c) continues former Section 25186.5(g) without substantive change.

44 See Sections 83160 (“department”), 83245 (“local officer”).

1 **§ 95185. Required disclosure statements by hazardous waste licenseholder or applicant**

2 95185. (a) Every hazardous waste licenseholder or applicant, other than a federal,
3 state, or local agency, who is not otherwise required to file a disclosure statement
4 on or before January 1, 1989, shall file a disclosure statement with the department
5 on or before January 1, 1989.

6 (b) If changes or additions of information regarding majority ownership, the
7 business name, or the information required by **paragraphs (6) and (8) of**
8 **subdivision (a) of Section 25112.5** occur after the filing of the statement, the
9 licenseholder or applicant shall provide that information to the department, in
10 writing, within 30 days of the change or addition.

11 (c) Any person submitting a disclosure statement shall pay a fee set by the
12 department in an amount adequate to defray the costs of implementing this section,
13 per person, officer, director, or partner required to be listed in the disclosure
14 statement, in addition to any other fees required.

15 (d) The department shall deposit fees paid pursuant to subdivision (c) in the
16 Hazardous Waste Control Account.

17 (e) Fees deposited pursuant to subdivision (d) shall be made available, upon
18 appropriation by the Legislature, to cover the costs of conducting the necessary
19 background searches.

20 (f) Any person who knowingly makes any false statement or misrepresentation in
21 a disclosure statement filed pursuant to the requirements of this division is, upon
22 conviction, subject to the penalties specified in **Sections 25189 and 25189.2 and**
23 **subdivision (a) of Section 25191.**

24 (g) The disclosure statement submitted pursuant to subdivision (b) is exempt from
25 the requirements of the California Public Records Act (Division 10 (commencing
26 with Section 7920.000) of Title 1 of the Government Code).

27 **Comment.** Subdivision (a) of Section 95185 continues former Section 25186.5(b) without
28 substantive change.

29 Subdivision (b) continues former Section 25186.5(c) without substantive change.

30 Subdivision (c) continues the first sentence of former Section 25186.5(d) without substantive
31 change.

32 Subdivision (d) continues the second sentence of former Section 25186.5(d) without substantive
33 change.

34 Subdivision (e) continues the third sentence of former Section 25186.5(d) without substantive
35 change.

36 Subdivision (f) continues former Section 25186.5(e) without substantive change.

37 Subdivision (g) continues former Section 25186.5(f) without substantive change.

38 See Sections 83065 (“applicant”), 83160 (“department”), 83170 (“disclosure statement”).

39 **Article 4. Permits**

40 **§ 95200. Proceedings generally relating to permit, registration or certificate**

41 95200. (a) Proceedings to determine whether to grant, issue, modify, or deny a
42 permit, registration, or certificate shall be conducted in accordance with the
43 regulations adopted by the department.

1 (b) The petition for judicial review of a final decision of the department to grant,
2 issue, modify, or deny a permit, registration, or certificate shall not be filed later
3 than 90 days after the date that the notice of the final decision is served.

4 **Comment.** Subdivision (a) of Section 95200 continues the third sentence of former Section
5 25186.1 without substantive change.

6 Subdivision (b) continues the fourth sentence of former Section 25186.1 without substantive
7 change.

8 See Section 83160 (“department”).

9 **§ 95205. Special requirement for issuance of hazardous waste facilities permit**

10 95205. (a) The department shall prepare a written report pursuant to subdivision
11 (b) whenever the department proposes to issue a hazardous waste facilities permit
12 applied for pursuant to **Section 25200** and the department has information that the
13 applicant, or the applicant under any previous name or names, or, if the applicant is
14 a business concern, any officer, director, or partner of the business concern, has been
15 named as a party in any action involving violation of any statute, regulation, or
16 requirement specified in **Section 25186**, excluding civil and administrative penalties
17 of one thousand dollars (\$1,000) or less at any hazardous waste facility issued a
18 permit pursuant to this division, and that a conviction, judgment, or settlement has
19 been entered during a three-year period preceding the date of application.

20 (b) The report shall list all convictions, judgments, and settlements relating to
21 violations of any statutes, regulations, or requirements specified in **Section 25186**,
22 excluding civil and administrative penalties of one thousand dollars (\$1,000) or less
23 at any hazardous waste facility issued a permit pursuant to this division, that
24 occurred during the three-year period preceding the date of application.

25 (c) Any listing of settlements shall include the following statement: “Settlements
26 may or may not include admissions of guilt.”

27 (d) The report shall separately list all criminal convictions and violations resulting
28 in penalties of fifty thousand dollars (\$50,000) or more, and shall be included in the
29 administrative record for the proposed permit.

30 (e) For the purposes of this section, the department may use criminal history
31 information obtained from the Department of Justice to the extent that the
32 information is necessary to list all convictions, judgments, and settlements as
33 required by subdivision (b).

34 (f) This section does not apply to facilities that meet the requirements necessary
35 to operate pursuant to the department’s permit-by-rule regulations.

36 **Comment.** Section 95205 continues former Section 25186.3 without substantive change.

37 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste
38 facility”), 8320 (“permit-by-rule”).

39 **§ 95210. Suspension of permit**

40 95210. (a) For purposes of this section, the term “permit” means a hazardous
41 waste facilities permit, interim status authorization, or standardized permit.

1 (b) The department shall suspend the permit of any facility for nonpayment of any
2 facility fee assessed pursuant to **Section 25205.2** or activity fee assessed pursuant
3 to **Section 25205.7**, if the operator of the facility is subject to the fee, and if the
4 department or State Board of Equalization has certified in writing to all of the
5 following:

6 (1) The facility's operator is delinquent in the payment of the fee for one or more
7 reporting periods.

8 (2) The department or State Board of Equalization has notified the facility's
9 operator of the delinquency.

10 (3)(A) For a facility operator that elected to pay the flat activity fee rate pursuant
11 to **subdivision (d) of Section 25205.7**, as that section read on January 1, 2016, the
12 operator has exhausted his or her administrative rights of appeal provided by
13 Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue
14 and Taxation Code, and the State Board of Equalization has determined that the
15 operator is liable for the fee, or that the operator has failed to assert those rights.

16 (B) For a facility operator that pays the activity fee under a reimbursement
17 agreement with the department pursuant to **subdivision (a) of Section 25205.7**, the
18 operator has exhausted the dispute resolution procedures adopted by the department
19 pursuant to **subparagraph (H) of paragraph (2) of subdivision (b) of Section**
20 **25206.2**.

21 (c)(1) The department shall suspend the permit of any facility for nonpayment of
22 a penalty assessed upon the owner or operator for failure to comply with this
23 division or the regulations adopted pursuant to this division, if the penalty has been
24 imposed by a trial court judge or by an administrative hearing officer, if the person
25 has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or
26 an administrative order, or if the penalty has become final due to the person's failure
27 to respond to the lawsuit or order.

28 (2) The department may suspend a permit pursuant to this subdivision only if the
29 owner or operator is delinquent in the payment of the penalty and the department
30 has notified the owner or operator of the delinquency pursuant to subdivision (d).

31 (d) Before suspending a permit pursuant to this section, the department shall
32 notify the owner or operator of its intent to do so, and shall allow the owner or
33 operator a minimum of 30 days in which to cure the delinquency.

34 (e) The department may deny a new permit or refuse to renew a permit on the
35 same grounds for which the department is required to suspend a permit under this
36 section, subject to the same requirements and conditions.

37 (f)(1) The department shall reinstate a permit that is suspended pursuant to this
38 section upon payment of the amount due if the permit has not otherwise been
39 revoked or suspended pursuant to any other provision of this division or regulation.

40 (2) Until the department reinstates a permit suspended pursuant to this section, if
41 the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall
42 be in violation of this division.

1 (3) If the operator of the facility subsequently pays the amount due, the period of
2 time for which the operator shall have been in violation of this division shall be from
3 the date of the activity that is in violation until the day after the owner or operator
4 submits the payment to the department.

5 (4) Except as otherwise provided in this section, the department is not required to
6 take any other statutory or regulatory procedures governing the suspension of the
7 permit before suspending a permit in compliance with the procedures of this section.

8 (g) (1) A suspension under this section shall be stayed while an authorized appeal
9 of the fee or penalty is pending before a court or an administrative agency.

10 (2) For purposes of this subdivision, “an authorized appeal” means any appeal
11 allowed pursuant to an applicable regulation or statute.

12 (h) The department may suspend a permit under this section based on a failure to
13 pay the required fee or penalty that commenced before January 1, 2002, if the failure
14 to pay has been ongoing for at least 30 days following that date.

15 (i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the
16 suspension of a permit pursuant to this section, the reason for the suspension, and
17 any documentation supporting the suspension, shall be a matter of public record.

18 (j)(1) This section does not authorize the department to suspend a permit held by
19 a government agency if the agency does not dispute the payment but nonetheless is
20 unable to process the payment in a timely manner.

21 (2) This section does not apply to a site owned or operated by a federal agency if
22 the department has entered into an agreement with that federal agency regarding the
23 remediation of that site.

24 (k) This section does not limit or supersede **Section 25186**.

25 **Comment.** Section 95210 continues former Section 25189.3 without substantive change.
26 See Sections 83160 (“department”), 83210 (“hazardous waste”).

27 CHAPTER 4. SANCTIONS

28 Article 1. Denial, Suspension, or Revocation of Permit, Registration, or Certificate

29 § 95250. Grounds in general

30 95250. The department may deny, suspend, or revoke any permit, registration, or
31 certificate applied for, or issued, pursuant to this division in accordance with the
32 procedures specified in **Sections 25186.1 and 25186.2**, where the applicant or
33 holder of the permit, registration, or certificate, or in the case of a business concern,
34 any trustee, officer, director, partner, or any person holding more than 5 percent of
35 the equity in, or debt liability of, that business concern, has engaged in any of the
36 following:

37 (a) Any violation of, or noncompliance with, this division, Chapter 6.7
38 (commencing with Section 25280), Part 2 (commencing with Section 78000) of
39 Division 45, the Porter-Cologne Water Quality Control Act (Division 7

1 (commencing with Section 13000) of the Water Code), the Resource Conservation
2 and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous
3 Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive
4 Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec.
5 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or
6 any other equivalent federal or state statute or any requirement or regulation adopted
7 pursuant thereto relating to the generation, transportation, treatment, storage,
8 recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**,
9 a hazardous substance, as defined in subdivision (a) of Section 78075, or a
10 hazardous material, as defined in Section 353 of the Vehicle Code, if the violation
11 or noncompliance shows a repeating or recurring pattern or may pose a threat to
12 public health or safety or the environment.

13 (b) The aiding, abetting, or permitting of any violation of, or noncompliance with,
14 this division, Chapter 6.7 (commencing with Section 25280), Part 2 (commencing
15 with Section 78000) of Division 45, the Porter-Cologne Water Quality Act
16 (Division 7 (commencing with Section 13000) of the Water Code), the Resource
17 Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.),
18 the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the
19 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
20 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec.
21 2601 et seq.), or any other equivalent federal or state statute or any requirement or
22 regulation adopted pursuant thereto relating to the generation, transportation,
23 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined
24 in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section
25 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if
26 the violation or noncompliance shows a repeating or recurring pattern or may pose
27 a threat to public health or safety or the environment.

28 (c) Any violation of, or noncompliance with, any order issued by a state or local
29 agency or by a hearing officer or a court relating to the generation, transportation,
30 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined
31 in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section
32 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

33 (d) Any misrepresentation or omission of a significant fact or other required
34 information in the application for the permit, registration, or certificate, or in
35 information subsequently reported to the department or to a local officer or agency
36 authorized to enforce this division pursuant to subdivision (a) of Section 25180.

37 (e) Activities resulting in the revocation or suspension of a license, permit,
38 registration, or certificate held by the applicant or holder of the permit, registration,
39 or certificate or, if the applicant or holder of the permit, registration, or certificate is
40 a business concern, by any trustee, officer, director, partner, or any person holding
41 more than 5 percent of the equity in, or debt liability of, that business concern
42 relating to, the generation, transportation, treatment, storage, recycling, disposal, or
43 handling of a hazardous waste, as defined in **Section 25117**, a hazardous substance,

1 as defined in subdivision (a) of Section 78075, or a hazardous material, as defined
2 in Section 353 of the Vehicle Code.

3 **Comment.** Subdivision (a) of Section 95250 continues former Section 25186(a) without
4 substantive change.

5 Subdivision (b) continues former Section 25186(b) without substantive change.

6 Subdivision (c) continues former Section 25186(c) without substantive change.

7 Subdivision (d) continues former Section 25186(d) without substantive change.

8 Subdivision (e) continues former Section 25186(f) without substantive change.

9 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83245
10 (“local officer”), 83355 (“storage”), 83370 (“treatment”).

11 § 95255. Activities relating to federal or state conviction

12 95255. (a) The department may deny, suspend, or revoke any permit, registration,
13 or certificate applied for, or issued, pursuant to this division in accordance with the
14 procedures specified in **Sections 25186.1 and 25186.2**, where the applicant or
15 holder of the permit, registration, or certificate, or in the case of a business concern,
16 any trustee, officer, director, partner, or any person holding more than 5 percent of
17 the equity in, or debt liability of, that business concern, has engaged in activities
18 resulting in any federal or state conviction that are significantly related to the fitness
19 of the applicant or holder of the permit, registration, or certificate to perform the
20 applicant’s duties or activities under the permit, registration, or certificate.

21 (b) An action that the department may take pursuant to this paragraph relating to
22 the denial, suspension, or revocation of a permit, registration, or certificate may be
23 based upon a conviction for which any of the following has occurred:

24 (1) The time for appeal has elapsed.

25 (2) The judgment of conviction has been affirmed on appeal.

26 (3) Any order granting probation is made suspending the imposition of sentence,
27 notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code
28 permitting that person to withdraw the person’s plea of guilty, and to enter a plea of
29 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
30 information, or indictment.

31 (c) For purposes of this paragraph, “conviction” means a plea or verdict of guilty
32 or a conviction following a plea of nolo contendere.

33 **Comment.** Section 95255 continues former Section 25186(e) without substantive change.

34 See Section 83160 (“department”).

35 § 95260. Obtaining information from other agencies

36 95260. (a) In making a determination pursuant to Section 95250 or 95255, the
37 director may contact the district attorney, local agencies, the Attorney General, the
38 United States Department of Justice, the Environmental Protection Agency, or other
39 agencies outside of the state that have, or have had, regulatory or enforcement
40 jurisdiction over the applicant in connection with any hazardous waste or hazardous
41 materials activities.

42 **Comment.** Section 95260 continues former Section 25186.5(a) without substantive change.

43 See Sections 83165 (“director”), 83210 (“hazardous waste”).

1 **§ 95265. Multiple incidents of violation or noncompliance**

2 95265. (a) For the purposes of this section, “violation” and “noncompliance”
3 mean only the following:

4 (1) A violation or noncompliance pursuant to Section 95250 or 95255 that creates
5 a significant risk of harm to the public health or safety of the environment resulting
6 from acute or chronic exposure to hazardous waste or hazardous waste constituents,
7 and that threat makes it reasonably necessary to take action to prevent, reduce, or
8 mitigate that exposure.

9 (2) A violation of, or noncompliance with, any order issued by the department to
10 the applicant or holder of the permit.

11 (3) A federal or state felony conviction for a violation of this division or its
12 equivalent in the federal act, or of any requirement or regulation adopted pursuant
13 to that authority relating to the generation, transportation, treatment, storage,
14 recycling, disposal, or handling of hazardous waste, as described in subdivision (e)
15 of Section 25186.

16 (b) A violation or noncompliance by a federal hazardous waste facility, pursuant
17 to Section 6961 of Title 42 of the United States Code, shall, for purposes of this
18 section, be limited to a violation or noncompliance caused by an action or inaction
19 within the boundaries identified in Part B of the federal hazardous waste permit
20 application, pursuant to Section 270.14 of Title 40 of the Code of Federal
21 Regulations, for that facility.

22 (c) “Violation” and “noncompliance” shall not include a minor violation as
23 defined in Section 25117.6.

24 (d) (1) Except as provided in paragraph (2), the department shall consider three or
25 more incidents of violation of, or noncompliance with, a requirement specified in
26 subdivision (a) or (b) of Section 95250 for which a person or entity has been found
27 liable or has been convicted, with respect to a single facility within a five-year
28 period, as compelling cause to deny, suspend, or revoke the permit, registration, or
29 certificate.

30 (2) This subdivision does not apply to a third violation or noncompliance if the
31 department finds that extraordinary circumstances exist, including that a denial,
32 suspension, or revocation would endanger the public health or safety or the
33 environment.

34 (3) This subdivision does not limit or modify the department’s authority to deny,
35 suspend, or revoke any permit, registration, or certificate pursuant to Section 95250,
36 Section 95255, or any other law.

37 **Comment.** Section 95265 continues former Section 25186.05 without substantive change.

38 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215
39 (“hazardous waste facility”), 83355 (“storage”), 83370 (“treatment”).

40 **§ 95270. Proceedings relating to permit, registration or certificate**

41 95270. (a) Except as specified in Section 95275, proceedings for the suspension
42 or revocation of a permit, registration, or certificate under this division shall be

1 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part
2 1 of Division 3 of Title 2 of the Government Code, and the department shall have
3 all the powers granted by those provisions.

4 (b) In the event of a conflict between this division and Chapter 5 (commencing
5 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the
6 provisions of the Government Code shall prevail.

7 **Comment.** Section 95270 continues the first two sentences of former Section 25186.1 without
8 substantive change.

9 See Section 83160 (“department”).

10 **Staff Note.** Existing Section 25186.1(a) (which would be continued by proposed Section
11 95270(a) and (b)), as well as most other sections in the existing statutory article in which Section
12 25186.1 appears, relates generally to enforcement activity by the Department of Toxic Substances
13 Control.

14 However, existing Section 25186.1(b) appears to relate solely to process relating to whether the
15 department grants, issues, modifies, or denies a permit, registration, or certificate, and is therefore
16 proposed to be relocated to proposed Article 4 of Chapter 3 of this proposed Part. See proposed
17 Section 95200.

18 **Public comment on this issue is welcome and invited.**

19 **§ 95275. Temporary suspension of permit, registration, or certificate due to endangerment**

20 95275. (a) The department may temporarily suspend any permit, registration, or
21 certificate issued pursuant to this division prior to any hearing if the department
22 determines that conditions may present an imminent and substantial endangerment
23 to the public health or safety or the environment.

24 (b) In making this determination, the department may rely on any information,
25 including, but not limited to, information concerning an actual, threatened, or
26 potential harm to the public health or safety or the environment, information
27 concerning a release or threat of a release, or a human health or ecological risk
28 assessment.

29 (c) The department shall notify the holder of the permit, registration, or certificate
30 of a temporary suspension and the effective date thereof, and at the same time shall
31 serve the person with an accusation.

32 (d) Upon receipt by the department of a notice of defense to the accusation from
33 the holder of the permit, registration, or certificate, the department shall, within 15
34 days, set the matter for a hearing, which shall be held as soon as possible, but not
35 later than 30 days after receipt of the notice.

36 (e) The temporary suspension shall remain in effect until the hearing is completed
37 and the department has made a final determination on the merits, which shall be
38 made within 60 days after the completion of the hearing.

39 (f) If the determination is not transmitted within this period, the temporary
40 suspension shall be of no further effect.

41 **Comment.** Subdivision (a) of Section 95275 continues the first sentence of former Section
42 25186.2 without substantive change.

1 Subdivision (b) continues the second sentence of former Section 25186.2 without substantive
2 change.

3 Subdivision (c) continues the third sentence of former Section 25186.2 without substantive
4 change.

5 Subdivision (d) continues the fourth sentence of former Section 25186.2 without substantive
6 change.

7 Subdivision (e) continues the fifth sentence of former Section 25186.2 without substantive
8 change.

9 Subdivision (f) continues the sixth sentence of former Section 25186.2 without substantive
10 change.

11 See Section 83160 (“department”).

12 **Staff Note.** The third sentence of existing Section 25186.2 (which would be continued by
13 proposed Section 95275(c)) requires service of an “accusation” by the department, with no further
14 detail as to content or process.

15 If no such statutory detail presently exists, would the absence of that detail be an appropriate
16 topic to be included in the list of substantive issues that the Legislature has requested be reported
17 for possible future study?

18 **Public comment on this issue is welcome and invited.**

19 **§ 95280. Temporary suspension of operation of facility with extended permit**

20 95280. (a) The department may temporarily suspend the operation of a facility
21 operating under an expired permit that has been extended pursuant to
22 **subparagraph (B) of paragraph (1) of subdivision (c) of Section 25200** or an
23 interim status pursuant to **Section 25200.5** prior to a hearing, if the department
24 determines that the action is necessary to prevent or mitigate a risk to the public
25 health or safety or the environment.

26 (b) The department shall notify the owner and operator of the facility of the
27 temporary suspension and the effective date of the temporary suspension and at the
28 same time shall serve the person with an accusation.

29 (c) Upon receipt by the department of a notice of defense to the accusation from
30 the owner or operator of the facility, the department shall, within 15 days, set the
31 matter for a hearing, which shall be held as soon as possible, but not later than 30
32 days after receipt of the notice.

33 (d) The temporary suspension shall remain in effect until the hearing is completed
34 and the department has made a final determination on the merits, which shall be
35 made within 60 days after the completion of the hearing.

36 (e) If the determination is not transmitted within this period, the temporary
37 suspension shall be of no further effect.

38 **Comment.** Subdivision (a) of Section 95280 continues the first sentence of former Section
39 25186.2.5 without substantive change.

40 Subdivision (b) continues the second sentence of former Section 25186.2.5 without substantive
41 change.

42 Subdivision (c) continues the third sentence of former Section 25186.2.5 without substantive
43 change.

44 Subdivision (d) continues the fourth sentence of former Section 25186.2.5 without substantive
45 change.

1 Subdivision (e) continues the fifth sentence of former Section 25186.2.5 without substantive
2 change.

3 See Section 83160 (“department”).

4 **Staff Note.** The second sentence of existing Section 25186.2.5 (which would be continued by
5 proposed Section 95280(b)) requires service of an “accusation” by the department, with no further
6 detail as to content or process.

7 If no such statutory detail presently exists, would the absence of that detail be an appropriate
8 topic to be included in the list of substantive issues identified by the Commission for possible future
9 study?

10 **Public comment on this issue is welcome and invited.**

11 **§ 95285. Suspension or revocation of other authorizations**

12 95285. (a) The department may suspend or revoke any grant of authorization to
13 operate pursuant to a permit-by-rule or authorization to conduct treatment pursuant
14 to **subdivision (a) or (c) of Section 25201.5**, in accordance with the procedures
15 specified in Sections **25186.1** and **25186.2**, for any of the grounds specified in
16 **Section 25186.**

17 (b) The department may suspend or revoke any grant of conditional authorization
18 granted pursuant to **Section 25200.3** in accordance with the procedures specified in
19 **Sections 25186.1 and 25186.2**, for any of the grounds specified in **Section 25186**
20 or as specified in **subdivision (j) of Section 25200.3.**

21 **Comment.** Section 95285 continues former Section 25186.7 without substantive change.
22 See Sections 83160 (“department”), 83290 (“permit-by-rule”), 83370 (“treatment”).

23 **Article 2. Order to Conduct Monitoring, Testing, Analysis, and Reporting**

24 **§ 95300. Basis for order**

25 95300. (a) If the department or a unified program agency authorized pursuant to
26 subdivision (b) determines, upon receipt of any information, that the presence of
27 any hazardous waste at a facility or site at which hazardous waste is, or has been,
28 stored, treated, or disposed of, or the release of any hazardous waste from the facility
29 or site may present a substantial hazard to human health or the environment, the
30 department or authorized unified program agency may issue an order requiring the
31 owner or operator of the facility or site to conduct monitoring, testing, analysis, and
32 reporting with respect to the facility or site which the department or authorized
33 unified program agency deems reasonable to ascertain the nature and extent of the
34 hazard.

35 (b) The authority granted under this article to a unified program agency is limited
36 to the issuance of orders pursuant to subdivision (a) to a unified program facility
37 within the jurisdiction of the CUPA, and is subject to **Section 25404.1.**

38 **Comment.** Section 95300 continues former Section 25187.1(a) without substantive change.

39 See Sections 83110 (“CUPA”), 83160 (“department”), 83210 (“hazardous waste”), 83375
40 (“unified program agency”), 83380 (“unified program facility”).

1 **§ 95305. Order to previous owner or operator**

2 95305. If a facility or site subject to Section 95300 is not in operation at the time
3 a determination pursuant to Section 95300 is made, and the department finds that
4 the owner of the facility or site could not reasonably be expected to have actual
5 knowledge of the presence of hazardous waste at the facility or site and of its
6 potential for release, the department may issue an order requiring the most recent
7 previous owner or operator of the facility or site who could reasonably be expected
8 to have the actual knowledge to carry out the actions specified in Section 95400.

9 **Comment.** Section 95305 continues former Section 25187.1(b) without substantive change.
10 See Sections 83160 (“department”), 83210 (“hazardous waste”).

11 **§ 95310. Submission of proposal**

12 95310. (a) Any order issued pursuant to Section 95300 or 95305 shall require the
13 person to whom the order is issued to submit to the department or authorized unified
14 program agency, within 30 days from the issuance of the order, a proposal for
15 carrying out the required monitoring, testing, analysis, and reporting.

16 (b) The department or authorized unified program agency may, after providing
17 the person to whom the order is issued an opportunity to confer with the department
18 or authorized unified program agency concerning the proposal, require the person
19 to carry out the monitoring, testing, analysis, and reporting in accordance with the
20 proposal, and with any modifications in the proposal that the department or
21 authorized unified program agency deems reasonable to ascertain the nature and
22 extent of the hazard.

23 **Comment.** Section 95310 continues former Section 25187.1(c) without substantive change.
24 See Sections 83160 (“department”), 83375 (“unified program agency”).

25 **§ 95315. Conduct of work by other parties**

26 95315. (a) If the department or authorized unified program agency determines that
27 there is no owner or operator as specified in Section 95300 or 95305 to conduct
28 monitoring, testing, analysis, or reporting satisfactory to the department or
29 authorized unified program agency, deems action carried out by an owner or
30 operator unsatisfactory, or cannot initially determine that there is an owner or
31 operator specified in Section 95400 or 94505 who is able to conduct monitoring,
32 testing, analysis, or reporting, the department or authorized unified program agency
33 may do either of the following:

34 (1) Conduct monitoring, testing, or analysis, or any combination of these actions
35 that the department or authorized unified program agency deems reasonable, to
36 ascertain the nature and extent of the hazard associated with the site.

37 (2) Authorize a local authority or other person to carry out the action needed, and
38 order the owner or operator specified in Section 95300 or 95305 to reimburse the
39 department or authorized unified program agency or other authority or person for
40 the costs of the action.

1 (b) The department or authorized unified program agency shall not issue an order
2 pursuant to this article that requires the department or authorized unified program
3 agency to be reimbursed for the costs of any action carried out by the department or
4 authorized unified program agency to conduct monitoring, testing, and analysis to
5 determine the results of the actions carried out by a person pursuant to an order
6 issued pursuant to Section 95300 or 95305.

7 **Comment.** Subdivision (a) of Section 95315 restates former Section 25187.1(d) without
8 substantive change.

9 Subdivision (b) continues former Section 25187.1(e) without substantive change.

10 See Sections 83160 (“department”), 83375 (“unified program agency”).

11 **Staff Note.** Proposed Section 95315(a) would restate existing Section 25187.1(d) for clarity.
12 Currently, Section 25187(h) provides:

13 “25187.1(d). If the department or authorized unified program agency determines that there is no
14 owner or operator specified in subdivision (a) or (b) to conduct monitoring, testing, analysis, or
15 reporting satisfactory to the department or authorized unified program agency, if the department or
16 authorized unified program agency deems the action carried out by an owner or operator is
17 unsatisfactory, or if the department or authorized unified program agency cannot initially determine
18 that there is an owner or operator specified in subdivision (a) or (b) who is able to conduct
19 monitoring, testing, analysis, or reporting, the department or authorized unified program agency
20 may do either of the following:

21 (1) Conduct monitoring, testing, or analysis, or any combination of these actions, which the
22 department or authorized unified program agency deems reasonable, to ascertain the nature and
23 extent of the hazard associated with the site.

24 (2) Authorize a local authority or other person to carry out the action, and require, by order, the
25 owner or operator specified in subdivision (a) or (b) to reimburse the department or authorized
26 unified program agency or other authority or person for the costs of the activity.”

27 **Absent comment, this proposed restatement will be presumed correct.**

28 **§ 95320. Other authorized action**

29 95320. For purposes of carrying out this article, the department, an authorized
30 unified program agency, any other local agency, or other person authorized under
31 paragraph (2) of subdivision (a) of Section 95315, may take action pursuant to
32 **Section 25185.**

33 **Comment.** Section 95320 continues former Section 25187.1(f) without substantive change.

34 See Sections 83160 (“department”), 83375 (“unified program agency”).

35 **Article 3. Order Requiring Corrective Action**

36 **Staff Note.** The following article proposes a nonsubstantive recodification and reorganization of
37 existing Section 25187.

38 **Public comment on whether this proposed recodification and reorganization would cause**
39 **any substantive change is welcome and invited.**

1 **§ 95350. “Hazardous waste facility”**

2 95350. For purposes of this article, “hazardous waste facility” includes the entire
3 site that is under the control of an owner or operator engaged in the management of
4 hazardous waste.

5 **Comment.** Section 95350 continues former Section 25187(b)(6) without substantive change.
6 See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

7 **§ 95355. Limitation on orders issued by unified program agency**

8 95355. The authority granted under this article to a unified program agency is
9 limited to issuance of the following orders:

10 (a) An order to impose penalties and to correct violations of the requirements of
11 this chapter and its implementing regulations, only when the violations are
12 violations of requirements applicable to hazardous waste generators and persons
13 operating pursuant to a permit-by-rule, conditional authorization, or conditional
14 exemption, when the violations occur at a unified program facility within the
15 jurisdiction of the CUPA.

16 (b) An order to require corrective action when there has been a release of
17 hazardous waste or constituents only when the unified program agency is authorized
18 to do so pursuant to **Section 25404.1**.

19 **Comment.** Section 95355 continues former Section 25187(l) without substantive change.

20 See Sections 83110 (“CUPA”), 83125 (“conditional authorization”), 83130 (“conditional
21 exemption”), 83210 (“hazardous waste”), 83290 (permit-by-rule”), 83330 (“release”), 83380
22 (“unified program facility”).

23 **§ 95360. Order correcting violation and imposing administrative penalty**

24 95360. (a) For purposes of this section, “threaten” has the meaning set forth in
25 subdivision (e) of Section 13304 of the Water Code.

26 (b) The department or a unified program agency, upon a determination that a
27 person has violated, is in violation of, or threatens to violate, a provision of this
28 division or a provision of Part 2 (commencing with Section 78000) of Division 45,
29 or any permit, rule, regulation, standard, or requirement issued or adopted pursuant
30 to this division or pursuant to Part 2 (commencing with Section 78000) of Division
31 45, may issue an order requiring that the violation or threat of violation be corrected,
32 and imposing an administrative penalty.

33 (c) In an order proposing a penalty pursuant to this section, the department or
34 unified program agency shall take into consideration the nature, circumstances,
35 extent, and gravity of the violation, the violator’s past and present efforts to prevent,
36 abate, or clean up conditions posing a threat to the public health or safety or the
37 environment, the violator’s ability to pay the proposed penalty, and the prophylactic
38 effect that the imposition of the proposed penalty would have on both the violator
39 and the regulated community as a whole.

40 **Comment.** Subdivision (a) and (b) of Section 95360 restate former Section 25187(a)(1) without
41 substantive change.

42 Subdivision (c) continues former Section 25187(a)(2) without substantive change.

1 See Sections 83160 (“department”), (“unified program agency”).

2 **Staff Note.** Proposed Section 95360, in conjunction with proposed Section 95355, would restate
3 existing Section 25187(a)(1) for clarity. Currently, Section 25187(a)(1) provides:

4 “25187. (a)(1) The department or a unified program agency, in accordance with subdivision (l),
5 may issue an order requiring that the violation be corrected and imposing an administrative penalty,
6 for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or
7 adopted pursuant to this chapter, whenever the department or unified program agency determines
8 that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section
9 13304 of the Water Code, to violate, this chapter or Part 2 (commencing with Section 78000) of
10 Division 45, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to
11 this chapter or Part 2 (commencing with Section 78000) of Division 45.”

12 **Absent comment, this proposed restatement will be presumed correct.**

13 **§ 95365. Issuance of order for corrective action**

14 95365. (a) The department or a unified program agency may issue an order
15 requiring corrective action whenever the department or unified program agency
16 determines that there is or has been a release, as defined in Part 2 (commencing with
17 Section 78000) of Division 45, of hazardous waste or constituents into the
18 environment from a hazardous waste facility.

19 (b) The order shall include a requirement that the person issued the order take
20 corrective action with respect to the release of hazardous waste or constituents, abate
21 the effects thereof, and take any other necessary remedial action.

22 (c) If the order requires corrective action at a hazardous waste facility, the order
23 shall require that corrective action be taken beyond the facility boundary, where
24 necessary to protect human health or the environment.

25 (d) The order shall incorporate, as a condition of the order, any applicable waste
26 discharge requirements issued by the State Water Resources Control Board or a
27 California regional water quality control board, and shall be consistent with all
28 applicable water quality control plans adopted pursuant to Section 13170 of the
29 Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of
30 Division 7 of the Water Code and state policies for water quality control adopted
31 pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7
32 of the Water Code existing at the time of the issuance of the order, to the extent that
33 the department or unified program agency determines that those plans and policies
34 are not less stringent than this division and regulations adopted pursuant to this
35 division.

36 (e) The order may include any more stringent requirement that the department or
37 unified program agency determines is necessary or appropriate to protect water
38 quality.

39 **Comment.** Subdivision (a) of Section 95365, in conjunction with Section 95305, continues the
40 introductory paragraph of former Section 25187(b) without substantive change.

41 Subdivision (b) continues former Section 25187(b)(2) without substantive change.

42 Subdivision (c) continues former Section 25187(b)(3) without substantive change.

43 Subdivision (d) continues the first sentence of former Section 25187(b)(4) without substantive
44 change.

1 Subdivision (e) continues the second sentence of former Section 25187(b)(4) without substantive
2 change.

3 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste
4 facility”), 83330 (“release”), 83375 (“unified program agency”), 83380 (“unified program
5 facility”), 83395 (“waste”).

6 **§ 95370. Preference for remedies under Division 46**

7 95370. In the case of a release of hazardous waste or constituents into the
8 environment from a hazardous waste facility that is required to obtain a permit
9 pursuant to **Article 9 (commencing with Section 25200)**, the department shall
10 pursue the remedies available under this division, including the issuance of an order
11 for corrective action pursuant to this article, before using legal remedies available
12 pursuant to Part 2 (commencing with Section 78000) of Division 45, except in any
13 of the following circumstances:

14 (a) The person who is responsible for the release voluntarily requests in writing
15 that the department issue an order to that person to take corrective action pursuant
16 to Part 2 (commencing with Section 78000) of Division 45.

17 (b) The person who is responsible for the release is unable, as determined in
18 accordance with the policies of the Environmental Protection Agency for the
19 implementation of Section 9605 of Title 42 of the United States Code, to pay for the
20 cost of corrective action to address the release.

21 (c) The person responsible for the release is unwilling, as determined in
22 accordance with the policies of the Environmental Protection Agency for the
23 implementation of Section 9605 of Title 42 of the United States Code, to perform
24 corrective action to address the release.

25 (d) The release is part of a regional or multisite groundwater contamination
26 problem that cannot, in its entirety, be addressed using the legal remedies available
27 pursuant to this division and for which other releases that are part of the regional or
28 multisite groundwater contamination problem are being addressed using the legal
29 remedies available pursuant to Part 2 (commencing with Section 78000) of Division
30 45.

31 (e) An order for corrective action has already been issued against the person
32 responsible for the release, or the department and the person responsible for the
33 release have, prior to January 1, 1996, entered into an agreement to address the
34 required cleanup of the release pursuant to Part 2 (commencing with Section 78000)
35 of Division 45.

36 (f) The hazardous waste facility is owned or operated by the federal government.

37 **Comment.** Section 95370 restates former Section 25187(b)(1) without substantive change.

38 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste
39 facility”).

40 **Staff Note.** Proposed Section 95370 would restate existing Section 25187(b)(1) for clarity.
41 Currently, Section 25187(a)(1) provides:

42 “25187. (b)(1) In the case of a release of hazardous waste or constituents into the environment
43 from a hazardous waste facility that is required to obtain a permit pursuant to Article 9

1 (commencing with Section 25200), the department shall pursue the remedies available under this
2 chapter, including the issuance of an order for corrective action pursuant to this section, before
3 using the legal remedies available pursuant to Part 2 (commencing with Section 78000) of Division
4 45, except in any of the following circumstances:

5 (A) If the person who is responsible for the release voluntarily requests in writing that the
6 department issue an order to that person to take corrective action pursuant to Part 2 (commencing
7 with Section 78000) of Division 45.

8 (B) If the person who is responsible for the release is unable to pay for the cost of corrective
9 action to address the release. For purposes of this subparagraph, the inability of a person to pay for
10 the cost of corrective action shall be determined in accordance with the policies of the
11 Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United
12 States Code.

13 (C) If the person responsible for the release is unwilling to perform corrective action to address
14 the release. For purposes of this subparagraph, the unwillingness of a person to take corrective
15 action shall be determined in accordance with the policies of the Environmental Protection Agency
16 for the implementation of Section 9605 of Title 42 of the United States Code.

17 (D) If the release is part of a regional or multisite groundwater contamination problem that
18 cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and
19 for which other releases that are part of the regional or multisite groundwater contamination
20 problem are being addressed using the legal remedies available pursuant to Part 2 (commencing
21 with Section 78000) of Division 45.

22 (E) If an order for corrective action has already been issued against the person responsible for
23 the release, or the department and the person responsible for the release have, prior to January 1,
24 1996, entered into an agreement to address the required cleanup of the release pursuant to Part 2
25 (commencing with Section 78000) of Division 45.

26 (F) If the hazardous waste facility is owned or operated by the federal government.”

27 **Absent comment, this proposed restatement will be presumed correct.**

28 **§ 95375. Persons subject to correction action order**

29 95375. Persons subject to an order pursuant to this article include present and
30 prior owners, lessees, or operators of the property where the hazardous waste is
31 located, present or past generators, storers, treaters, transporters, disposers, and
32 handlers of hazardous waste, and persons who arrange, or have arranged, by contract
33 or other agreement, to store, treat, transport, dispose of, or otherwise handle
34 hazardous waste.

35 **Comment.** Section 95375 continues former Section 25187(b)(5) without substantive change.
36 See Section 83210 (“hazardous waste”).

37 **§ 95380. Service and form of order**

38 95380. (a) Any order issued pursuant to this article shall be served by personal
39 service or certified mail and shall inform the person served of the right to a hearing.

40 (b) If a unified program agency issues the order, the order shall state whether the
41 hearing procedure specified in paragraph (2) of subdivision (a) of Section 95340
42 may be requested by the person served with the order.

43 **Comment.** Section 95380 continues former Section 25187(c) without substantive change.
44 See Section 83375 (“unified program agency”).

1 **§ 95385. Request for hearing and filing notice of defense**

2 95385. (a) Any person served with an order pursuant to this article who has been
3 unable to resolve any violation or deficiency on an informal basis with the
4 department or unified program agency may, within 15 days after service of the
5 order, request that a hearing be conducted pursuant to Section 95390 by filing a
6 notice of defense with the department or unified program agency.

7 (b)(1) If a hearing is requested on an order issued by a unified program agency,
8 and as of the date the order is issued the agency has selected a designated hearing
9 officer and established a program for conducting a hearing in accordance with
10 paragraph (2) of subdivision (a) of Section 95340, the person requesting the hearing
11 may select that hearing process in the notice of defense.

12 (b) The notice of defense shall be filed with the office that issued the order.

13 (c) A notice of defense shall be deemed filed within the 15-day period provided
14 by this subdivision if it is postmarked within that 15-day period.

15 (d) If a notice of defense is not filed within the time limits provided by this
16 subdivision, the order shall become final.

17 **Comment.** Section 95385 restates former Section 25187(d) without substantive change.
18 See Section 83375 (“unified program agency”).

19 **Staff Note.** Proposed Section 95385 would restate existing Section 25187(d) for clarity.
20 Currently, Section 25187(d) provides:

21 “25187. (d) Any person served with an order pursuant to this section who has been unable to
22 resolve any violation or deficiency on an informal basis with the department or unified program
23 agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e)
24 or (f) by filing with the department or unified program agency a notice of defense. The notice shall
25 be filed with the office that issued the order. A notice of defense shall be deemed filed within the
26 15-day period provided by this subdivision if it is postmarked within that 15-day period. If a notice
27 of defense is not filed within the time limits provided by this subdivision, the order shall become
28 final.”

29 **Absent comment, this proposed restatement will be presumed correct.**

30 **§ 95390. Hearing process**

31 95390. (a) Within 90 days of receipt of the notice of defense by the unified
32 program agency, the hearing shall be conducted using one of the following
33 procedures:

34 (1) An administrative law judge of the Office of Administrative Hearings of the
35 Department of General Services shall conduct the hearing in accordance with
36 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of
37 the Government Code, at which the department shall have all the authority granted
38 to an agency by those provisions.

39 (2) If the unified program agency has selected a designated hearing officer and
40 established a program for conducting a hearing in accordance with this section as of
41 the date the order is issued, a hearing officer designated by the unified program
42 agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with
43 Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, at which

1 the unified program agency shall have all the authority granted to an agency by those
2 provisions.

3 (b) When a hearing is conducted by a unified program agency pursuant to
4 subdivision (b), the unified program agency shall issue a decision within 60 days of
5 the hearing.

6 (c) The hearing decision is effective and final upon issuance.

7 (d) Copies of the decision shall be served by personal service or by certified mail
8 upon the party served with the order and upon other persons who appeared at the
9 hearing and requested a copy.

10 **Comment.** Subdivision (a) of Section 95390 restates former Section 25187(e), the second
11 sentence of former Section 25187(f), former Section 25187(f)(1), and the first sentence of former
12 Section 25187(f)(2)(A) without substantive change.

13 Subdivision (b) restates the second sentence of former Section 25187(f)(2)(A) without
14 substantive change.

15 Subdivision (c) restates the first sentence of former Section 25187(g) without substantive change.

16 Subdivision (d) continues the second sentence of former Section 25187(g) without substantive
17 change.

18 See Sections 83160 (“department”), 83375 (“unified program agency”).

19 **Staff Notes. (1)** Proposed Section 95390 would restate former Section 25187(e), the second
20 sentence of former Section 25187(f), former Section 25187(f)(1) and (f)(2)(A), and the first
21 sentence of former Section 25187(g), for clarity. Currently those provisions provide as follows:

22 “25187. (e) Any hearing requested on an order issued by the department shall be conducted
23 within 90 days after receipt of the notice of defense by an administrative law judge of the Office of
24 Administrative Hearings of the Department of General Services in accordance with Chapter 4.5
25 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and
26 the department shall have all the authority granted to an agency by those provisions.

27 (f) ... Within 90 days of receipt of the notice of defense by the unified program agency, the
28 hearing shall be conducted using one of the following procedures:

29 (1) An administrative law judge of the Office of Administrative Hearings of the Department of
30 General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with
31 Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

32 (2) (A) A hearing officer designated by the unified program agency shall conduct the hearing in
33 accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2
34 of the Government Code, and the unified program agency shall have all the authority granted to an
35 agency by those provisions.

36 (g) The hearing decision issued pursuant to subdivision (f) is effective and final upon issuance.”

37 **Absent comment, this proposed restatement will be presumed correct.**

38 **(2)** Proposed Section 95390(a)(2), which would continue the second sentence of existing Section
39 25187(f)(2)(A), requires that following a hearing on a correction order at which a hearing officer
40 designated by a uniform program agency has conducted the hearing, the unified program agency
41 shall issue a decision within 60 days of the hearing. However, the section appears to provide no
42 deadline for the issuance of a decision if the hearing is conducted by an administrative law judge
43 pursuant to existing Section 25187(f)(1) (which would be continued by proposed Section
44 95340(a)(1)). **Is or should there be a deadline specified in this section?**

45 **(3)** The procedure that existing Section 25187(f)(1) specifies for conducting a hearing by an
46 administrative law judge indicates that the hearing is to be conducted in accordance with Chapter
47 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

1 **Should this citation be to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3**
2 **of Title 2 of the Government Code?**

3 **Public comment on these questions is welcome and invited.**

4 **§ 95395. Effective date of order**

5 95395. (a) Notwithstanding a request for a hearing or a pending hearing decision,
6 any provision of any order issued pursuant to this article other than a provision
7 imposing an administrative penalty takes effect upon issuance of the order, if the
8 department or unified program agency finds that a violation of law associated with
9 the provision may pose an imminent and substantial endangerment to the public
10 health or safety or the environment.

11 (b) Notwithstanding a request for a hearing or a pending hearing decision, if the
12 department or unified program agency determines that any or all provisions of an
13 order are so related that the public health or safety or the environment can be
14 protected only by immediate compliance with the order as a whole, the order as a
15 whole, other than a provision imposing an administrative penalty, takes effect upon
16 issuance of the order.

17 **Comment.** Section 95395 restates former Section 25187(h) without substantive change.
18 See Sections 83160 (“department”), 83375 (“unified program agency”).

19 **Staff Note.** Proposed Section 95395 would restate existing Section 25187(h) for clarity.
20 Currently, Section 25187(h) provides:

21 “25187. (h) Any provision of an order issued under this section, except the imposition of an
22 administrative penalty, takes effect upon issuance by the department or unified program agency if
23 the department or unified program agency finds that the violation or violations of law associated
24 with that provision may pose an imminent and substantial endangerment to the public health or
25 safety or the environment, and a request for a hearing shall not stay the effect of that provision of
26 the order pending a hearing decision. However, if the department or unified program agency
27 determines that any or all provisions of the order are so related that the public health or safety or
28 the environment can be protected only by immediate compliance with the order as a whole, then
29 the order as a whole, except the imposition of an administrative penalty, takes effect upon issuance
30 by the department or unified program agency. A request for a hearing shall not stay the effect of
31 the order as a whole pending a hearing decision.”

32 **Absent comment, this proposed restatement will be presumed correct.**

33 **§ 95400. Court review of decision**

34 95400. (a) A decision issued pursuant to this article may be reviewed by the court
35 pursuant to Section 11523 of the Government Code.

36 (b) In all proceedings pursuant to this article, the court shall uphold the decision
37 of the department or unified program agency if the decision is based upon
38 substantial evidence in the whole record.

39 (c) The filing of a petition for writ of mandate shall not stay any action required
40 pursuant to this division or the accrual of any penalties assessed pursuant to this
41 division.

1 (d) This section does not prohibit a court from granting any appropriate relief
2 within its jurisdiction.

3 **Comment.** Section 95400 continues former Section 25187(i) without substantive change.
4 See Sections 83160 (“department”), 83375 (“unified program agency”).

5 **§ 95405. Collected administrative penalties**

6 95405. (a) All administrative penalties collected from actions brought by the
7 department pursuant to this article shall be placed in a separate subaccount in the
8 Toxic Substances Control Account and shall be available only for transfer to the
9 Site Remediation Account or the Expedited Site Remediation Trust Fund and for
10 expenditure by the department upon appropriation by the Legislature.

11 (b) The administrative penalties collected from an action brought by the
12 department pursuant to **Sections 25214.3, 25214.22.1, and 25215.82**, in accordance
13 with this chapter, shall be deposited in the Toxic Substances Control Account, for
14 expenditure by the department for implementation and enforcement activities, upon
15 appropriation by the Legislature, pursuant to **Section 25173.6**.

16 (c) All administrative penalties collected from an action brought by a unified
17 program agency pursuant to this article shall be paid to the unified program agency
18 that imposed the penalty, and shall be deposited into a special account that shall be
19 expended to fund the activities of the unified program agency in enforcing this
20 chapter pursuant to **Section 25180**.

21 **Comment.** Subdivision (a) of Section 95405 continues former Section 25187(j)(1) without
22 substantive change.

23 Subdivision (b) continues former Section 25187(j)(2) without substantive change.

24 Subdivision (c) continues former Section 25187(k) without substantive change.

25 See Sections 83160 (“department”), 83375 (“unified program agency”).

26 **§ 95410. Responsibilities of CUPA**

27 95410. (a) The CUPA shall annually submit a summary report to the department
28 on the status of orders issued by the unified program agencies under this article and
29 under **Section 25187.1**.

30 (b) The CUPA shall consult with the local district attorney on the development of
31 policies to be followed in exercising the authority delegated pursuant to this article
32 and **Section 25187.1**, as they relate to the authority of unified program agencies to
33 issue orders.

34 (c) The CUPA shall arrange to have appropriate legal representation in
35 administrative hearings that are conducted by an administrative law judge of the
36 Office of Administrative Hearings of the Department of General Services, and when
37 a decision issued pursuant to this section is appealed to the superior court.

38 **Comment.** Subdivision (a) of Section 95410 continues former Section 25187(m) without
39 substantive change.

40 Subdivision (b) continues former Section 25187(n) without substantive change.

41 Subdivision (c) continues former Section (o) without substantive change.

42 See Sections 83110 (“CUPA”), 83160 (“department”), 83375 (“unified program agency”).

1 **Staff Note.** Subdivisions (m), (n), and (o) of existing Section 25187, which would be continued
2 by proposed Section 95410, could likely be more easily understood if the CUPAs referenced in
3 those subdivisions were more clearly identified.

4 **Public comment on this issue is welcome and invited.**

5 **§ 95415. Implementation of regulations**

6 95415. (a) The department may adopt regulations to implement this article and
7 **paragraph (2) of subdivision (a) of Section 25187.1** as they relate to the authority
8 of unified program agencies to issue orders.

9 (b) The regulations shall include, but not be limited to, all of the following
10 requirements:

11 (1) Provisions to ensure coordinated and consistent application of this section and
12 **Section 25187.1** when both the department and the unified program agency have
13 issued or will be issuing orders under one or both of these sections with regard to
14 the same facility.

15 (2) Provisions to ensure that the enforcement authority granted to the unified
16 program agencies will be exercised consistently throughout the state.

17 (3) Minimum training requirements for staff of the unified program agency
18 relative to this section and **Section 25187.1**.

19 (4) Procedures to be followed by the department to rescind the authority granted
20 to a unified program agency under this section and **Section 25187.1**, if the
21 department finds that the unified program agency is not exercising that authority in
22 a manner consistent with this chapter and **Chapter 6.11 (commencing with Section**
23 **25404)** and the regulations adopted pursuant thereto.

24 **Comment.** Subdivision (a) of Section 95415 continues the first sentence of former Section
25 25187(p) without substantive change.

26 Subdivision (b) continues the second sentence of former Section 25187(p) without substantive
27 change.

28 See Sections 83160 (“department”), 83375 (“unified program agency”).

29 **§ 95420. Authority of local agency**

30 95420. Except for an enforcement action taken pursuant to this division or Part 2
31 (commencing with Section 78000) of Division 45, this article does not otherwise
32 affect the authority of a local agency to take any action under any other law.

33 **Comment.** Section 95420 continues former Section 25187(q) without substantive change.

34 **Article 4. Financial Assurances**

35 **§ 95450. Corrective action cost estimate**

36 95450. An owner or operator of a facility for which corrective action under
37 department oversight is required shall include a corrective action cost estimate in
38 any corrective measures study submitted to the department pursuant to an order
39 issued or agreement entered into pursuant to Article 3 (commencing with Section

1 95350) for a release, as defined in Part 2 (commencing with Section 78000) of
2 Division 45, of hazardous waste, hazardous waste constituents, or hazardous
3 substances, as defined in Part 2 (commencing with Section 78000) of Division 45,
4 into the environment from the facility.

5 **Comment.** Section 95450 continues former Section 25187.3(a) without substantive change.
6 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83330 (“release”).

7 **§ 95455. Continuing assurances**

8 95455. (a) An owner or operator of a facility for which corrective action under
9 department oversight is required shall demonstrate financial assurances within 90
10 days of the department’s approval of a corrective action cost estimate as required
11 by Section 95450, or by **Section 25246.1**, and shall maintain financial assurances
12 until the department determines that all required corrective actions are complete.

13 (b) The department shall waive the financial assurances required by subdivision
14 (a) if the owner or operator of the facility is a federal or state governmental entity.

15 **Comment.** Subdivision (a) of Section 95455 continues former Section 25187.3(b) without
16 substantive change.

17 Subdivision (b) continues former Section 25187.3(d) without substantive change.

18 See Section 83160 (“department”).

19 **§ 95460. Approved financial assurance mechanisms**

20 95460. (a) For purposes of Section 94555, an owner or operator of a facility for
21 which corrective action under department oversight is required shall demonstrate
22 and maintain one or more of the financial assurance mechanisms set forth in
23 subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California
24 Code of Regulations.

25 (b) As an alternative to the financial assurance requirement of subdivision (a), an
26 owner or operator of a facility for which corrective action under department
27 oversight is required may demonstrate and maintain financial assurances by means
28 of a financial assurance mechanism other than those described in subdivision (a), if
29 the alternative financial assurance mechanism has been submitted to, and approved
30 by, the department as being at least equivalent to the financial assurance
31 mechanisms described in subdivision (a).

32 (c) The department shall evaluate the equivalency of the proposed alternative
33 financial assurance mechanism described in subdivision (b), principally in terms of
34 the certainty of the availability of funds for required corrective action activities and
35 the amount of funds that will be made available.

36 (d) The department shall require the owner or operator of the facility to submit
37 any information deemed necessary by the department to make a determination
38 regarding the equivalency of the proposed alternative financial assurance
39 mechanism described in subdivision (b).

40 **Comment.** Subdivision (a) of Section 95460 continues former Section 25187.3(c)(1) without
41 substantive change.

42 Subdivision (b) continues former Section 25187.3(c)(2)(A) without substantive change.

1 Subdivision (c) continues the first sentence of former Section 25187.3(c)(2)(B) without
2 substantive change.

3 Subdivision (d) continues the second sentence of former Section 25187.3(c)(2)(B) without
4 substantive change.

5 See Section 83160 (“department”).

6 **§ 95465. Prior financial assurances to water control board**

7 95465. An owner or operator may satisfy the requirements of this article by
8 demonstrating to the department that it has provided financial assurance for
9 corrective action to the State Water Resources Control Board or a California
10 regional water quality control board for the same release identified by the
11 department.

12 **Comment.** Section 95465 continues former Section 25187.3(e) without substantive change.

13 See Section 83160 (“department”), 83330 (“release”).

14 **§ 95470. Exemption based on participation in hazardous waste facility regulation and**
15 **permitting consolidation program**

16 95470. For facilities for which sole jurisdiction has been granted pursuant to
17 **subdivision (b) of Section 25204.6**, the department shall not require additional
18 financial assurances unless it is the lead agency or is directed by the lead agency
19 that has sole jurisdiction pursuant to **subdivision (b) of Section 25204.6**.

20 **Comment.** Section 95470 continues the first sentence of former Section 25187.3(f) without
21 substantive change.

22 See Section 83160 (“department”).

23 **§ 95475. Impact of State Water Resources Control Board rules and regulations**

24 95475. This article does not alter the State Water Resources Control Board’s rules
25 and regulations regarding financial assurances.

26 **Comment.** Section 95475 continues the second sentence of former Section 25187.3(f) without
27 substantive change.

28 **Article 5. Corrective Action by Department**

29 **§ 95500. Grounds for corrective action by department**

30 95500. (a) If corrective action is not taken on or before the date specified in an
31 order issued pursuant to Article 3 (commencing with Section 95350), or if in the
32 judgment of the department immediate corrective action is necessary to remedy or
33 prevent an imminent substantial danger to the public health, domestic livestock,
34 wildlife, or the environment, the department may take, or contract for the taking of,
35 that corrective action, and recover the cost for doing so, as provided in Section
36 95510.

37 **Comment.** Section 95470 continues former Section 25187.5(a) without substantive change.

38 See Section 83160 (“department”).

1 **§ 95505. Expenditure of funds**

2 94505. (a) The department may expend up to one hundred thousand dollars
3 (\$100,000) in a 12-month period of available funds in the Hazardous Waste Control
4 Account in the General Fund to take corrective action pursuant to Section 95500.

5 (b) Notwithstanding any other provision of law, the department may enter into
6 written contracts for corrective action taken or to be taken pursuant to subdivision
7 (a).

8 (c) Notwithstanding any other provision of law, the department may enter into
9 oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when in
10 the judgment of the department immediate corrective action is necessary to remedy
11 or prevent an imminent substantial danger to the public health, domestic livestock,
12 wildlife, or the environment.

13 (d) The contracts entered into pursuant to this section, whether written or oral,
14 may include provisions for the rental of tools or equipment, either with or without
15 operators furnished, and for the furnishing of labor and materials necessary to
16 accomplish the work.

17 (e) Any contract entered into by the department pursuant to this subdivision shall
18 be exempt from approval by the Department of General Services pursuant to Section
19 10295 of the Public Contract Code.

20 **Comment.** Section 95505 continues former Section 25187.5(b) without substantive change.
21 See Section 83160 (“department”).

22 **§ 95510. Financial liability to department**

23 95510. (a) If corrective action is taken pursuant to Section 95500, the person or
24 persons who were subject to the order issued pursuant to Article 3 (commencing
25 with Section 95350), or any person or persons whose violation resulted in the
26 imminent and substantial danger to health or the environment, shall be liable to the
27 department for the reasonable cost actually incurred in taking corrective action.

28 (b) In addition to the liability specified in subdivision (a), the person or persons
29 referenced in subdivision (a) shall be liable to the department for administrative
30 costs in an amount equal to 10 percent of the reasonable cost actually incurred or
31 five hundred dollars (\$500), whichever is greater.

32 (c) The amount of cost determined pursuant to this section shall be recoverable in
33 a civil action by the department, in addition to any other fees or penalties.

34 (d) Persons who may be liable pursuant to this section shall include, but not be
35 limited to, present or prior owners, lessees, or operators of the property where the
36 hazardous waste is located and producers, transporters or disposers of the hazardous
37 waste.

38 **Comment.** Section 95510 continues former Section 25187.5(c) without substantive change.
39 See Sections 83160 (“department”), 83210 (“hazardous waste”).

1 (b) No person shall remove, transfer, or dispose of the hazardous waste until
2 permission for removal, transfer, or disposal is given by an authorized agent of the
3 department or by a court.

4 (c) The person notified may request, and shall be granted, an immediate hearing
5 before a person designated by the director to review the validity of the authorized
6 agent’s order, which shall be held within 24 hours after a hearing is requested by
7 the person subject to the order.

8 **Comment.** Section 95560 restates former Section 25187.6(b) without substantive change.
9 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”).

10 **Staff Note.** Proposed Section 95560 would restate existing Section 25187.6(b) for clarity.
11 Currently, Section 25187.6(b) provides:

12 “25187.6 (b) Upon issuing an order of quarantine pursuant to subdivision (a), the authorized
13 agent shall notify the person who owns the hazardous waste, or the owner or lessee of the vehicle
14 in which the wastes are transported, of all of the following:

15 (1) The hazardous waste has been subject to a quarantine order because the hazardous waste is,
16 or is suspected of being, stored, transported, disposed of, or handled in violation of this chapter.

17 (2) No person shall remove, transfer, or dispose of the hazardous waste until permission for
18 removal, transfer, or disposal is given by an authorized agent of the department or by a court.

19 (3) The person so notified may request, and shall be granted, an immediate hearing before a
20 person designated by the director to review the validity of the authorized agent’s order. For
21 purposes of this section, an immediate hearing shall be held within 24 hours after a hearing is
22 requested by the person subject to the order.”

23 **Absent comment, this proposed restatement will be presumed correct.**

24 **§ 95565. Duration of quarantine order**

25 95565. Any order of quarantine issued pursuant to Section 95555 shall take effect
26 upon issuance and shall remain effective for 30 days thereafter, until an authorized
27 agent removes the quarantine order pursuant to Section 95570, or until the
28 quarantine order is revoked pursuant to a hearing conducted in accordance with
29 subdivision (c) of Section 95560, whichever event occurs first.

30 **Comment.** Section 95565 continues former Section 25187.6(c) without substantive change.
31 See Sections 83160 (“department”), 83210 (“hazardous waste”).

32 **§ 95570. Revocation of quarantine order**

33 95570. If an authorized agent of the department determines that a hazardous waste
34 subject to a quarantine order is not being stored, handled, transported, or disposed
35 of in violation of this division, or does not threaten public health and safety or the
36 environment, the authorized agent shall revoke the order of quarantine.

37 **Comment.** Section 95570 continues former Section 25187.6(d) without substantive change.
38 See Sections 83160 (“department”), 83210 (“hazardous waste”).

39 **§ 95575. Removal of hazardous waste subject to quarantine order**

40 95575. If an authorized agent of the department has probable cause to believe that
41 a hazardous waste subject to a quarantine order will, or is likely to, be removed,

1 transferred or disposed of in violation of this section, the authorized agent may
2 remove the hazardous waste to a place of safekeeping.

3 **Comment.** Section 95575 continues former Section 25187.6(e) without substantive change.
4 See Sections 83160 (“department”), 83210 (“hazardous waste”).

5 **§ 95580. Storage of hazardous waste subject to quarantine order**

6 95580. (a) A hazardous waste in transit for which a quarantine order has been
7 issued pursuant to Section 95555 shall be stored or held at one of the following
8 locations that the authorized agent determines will represent the least risk to the
9 public health and safety or the environment:

10 (1) The facility owned or operated by the producer of the waste, except when the
11 producer is located outside the state.

12 (2) The transporter’s yard, facility, or terminal.

13 (3) The treatment, storage, or disposal facility to which the hazardous waste is to
14 be transported.

15 (4) Any other site designated by the authorized agent.

16 (b) All fees for storage and any other expenses incurred in carrying out this section
17 or Section 95575 shall be a charge against the person who owns the hazardous waste
18 or the owner or lessee of the vehicle in which the wastes are transported.

19 **Comment.** Subdivision (a) of Section 95580 continues former Section 25187.6(f) without
20 substantive change.

21 Subdivision (b) continues former Section 25187.6(g) without substantive change.

22 See Sections 83160 (“department”), 83165 (“disposal”), 83210 (“hazardous waste”), 83305
23 (“producer”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

24 **Article 7. Notices to Comply**

25 **§ 95600. Issuance of notice**

26 95600. An authorized representative of the department or local officer or agency
27 authorized to enforce this division pursuant to **subdivision (a) of Section 25180**,
28 who, in the course of conducting an inspection of a facility, detects a minor violation
29 of any permit conditions, rule, regulation, standard, or other requirement, shall issue
30 a notice to comply before leaving the site in which the minor violation is alleged to
31 have occurred.

32 **Comment.** Section 95600 continues former Section 25187.8(a) without substantive change.
33 See Sections 83160 (“department”), 83245 (“local officer”).

34 **§ 95605. Notice to contain advisement about reinspection**

35 95605. A notice to comply issued to a facility pursuant to this article shall contain
36 an explicit statement that the facility may be subject to reinspection at any time by
37 the department or authorized local officer or agency that issued the notice to comply.

38 **Comment.** Section 95605 continues the first sentence of former Section 25187.8(h) without
39 substantive change.

40 See Sections 83160 (“department”), 83245 (“local officer”).

1 **§ 95610. Compliance with notice**

2 95610. (a) A facility that receives a notice to comply pursuant to Section 95600
3 shall have not more than 30 days from the date of receipt of the notice to comply in
4 which to achieve compliance with the permit conditions, rule, regulation, standard,
5 or other requirement cited on the notice to comply.

6 (b) Within five working days of achieving compliance, an appropriate person who
7 is an owner or operator of or an employee at the facility shall sign the notice to
8 comply stating that the facility has complied with the notice, and return the signed
9 notice to the department representative or to the authorized local officer or agency.

10 (c) A false statement that compliance has been achieved is a violation of this
11 division pursuant to Section 25191.

12 (d) A department representative or authorized local officer or agency shall not
13 take any other enforcement action specified in this division against a facility for a
14 violation alleged in a notice to comply, if the facility complies with this article.

15 **Comment.** Subdivision (a) of Section 95610 continues the first sentence of former Section
16 25187.8(b) without substantive change.

17 Subdivision (b) restates the second sentence of former Section 25187.8(b) without substantive
18 change.

19 Subdivision (c) continues the third sentence of former Section 25187.8(b) without substantive
20 change.

21 Subdivision (d) restates the second sentence of former Section 25187.8(e) without substantive
22 change.

23 See Sections 83160 (“department”), 83245 (“local officer”).

24 **Staff Notes.** (1) Proposed Section 95610(b) would restate the second sentence of existing Section
25 25187.8(b) for clarity. Currently, that sentence reads:

26 “25187.8. (b) ... Within five working days of achieving compliance, an appropriate person who
27 is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return
28 it to the department representative or to the authorized local officer or agency, as the case may be,
29 which states that the facility has complied with the notice to comply.”

30 **Absent comment, this proposed restatement will be presumed correct.**

31 (2) Proposed Section 95610(d) would restate the second sentence of existing Section 25187.8(e)
32 for clarity. Currently, that sentence reads:

33 “25187.8. (e) ... The department representative or the authorized local officer or agency shall
34 not take any other enforcement action specified in this chapter against a facility which has received
35 a notice to comply if the facility complies with this section.”

36 **Absent comment, this proposed restatement will be presumed correct.**

37 **§ 95615. Enforcement action based on failure to comply with notice**

38 (i) Nothing in this article shall be construed as preventing the department, or
39 authorized local officer or agency, on a case-by-case basis, from requiring a facility
40 to submit reasonable and necessary documentation to support the facility’s claim of
41 compliance pursuant to Section 95615.

42 **Comment.** Section 95615 continues the second sentence of former Section 25187.8(h) without
43 substantive change.

44 See Sections 83160 (“department”), 83245 (“local officer”).

1 **§ 95620. Multiple violations**

2 95620. A single notice to comply shall be issued for all minor violations cited
3 during the same inspection that shall separately list each of the cited minor
4 violations and the manner in which each of the minor violations may be brought
5 into compliance.

6 **Comment.** Section 95615 continues former Section 25187.8(c) without substantive change.
7 See Sections 83160 (“department”), 83245 (“local officer”).

8 **§ 95625. Immediate correction of violation in presence of an inspector**

9 95625. Immediate correction of a minor violation in the presence of an inspector
10 may be noted in an inspection report, but a notice to comply shall not be issued for
11 the violation, and the facility shall not be subject to any further action by the
12 department representative or by the authorized local officer or agency.

13 **Comment.** Section 95615 restates former Section 25187.8(d) without substantive change.
14 See Sections 83160 (“department”), 83245 (“local officer”).

15 **Staff Note.** Proposed Section 95625 would restate existing Section 25187.8(d) for clarity.
16 Currently, Section 25187.8(d) provides:

17 “(d) A notice to comply shall not be issued for any minor violation which is corrected
18 immediately in the presence of the inspector. Immediate compliance in that manner may be noted
19 in the inspection report, but the facility shall not be subject to any further action by the department
20 representative or by the authorized local officer or agency.”

21 **Absent comment, this proposed restatement will be presumed correct.**

22 **§ 95630. Exclusive means of citation for minor violation**

23 95630. Except as otherwise provided in Sections 95635 and 95650, a notice to
24 comply shall be the only means by which a department representative or authorized
25 local officer or agency shall cite a minor violation.

26 **Comment.** Section 95630 continues the first sentence of former Section 25187.8(e) without
27 substantive change.

28 See Sections 83160 (“department”), 83245 (“local officer”).

29 **§ 95635. Additional assessment of civil penalty**

30 95635. Notwithstanding any other provision of this article, if the department, or
31 an authorized local officer or agency, determines that the circumstances surrounding
32 a particular minor violation or combination of minor violations are such that the
33 assessment of a civil penalty pursuant to this division is warranted or is required by
34 the federal act, in addition to issuance of a notice to comply, the department or
35 authorized local officer or agency shall assess that civil penalty in accordance with
36 this division, if the department or authorized local officer or agency makes written
37 findings that set forth the basis for the department’s or authorized local officer’s or
38 agency’s determination.

39 **Comment.** Section 95635 continues former Section 25187.8(g)(2) without substantive change.
40 See Sections 83160 (“department”), 83200 (“federal act”), 83245 (“local officer”).

1 **§ 95640. Disagreement with notice to comply**

2 95640. If a facility that receives a notice to comply pursuant to Section 95600
3 disagrees with one or more of the alleged violations listed on the notice to comply,
4 the owner shall give the person who issued the notice to comply written notice of
5 disagreement.

6 **Comment.** Section 95640 continues the first sentence of former Section 25187.8(f) without
7 substantive change.

8 **§ 95645. Appeal of enforcement action**

9 95645. If the issuing agency takes administrative enforcement action on the basis
10 of a disputed violation, that action may be appealed in the same manner as for other
11 alleged violations under **subdivisions (d) to (j), inclusive, of Section 25187.**

12 **Comment.** Section 95645 continues the second sentence of former Section 25187.8(f) without
13 substantive change.

14 **§ 95650. Need for immediate enforcement**

15 95650. Notwithstanding any other provision of this article, if a facility fails to
16 comply with a notice to comply within the prescribed period, or if the department,
17 or an authorized local officer or agency, determines that the circumstances
18 surrounding a particular minor violation or combination of minor violations are such
19 that immediate enforcement is warranted to prevent harm to the public health or
20 safety or to the environment, the department or authorized local officer or agency
21 may take any needed enforcement action authorized by this chapter.

22 **Comment.** Section 95650 continues former Section 25187.8(g)(1) without substantive change.
23 See Sections 83160 (“department”), 83245 (“local officer”).

24 **§ 95655. Disagreement with notice to comply**

25 95655. Nothing in this article shall be construed as preventing the reinspection of
26 a facility to ensure compliance with this division or to ensure that minor violations
27 cited in a notice to comply have been corrected and that the facility is in compliance
28 with this division.

29 **Comment.** Section 95655 continues former Section 25187.8(i) without substantive change.

30 CHAPTER 5. LIABILITY

31 Article 1. General Provisions

32 **§ 95700. Cumulative remedies permissible**

33 95700. The remedies provided by this division are cumulative, and shall not be
34 construed as restricting any remedy, provisional or otherwise, provided by law for
35 the benefit of any party, and no judgment under this division shall preclude any
36 party from obtaining additional relief based upon the same facts.

1 **Comment.** Section 95700 continues former Section 25193 without substantive change.

2 **§ 95705. Non-abatement of action or proceeding**

3 95705. Any action brought pursuant to this division against a person shall not
4 abate by reason of a sale or other transfer of ownership, except with the express
5 written consent of the director.

6 **Comment.** Section 95705 continues former Section 25194 without substantive change.

7 **§ 95710. Proceeding relating to withdrawn application**

8 95710. (a) The withdrawal of an application for a permit, registration, or
9 certificate after it has been filed with the department shall not, unless the department
10 consents in writing to the withdrawal, deprive the department of its authority to
11 institute or continue a proceeding against the applicant for the denial of the permit,
12 registration, or certificate upon any ground provided by law, or enter an order
13 denying the permit, registration, or certificate on any ground.

14 (b) A withdrawal described in subdivision (a) shall not affect the authority of the
15 department, or a local officer or agency authorized to enforce this division pursuant
16 to **subdivision (a) of Section 25180**, to institute or continue a proceeding against
17 the applicant pertaining to any violation of this division or any rule, regulation,
18 standard, or requirement issued or promulgated pursuant to this division.

19 (c) The suspension, expiration, or forfeiture by operation of law of a permit,
20 registration, or certificate issued by the department, or its suspension, forfeiture, or
21 cancellation by order of the department or by order of a court, or its surrender or
22 attempted or actual transfer without the written consent of the department shall not
23 affect the authority of the department, or a local officer or agency authorized to
24 enforce this division pursuant to **subdivision (a) of Section 25180**, to institute or
25 continue a disciplinary proceeding against the holder of a permit, registration, or
26 certificate upon any ground, or the authority of the department to enter an order
27 suspending or revoking the permit, registration, or certificate, or otherwise taking
28 an action against the holder of a permit, registration, or certificate on any ground.

29 **Comment.** Section 95710 continues former Section 25194.5 without substantive change.

30 See Sections 83160 (“department”), 83245 (“local officer”).

31 **§ 95715. Apportionment of penalties**

32 95715. (a) All civil and criminal penalties collected pursuant to this division shall
33 be apportioned in the following manner:

34 (1) Fifty percent shall be deposited in the Toxic Substances Control Account in
35 the General Fund.

36 (2) Twenty-five percent shall be paid to the office of the city attorney, city
37 prosecutor, county counsel, district attorney, or the Attorney General, whichever
38 office brought the action.

39 (3) Twenty-five percent shall be paid to the department and used to fund the
40 activity of the CUPA, the local health officer, or other local public officer or agency

1 authorized to enforce the provisions of this division pursuant to **Section 25180**,
2 whichever entity investigated the matter that led to the bringing of the action.

3 (4) If investigation by the local police department or sheriff's office or the
4 Department of the California Highway Patrol led to the bringing of the action, the
5 CUPA, the local health officer, or the authorized officer or agency, shall pay a total
6 of 40 percent of its portion under this subdivision to that investigating agency or
7 agencies to be used for the same purpose.

8 (5) If more than one agency is eligible for payment under this paragraph, division
9 of payment among the eligible agencies shall be in the discretion of the CUPA, the
10 local health officer, or the authorized officer or agency.

11 (b) If a reward is paid to a person pursuant to Section 95715, the amount of the
12 reward shall be deducted from the amount of the civil penalty before the amount is
13 apportioned pursuant to subdivision (a).

14 **Comment.** Section 95715 continues former Section 25192 without substantive change.
15 See Sections 83110 ("CUPA"), 83160 ("department"), 83240 ("local health officer").

16 **§ 95720. Reimbursement to department for overseeing or carrying out corrective action**

17 95720. If an order or agreement issued by the department pursuant to Article 3
18 (commencing with Section 95350) of Chapter 4 to a potentially responsible party
19 requires a person to take corrective action with respect to a release of hazardous
20 waste or hazardous waste constituents into the environment, that person shall pay
21 for the department's costs incurred in overseeing or carrying out the corrective
22 action.

23 **Comment.** Section 95720 continues former Section 25187.2 without substantive change.
24 See Sections 83160 ("department"), ("hazardous waste").

25 Article 2. Civil Liability Generally

26 **§ 95800. Prosecution of civil action**

27 95800. Every civil action brought under this division at the request of the
28 department or a unified program agency shall be brought by the city attorney, the
29 county counsel, the district attorney, or the Attorney General in the name of the
30 people of the State of California, and any such actions relating to the same
31 processing or disposal of hazardous wastes may be joined or consolidated.

32 **Comment.** Section 95800 continues former Section 25182 without substantive change.
33 See Sections 83160 ("department"), 83375 ("unified program agency").

34 **§ 95805. Venue for civil action**

35 95805. Any civil action brought pursuant to this division shall be brought in the
36 county in which the processing or disposal of hazardous waste is made or proposed
37 to be made, the county in which the principal office of the defendant is located, or
38 the county in which the Attorney General has an office nearest to the county in
39 which the principal office of the defendants, or any of them, is located in this state.

1 **Comment.** Section 95805 continues former Section 25183 without substantive change.
2 See Sections 83175 (“disposal”), 83210 (“hazardous waste”).

3 **§ 95810. Temporary restraining order or injunctive relief**

4 95810. In any civil action brought pursuant to this division in which a temporary
5 restraining order, preliminary injunction, or permanent injunction is sought, it shall
6 not be necessary to allege or prove at any stage of the proceeding that irreparable
7 damage will occur should the temporary restraining order, preliminary injunction,
8 or permanent injunction not be issued, or that the remedy at law is inadequate, and
9 the temporary restraining order, preliminary injunction, or permanent injunction
10 shall issue without such allegations and without such proof.

11 **Comment.** Section 95810 continues former Section 25184 without substantive change.

12 **§ 95815. Additional liability for costs and expenses**

13 95815. (a) In addition to liability under any other provision of law, any person
14 who is liable for a civil penalty pursuant to **subdivision (c) or (d) of Section 25189**
15 **or subdivision (c) of Section 25189.2**, or is convicted pursuant to **subdivision (b)**
16 **of Section 25189.5**, is also civilly liable for all the costs or expenses which may be
17 incurred by the state, or by a local agency, in doing any of the following:

18 (1) Assess short-term or long-term injury to, degradation or destruction of, or any
19 loss of, any natural resource resulting from the disposal of the hazardous waste
20 which is the subject of the civil penalty or conviction.

21 (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource
22 injured, degraded, destroyed, or lost as a result of the disposal of the hazardous
23 waste which is the subject of the civil penalty or conviction.

24 (b) The liability imposed by subdivision (a) is separate and in addition to any civil
25 penalty imposed pursuant to **subdivision (c) or (d) of Section 25189 or subdivision**
26 **(c) of Section 25189.2** or any fine imposed pursuant to **subdivision (e) of Section**
27 **25189.5**.

28 (c) Any funds collected pursuant to this section are in addition to any other funds
29 which may be collected pursuant to this division.

30 (d) A state or local agency may collect funds pursuant to this section prior to
31 carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

32 (e) An action brought pursuant to this section may be brought by the trustee of the
33 natural resources specified in **Section 79685**.

34 (f) The action may be prosecuted by the Attorney General or the district attorney,
35 but by the district attorney only after the trustee, in consultation with the Office of
36 the Attorney General, approves that prosecution in writing.

37 (g) The trustee shall have 30 days to consider any requested action, and approval
38 shall be presumed to have been granted if a written denial is not issued within 30
39 days.

40 (h) The trustee may not unreasonably withhold approval.

1 (i) All funds collected pursuant to this section by the trustee of the natural
2 resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife
3 Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund
4 or in a special deposit trust fund.

5 **Comment.** Section 95815 continues former Section 25189.1 without substantive change.
6 See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83260 (“natural resource”).

7 Article 3. Primary Civil Liability [Former Section 25189]

8 **§ 95850. False statements**

9 95850. A person who intentionally or negligently makes a false statement or
10 representation in an application, label, manifest, record, report, permit, or other
11 document filed, maintained, or used for purposes of compliance with this division,
12 shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000)
13 for each separate violation, or for continuing violations, for each day that violation
14 continues.

15 **Comment.** Section 95850 continues former Section 25189(a) without substantive change.
16 83210 (“hazardous waste”).

17 **Staff Note.** Proposed Sections 95820 through 95850 would continue existing Section 25189
18 without substantive change. These provisions of existing Section 25189 appear to be largely
19 duplicative of the provisions of existing Section 25189.2.

20 Pending further study and consideration of public comment, proposed recodification of the
21 provisions of existing Section 25189.2 are temporarily not included in this draft, in anticipation of
22 possible merger and/or coordination in the recodification of the provisions of both Section 25189
23 and 25189.2.

24 **Public comment on this issue is invited and welcome.**

25 **§ 95855. Violation of provision of division**

26 95855. Except as provided in Sections 95830, 95835, or 95840, a person who
27 intentionally or negligently violates a provision of this division or a permit, rule,
28 regulation, standard, or requirement issued or promulgated pursuant to this division
29 shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000)
30 for each violation of a separate provision, or for continuing violations, for each day
31 that violation continues.

32 **Comment.** Section 95855 continues former Section 25189(b) without substantive change.

33 **§ 95860. Intentional disposal of hazardous or extremely hazardous waste**

34 95860. (a) A person who intentionally disposes or causes the disposal of a
35 hazardous or extremely hazardous waste at a point that is not authorized according
36 to the provisions of this division shall be subject to a civil penalty of not less than
37 one thousand dollars (\$1,000) or more than seventy thousand dollars (\$70,000) for
38 each violation, and may be ordered to disclose the fact of this violation or these
39 violations to those persons as the court may direct.

1 (b) Each day on which the deposit remains and the person has knowledge of the
2 deposit is a separate additional violation, unless the person immediately files a
3 report of the deposit with the department and is complying with an order concerning
4 the deposit issued by the department, a hearing officer, or a court of competent
5 jurisdiction for the cleanup.

6 **Comment.** Section 95860 continues former Section 25189(c) without substantive change.

7 See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”),
8 83210 (“hazardous waste”).

9 **§ 95865. Negligent disposal of hazardous or extremely hazardous waste**

10 95865. (a) A person who negligently disposes or causes the disposal of a
11 hazardous or extremely hazardous waste at a point that is not authorized according
12 to the provisions of this division shall be subject to a civil penalty of not more than
13 seventy thousand dollars (\$70,000) for each violation and may be ordered to
14 disclose the fact of this violation or these violations to those persons as the court
15 may direct.

16 (b) Each day on which the deposit remains and the person had knowledge of the
17 deposit is a separate additional violation, unless the person immediately files a
18 report of the deposit with the department and is complying with an order concerning
19 the deposit issued by the department, a hearing officer, or a court of competent
20 jurisdiction for the cleanup.

21 **Comment.** Section 95865 continues former Section 25189(d) without substantive change.

22 See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”),
23 83210 (“hazardous waste”).

24 **§ 95870. Treatment or storage of hazardous waste**

25 95870. A person who intentionally or negligently treats or stores, or causes the
26 treatment or storage of, a hazardous waste at a point that is not authorized according
27 to this division shall be liable for a civil penalty not to exceed seventy thousand
28 dollars (\$70,000) for each separate violation or, for continuing violations, for each
29 day that the violation continues.

30 **Comment.** Section 95870 continues former Section 25189(e) without substantive change.

31 See Sections 83210 (“hazardous waste”), 83370 (“treatment”).

32 **§ 95875. Separate penalties for separate violations**

33 95875. Each civil penalty imposed for a separate violation pursuant to this section
34 shall be separate and in addition to any other civil penalty imposed pursuant to this
35 section or any other provision of law.

36 **Comment.** Section 95875 continues former Section 25189(f) without substantive change.

37 **§ 95880. Duplication of penalties**

38 95880. A person shall not be liable for a civil penalty imposed under this section
39 and for a civil penalty imposed under **Section 25189.2** for the same act or failure to
40 act.

1 **Comment.** Section 95880 continues former Section 25189(g) without substantive change.

2 Article 4. Alternative Civil Liability [Former Section 25189.2]

3 **§ 95900. False statements**

4 95900. A person who makes a false statement or representation in an application,
5 label, manifest, record, report, permit, or other document filed, maintained, or used
6 for purposes of compliance with this chapter, is liable for a civil penalty not to
7 exceed seventy thousand dollars (\$70,000) for each separate violation or, for
8 continuing violations, for each day that the violation continues.

9 **Comment.** Section 95900 continues former Section 25189.2(a) without substantive change.

10 See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”),
11 83210 (“hazardous waste”).
12

13 **§ 95905. Violation of provision of division**

14 95905. Except as provided in Section 95910 or 95915, a person who violates a
15 provision of this division or a permit, rule, regulation, standard, or requirement
16 issued or adopted pursuant to this division, is liable for a civil penalty not to exceed
17 seventy thousand dollars (\$70,000) for each violation of a separate provision or, for
18 continuing violations, for each day that the violation continues.

19 **Comment.** Section 95905 continues former Section 25189.2(b) without substantive change.

20 **§ 95910. Unauthorized disposal of hazardous or extremely hazardous waste**

21 95910. (a) A person who disposes, or causes the disposal of, a hazardous or
22 extremely hazardous waste at a point that is not authorized according to the
23 provisions of this chapter is liable for a civil penalty of not more than seventy
24 thousand dollars (\$70,000) for each violation and may be ordered to disclose the
25 fact of this violation or these violations to those persons as the court or, in the case
26 of an administrative action, a hearing officer, may direct.

27 (b) Each day on which the deposit remains is a separate additional violation,
28 unless the person immediately files a report of the deposit with the department and
29 is complying with an order concerning the deposit issued by the department, a
30 hearing officer, or a court of competent jurisdiction for the cleanup.

31 **Comment.** Section 95910 continues former Section 25189.2(c) without substantive change.

32 See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”),
33 83210 (“hazardous waste”).

34 **§ 95915. Treatment or storage of hazardous waste**

35 95915. A person who treats or stores, or causes the treatment or storage of, a
36 hazardous waste at a point that is not authorized according to this chapter, shall be
37 liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each
38 separate violation or, for continuing violations, for each day that the violation
39 continues.

1 that this disclosure would adversely affect an ongoing criminal investigation, or
2 when the information is already general public knowledge within the locality
3 affected by the discharge or threatened discharge.

4 (c)(1) Any designated government employee who knowingly and intentionally
5 fails to disclose information required to be disclosed under subdivision (b) shall,
6 upon conviction, be punished by imprisonment in a county jail for not more than
7 one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the
8 Penal Code.

9 (2) The court may also impose upon the person a fine of not less than five thousand
10 dollars (\$5000) or more than twenty-five thousand dollars (\$25,000).

11 (3) The felony conviction for violation of this section shall require forfeiture of
12 government employment within thirty days of conviction.

13 (d) Any local health officer who receives information pursuant to subdivision (b)
14 shall take appropriate action to notify local news media and shall make that
15 information available to the public without delay.

16 **Comment.** Section 95950 continues former Section 25180.7 without substantive change.
17 See Sections 83210 (“hazardous waste”), 83240 (“local health officer”).

18 **§ 95955. Knowing disposal of hazardous waste**

19 95955. (a) The disposal of any hazardous waste, or the causing thereof, is
20 prohibited when the disposal is at a facility which does not have a permit from the
21 department issued pursuant to this division, or at any point which is not authorized
22 according to this division.

23 (b) Any person who is convicted of knowingly disposing or causing the disposal
24 of any hazardous waste, or who reasonably should have known that he or she was
25 disposing or causing the disposal of any hazardous waste, at a facility which does
26 not have a permit from the department issued pursuant to this division, or at any
27 point which is not authorized according to this division shall, upon conviction, be
28 punished by imprisonment in a county jail for not more than one year or by
29 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

30 (c) Any person who knowingly transports or causes the transportation of
31 hazardous waste, or who reasonably should have known that he or she was causing
32 the transportation of any hazardous waste, to a facility which does not have a permit
33 from the department issued pursuant to this division, or at any point which is not
34 authorized according to this division, shall, upon conviction, be punished by
35 imprisonment in a county jail for not more than one year or by imprisonment
36 pursuant to subdivision (h) of Section 1170 of the Penal Code.

37 (d) Any person who knowingly treats or stores any hazardous waste at a facility
38 which does not have a permit from the department issued pursuant to this division,
39 or at any point which is not authorized according to this division, shall, upon
40 conviction, be punished by imprisonment in a county jail for not more than one year
41 or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

1 (e) The court also shall impose upon a person convicted of violating subdivision
 2 (b), (c), or (d), a fine of not less than five thousand dollars (\$5,000) nor more than
 3 one hundred thousand dollars (\$100,000) for each day of violation, except as further
 4 provided in this subdivision. If the act which violated subdivision (b), (c), or (d)
 5 caused great bodily injury, or caused a substantial probability that death could result,
 6 the person convicted of violating subdivision (b), (c), or (d) may be punished by
 7 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for one,
 8 two, or three years, in addition and consecutive to the term specified in subdivision
 9 (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars (\$250,000)
 10 for each day of violation.

11 (f) For purposes of this section, except as otherwise provided in this subdivision,
 12 “each day of violation” means each day on which a violation continues. In any case
 13 where a person has disposed or caused the disposal of any hazardous waste in
 14 violation of this section, each day that the waste remains disposed of in violation of
 15 this section and the person has knowledge thereof is a separate additional violation,
 16 unless the person has filed a report of the disposal with the department and is
 17 complying with any order concerning the disposal issued by the department, a
 18 hearing officer, or court of competent jurisdiction.

19 **Comment.** Section 95955 continues former Section 25189.5 without substantive change.
 20 See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83395 (“waste”).

21 **§ 95960. Treatment, handling, transport, disposal, or storage of hazardous waste**

22 95960. (a) Any person who knowingly, or with reckless disregard for the risk,
 23 treats, handles, transports, disposes, or stores any hazardous waste in a manner
 24 which causes any unreasonable risk of fire, explosion, serious injury, or death is
 25 guilty of a public offense and shall, upon conviction, be punished by a fine of not
 26 less than five thousand dollars (\$5,000) nor more than two hundred fifty thousand
 27 dollars (\$250,000) for each day of violation, or by imprisonment in a county jail for
 28 not more than one year, or by imprisonment pursuant to subdivision (h) of Section
 29 1170 of the Penal Code, or by both that fine and imprisonment.

30 (b) Any person who knowingly, at the time the person takes the actions specified
 31 in subdivision (a), places another person in imminent danger of death or serious
 32 bodily injury, is guilty of a public offense and shall, upon conviction, be punished
 33 by a fine of not less than five thousand dollars (\$5,000) nor more than two hundred
 34 fifty thousand dollars (\$250,000) for each day of violation, and by imprisonment
 35 pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine
 36 years.

37 **Comment.** Section 95960 continues former Section 25189.6 without substantive change.
 38 See Section 83210 (“hazardous waste”).

39 **§ 95965. Burning or incineration of hazardous waste**

40 95965. (a) The burning or incineration of any hazardous waste, or the causing
 41 thereof, is prohibited when the burning or incineration is at a facility which does not

1 have a permit from the department issued pursuant to this division, or at any point
2 which is not authorized according to this division.

3 (b) Any person who is convicted of knowingly burning or incinerating, or causing
4 the burning or incineration of, any hazardous waste, or who reasonably should have
5 known that he or she was burning or incinerating, or causing the burning or
6 incineration of, any hazardous waste, at a facility which does not have a permit from
7 the department issued pursuant to this division, or at any point which is not
8 authorized according to this division, shall, upon conviction, be punished by
9 imprisonment in a county jail for not more than one year or by imprisonment
10 pursuant to subdivision (h) of Section 1170 of the Penal Code.

11 (c) The court also shall impose upon a person convicted of violating subdivision
12 (b) a fine of not less than five thousand dollars (\$5,000) nor more than one hundred
13 thousand dollars (\$100,000) for each day of violation, except as otherwise provided
14 in this subdivision.

15 (d) If the act which violated subdivision (b) caused great bodily injury or caused
16 a substantial probability that death could result, the person convicted of violating
17 subdivision (b) may be punished by imprisonment pursuant to subdivision (h) of
18 Section 1170 of the Penal Code for one, two, or three years, in addition and
19 consecutive to the term specified in subdivision (b), and may be fined up to two
20 hundred fifty thousand dollars (\$250,000) for each day of violation.

21 **Comment.** Section 95965 continues former Section 25189.7 without substantive change.
22 See Sections 83160 (“department”), 83210 (“hazardous waste”).

23 **§ 95970. Violation of provision of division**

24 95970. (a) Except as otherwise provided in **Sections 25185.6, 25189.5, 25189.6,**
25 **25189.7, and 25191,** any person who violates any provision of this division, or any
26 permit, rule, regulation, standard, or requirement issued or adopted pursuant to this
27 division, is, upon conviction, guilty of a misdemeanor and shall be punished by a
28 fine of not more than one thousand dollars (\$1,000) or by imprisonment for up to
29 six months in a county jail or by both that fine and imprisonment.

30 (b) If the conviction is for a second or subsequent violation, the person shall, upon
31 conviction, be punished by imprisonment in the county jail for not more than one
32 year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
33 Code for 16, 20, or 24 months. The court shall also impose upon the person a fine
34 of not less than five thousand dollars (\$5,000) or more than twenty-five thousand
35 dollars (\$25,000).

36 **Comment.** Section 95970 continues former Section 25190 without substantive change.

37 **§ 95975. Dissemination of protected information**

38 95975. Notwithstanding Section 25190, a person who knowingly and willfully
39 disseminates information protected by **Section 25173** or procedures established by
40 the department pursuant to **Section 25173** shall, upon conviction, be punished by a

1 fine of not more than five thousand dollars (\$5,000), imprisonment in a county jail
2 not to exceed one year, or by both that fine and imprisonment.

3 **Comment.** Section 95975 continues former Section 25185.6(i) without substantive change.

4 **§ 95980. Miscellaneous criminal liability**

5 95980. (a)(1) Any person who knowingly does any of the acts specified in
6 subdivision (b) shall, upon conviction, be punished by a fine of not less than two
7 thousand dollars (\$2,000) or more than twenty-five thousand dollars (\$25,000) for
8 each day of violation, or by imprisonment in a county jail for not more than one
9 year, or by both that fine and imprisonment.

10 (2) If the conviction is for a second or subsequent violation of subdivision (b), the
11 person shall be punished by imprisonment pursuant to subdivision (h) of Section
12 1170 of the Penal Code for 16, 20, or 24 months, or in a county jail for not more
13 than one year, or by a fine of not less than two thousand dollars (\$2,000) or more
14 than fifty thousand dollars (\$50,000) for each day of violation, or by both that fine
15 and imprisonment.

16 (3) Each day or partial day that a violation occurs is a separate violation.

17 (b) A person who does any of the following is subject to the punishment
18 prescribed in subdivision (a):

19 (1) Makes any false statement or representation in any application, label, manifest,
20 record, report, permit, notice to comply, or other document filed, maintained, or
21 used for the purposes of compliance with this division.

22 (2) Has in his or her possession any record relating to the generation, storage,
23 treatment, transportation, disposal, or handling of hazardous waste required to be
24 maintained pursuant to this division, that has been altered or concealed.

25 (3) Destroys, alters, or conceals any record relating to the generation, storage,
26 treatment, transportation, disposal, or handling of hazardous waste required to be
27 maintained pursuant to this division.

28 (4) Withholds information regarding a real and substantial danger to the public
29 health or safety when that information has been requested by the department, or by
30 a local officer or agency authorized to enforce this division pursuant to **subdivision**
31 **(a) of Section 25180**, and is required to carry out the responsibilities of the
32 department or the authorized local officer or agency pursuant to this division in
33 response to a real and substantial danger.

34 (5) Except as otherwise provided in this division, engages in transportation of
35 hazardous waste in violation of **Section 25160 or 25161, or subdivision (a) of**
36 **Section 25163**, or in violation of any regulation adopted by the department pursuant
37 to those provisions, including, but not limited to, failing to complete or provide the
38 manifest in the form and manner required by the department.

39 (6) Except as otherwise provided in this division, produces, receives, stores, or
40 disposes of hazardous waste, or submits hazardous waste for transportation, in
41 violation of **Section 25160 or 25161** or any regulation adopted by the department

1 pursuant to those sections, including, but not limited to, failing to complete, provide,
2 or submit the manifest in the form and manner required by the department.

3 (7) Transports any waste, for which there is provided a manifest, if the
4 transportation is in violation of this division or the regulations adopted by the
5 department pursuant thereto.

6 (8) Violates **Section 25162**.

7 (c)(1) The penalties imposed pursuant to subdivision (a) on any person who
8 commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall
9 be imposed only on the owner or lessee of the vehicle in which the hazardous wastes
10 are unlawfully transported, carried, or handled, or the person who authorizes or
11 causes the transporting, carrying, or handling.

12 (2) The penalties shall not be imposed on the driver of the vehicle, unless the
13 driver is also the owner or lessee of the vehicle or authorized or caused the
14 transporting, carrying, or handling.

15 (3) If any person other than the person producing the hazardous waste prepares
16 the manifest specified in **Section 25160**, that other person is also subject to the
17 penalties imposed on a person who commits any of the acts specified in paragraph
18 (6) of subdivision (b).

19 (d) Any person who knowingly does any of the following acts, each day or partial
20 day that a violation occurs constituting a separate violation, shall, upon conviction,
21 be punished by a fine of not more than five hundred dollars (\$500) for each day of
22 violation, or by imprisonment in the county jail for not to exceed six months, or by
23 both that fine and imprisonment:

24 (1) Carries or handles, or authorizes the carrying or handling of, a hazardous waste
25 without having in the driver's possession the manifest specified in Section 25160.

26 (2) Transports, or authorizes the transportation of, hazardous waste without
27 having in the driver's possession a valid registration issued by the department
28 pursuant to **Section 25163**.

29 (e) Whenever any person is prosecuted for a violation pursuant to **paragraph (5),**
30 **(6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section**
31 **25189.5**, the prosecuting attorney may take appropriate steps to make the owner or
32 lessee of the vehicle in which the hazardous wastes are unlawfully transported,
33 carried, or handled, the driver of the vehicle, or any other person who authorized or
34 directed the loading, maintenance, or operation of the vehicle, who is reasonably
35 believed to have violated these provisions, a codefendant.

36 (f) If a codefendant is held solely responsible and found guilty, the court may
37 dismiss the charge against the person who was initially so charged.

38 **Comment.** Section 95980 continues former Section 25191 without substantive change.
39 See Sections 83175 ("disposal"), 83355 ("storage"), 83370 ("treatment").

40 **§ 95985. Additional misdemeanor violations**

41 95985. It is a misdemeanor for any person to do any of the following:

1 (a) Willfully prevent, interfere with, or attempt to impede in any way the work of
2 any duly authorized representative of the department, or a local officer or agency
3 authorized to enforce this division pursuant to subdivision (a) of Section 25180, in
4 the lawful enforcement of any provision of this division.

5 (b) Willfully prevent or attempt to prevent any such representative from
6 examining any relevant books or records in the conduct of his or her official duties
7 under this division.

8 (c) Willfully prevent or interfere with any such representative in the preserving of
9 evidence of any violation of any of the provisions of this division or of the rules and
10 regulations promulgated pursuant to this division.

11 **Comment.** Section 95985 continues former Section 25195 without substantive change.
12 See Sections 83160 (“department”), 83245 (“local officer”).

13 Article 6. Miscellaneous Liability

14 § 96000. Additional civil penalty based on prior liability finding

15 96000. (a) In addition to any penalty imposed under any other law, a person who
16 is subject to the imposition of civil or criminal penalties pursuant to the provisions
17 specified in subdivision (b) shall also be subject to an additional civil penalty of not
18 less than five thousand dollars (\$5,000) or more than fifty thousand dollars
19 (\$50,000) for each day of each violation, if the person has been found liable for, or
20 has been convicted of, two or more previous violations subject to the penalties
21 specified in subdivision (b) and those violations or convictions occurred within any
22 consecutive 60 months.

23 (b) The additional liability specified in subdivision (a) shall apply to a penalty
24 imposed pursuant to, or a conviction under, paragraph (2) of subdivision (g) of
25 Section 25187.8, or Section 25189, 25189.2, 25189.3, 25189.5, 25189.6, or
26 25189.7.

27 **Comment.** Section 96000 continues former Section 25189.4 without substantive change.

28 § 96005. Violation of Section 25227 or former Section 25221

29 96005. A person who knowingly violates a provision of **subdivision (a) of former**
30 **Section 25221** as that section read on January 1, 2012, and who violated that
31 provision prior to the effective date of Chapter 39 of the Statutes of 2012, or who
32 knowingly violates **Section 25227**, shall be subject to a civil penalty not to exceed
33 25 percent of the fair market value of the land and improvements, 25 percent of the
34 sale price of the land and improvements, or fifty thousand dollars (\$50,000),
35 whichever has been established and is greatest.

36 **Comment.** Section 96005 continues former Section 25196 without substantive change.

1 **§ 96010. Registered waste transporters**

2 96010. A registered waste transporter transporting medical waste who is not
3 subject to **Section 25097** shall be subject to penalties for violations pursuant to this
4 part.

5 **Comment.** Section 96010 continues former Section 25181.5 without substantive change.
6 See Section 83395 (“waste”).

7 **§ 96015. Failure to provide information relating to generated hazardous waste**

8 96015. (a) A person who generates or has generated hazardous waste that fails to
9 provide information to the department as required pursuant to this division and
10 regulations adopted pursuant to this division is liable for a civil or administrative
11 penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation
12 or, for continuing violations, for each day that the violation continues.

13 (b) The department may adopt regulations to implement subdivision (a).

14 **Comment.** Section 96015 continues former Section 25196.1 without substantive change.
15 See Sections 83160 (“department”), 83210 (“hazardous waste”).

16 **§ 96020. Noncompliance with order requiring corrective action**

17 96020. A person subject to an order issued pursuant to Article 3 (commencing
18 with Section 95350) of Chapter 4 who does not comply with that order shall be
19 subject to a civil penalty of not more than seventy thousand dollars (\$70,000) for
20 each day of noncompliance.

21 **Comment.** Section 95815 continues former Section 25188 without substantive change.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this cumulative draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as that law existed on January 1, 2026. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	New Provision
25100.....	83000
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25105.....	83015
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25110.....	83075
25110.02.....	83080
25110.1.....	83085
25110.2.....	not cont'd
25110.3.....	83090
25110.4.....	83095
25110.5.....	83100
25110.8.....	83105
25110.8.5 (except 2nd sentence of subd. (b)).....	83115
25110.8.5, 2nd sentence of subd. (b).....	83120
25110.9(b).....	83140
25110.9(a).....	83135
25110.9.1(b).....	83130
25110.9.1(a).....	83125
25110.9.3.....	83145
25110.10(a).....	83150
25110.10(b)-(e).....	[not yet recodified]
25110.10.1.....	not cont'd
25110.11.....	83155
25111.....	83160
25111.1.....	not cont'd
25112.....	83165
25112.5(a) (preceding numbered paragraphs).....	83170
25112.5(a)(1)-(d).....	[not yet recodified]
25113.....	83175
25114.....	83180
25114.5.....	83190
25115.....	83195
25115.1.....	83200
25116.....	83205
25116.5.....	83220
25117(a)-(c).....	83210(a)
25117(d).....	[not yet recodified]
25117.1.....	83215

Existing Provision	Proposed New Provision
25117.10.....	83235
25117.11.....	83275
25117.12.....	83280
25117.13.....	83230
25117.14.....	83290
25117.2.....	83220
25117.3.....	[not yet recodified]
25117.4.1(b).....	83245
25117.4.1(a).....	83240
25117.5.....	83210(b)
25117.6.....	83255
25117.8.....	83260
25117.9.....	83265
25117.9.1.....	83270
25117.10.....	83235
25117.11.....	83275
25117.12.....	83280
25117.13.....	83230
25117.14.....	83290
25118.....	83295
25119.....	83300
25120.....	83305
25120.2.....	83310
25120.5.....	83315
25120.55.....	[not yet recodified]
25121.....	83320
25121.1.....	83325
25121.2.....	83330
25121.3(a).....	83335
25121.3(b), (c).....	[not yet recodified]
25121.5.....	83340
25122.7.....	83345
25122.8.....	not cont'd
25122.9.....	83350
25123.....	83355
25123.3(a).....	[not yet recodified]
25123.3(b), initial clause.....	83360
25123.3(b) (remainder of subdivision), (c)-(i).....	[not yet recodified]
25123.4.....	83365
25123.5.....	83370
25123.6.....	83390
25123.7(a).....	83380
25123.7(b).....	83110
25123.7(c).....	83285
25123.7(d).....	83375
25123.8.....	83385
25124.....	83395

Existing Provision	Proposed New Provision
25125(a), (b), (c)	83650
25125(d).....	83655
25125(e).....	83700
25125(f).....	83660
25125(g).....	83725
25125(h).....	83720
25125(i).....	83705(a)
25125(j).....	83710
25125(k).....	83705(b)
25125(l).....	83675
25125(m).....	83665
25125(n).....	83715
25125(o).....	83670
25125.2(a)	83750
25125.2(b)(1)	83775
25125.2(b)(2)	83780
25125.2(b)(3)	83785
25125.2(b)(4)	83790
25125.2(b)(5)	83795
25125.2(b)(6)	83800
25125.2(b)(7)	83805
25125.3.....	83755
25125.4.....	83835
25125.5.....	83650
25125.6.....	83760
25125.7.....	83810
25125.8(a), 1st sentence.....	83845
25125.8(a), 2nd sentence	83850
25125.8(b).....	83855
25125.8(c)	83860
25125.8(d).....	83865
25125.8(e).....	83870
25125.9.....	83815
25130-25149.7	[not yet recodified]
25150.....	83450
25150.1 – 25150.4.....	[not yet recodified]
25150.5.....	83470
25150.65.....	83460
25150.82 – 25150.87.....	[not yet recodified]
25151.....	83455
25152.....	83465
25152.5 – 25159.25.....	[not yet recodified]
25160(a)(2).....	83185
25160(a)(1), (3).....	83250
25160(b) – 25169.9	[not yet recodified]
25170.....	83420
25172.6.....	83575

Existing Provision	Proposed New Provision
25173.....	83505
25173.5.....	[not yet recodified]
25173.6(a).....	84000
25173.6(b), (c).....	84005
25173.6(d), (e).....	84010
25173.6(f).....	84015
25173.6(g), (h).....	84020
25173.6(i).....	not cont'd
25173.7(a).....	84025
25173.7(b).....	84030
25173.7(c).....	84050
25174(a).....	83900
25174(b).....	83905
25174(c).....	84045
25174(d).....	83910
25174.01.....	[not yet recodified]
25174.02(a).....	84075
25174.02(b).....	84080
25174.02(c).....	84085
25174.02(d).....	84090
25174.02(e).....	84095
25174.02(f).....	not cont'd
25174.8 – 25174.8.1.....	[not yet recodified]
25174.9.....	83915
25175.....	[not yet recodified]
25177.....	83500
25178.....	83550
25178.1 – 25179.....	[not yet recodified]
25180(a).....	95000
25180(b).....	95005
25180(c).....	95010
25180(d).....	95020
25180.1.....	83288
25180.2.....	95050
25180.5(a), (b).....	95055
25180.5(c).....	95060
25180.7.....	95950
25181.....	95080
25181.5.....	96010
25182.....	95800
25183.....	95805
25184.....	95810
25184.1.....	95085
25185(a).....	95075
25185(b).....	95100(a)
25185(c)(1), 1 st sent.....	95100(b)
25185(c)(1), 2 nd sent.....	95100(c)

Existing Provision	Proposed New Provision
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25185(c)(2)(A), 2 nd sent.....	95100(e)
25185(c)(2)(A), 3 rd sent.....	95100(f)
25185(c)(2)(A), 4 th sent.....	95100(g)
25185(c)(2)(A), 5 th sent.....	95100(h)(1)
25185(c)(2)(A), 6 th sent.....	95100(h)(2)
25185(c)(2)(B).....	95105
25185(c)(2)(C).....	95110
25185(c)(2)(D).....	95115
25185(c)(3), 1 st sent.....	95120(a)
25185(c)(3), 2 nd sent.....	95120(b)
25185(c)(3), 3 rd sent.....	95120(c)
25185(c)(3), 4 th sent.....	95120(d)
25185(d), 1 st sent.....	95125(a)
25185(d), 2 nd and 3 rd sent.....	95125(b)
25185.5.....	95130
25185.6(a)(1).....	95150
25185.6(a)(2).....	95155
25185.6(b).....	95160
25185.6(c).....	95165
25185.6(d).....	95170(a)
25185.6(e).....	95175
25186.5(f), 1 st sent.....	95180(a)
25186.5(f), 2 nd sent.....	95180(b)
25185.6(g).....	95180(c)
25185.6(h), 1 st sent.....	95170(b)
25185.6(h), 2 nd sent.....	95170(c)
25185.6(h), 3 rd sent.....	95170(d)
25185.6(i).....	95975
25186.5(a).....	95260
25186.5(b).....	95185(a)
25186.5(c).....	95185(b)
25185.6(d), 1 st sent.....	95185(c)
25185.6(d), 2 nd sent.....	95185(d)
25185.6(d), 3 rd sent.....	95185(e)
25185.6(e).....	95185(f)
25186.5(f).....	95185(g)
25186(a).....	95250(a)
25186(b).....	95250(b)
25186(c).....	95250(c)
25186(d).....	95250(d)
25186(e).....	95255
25186(f).....	95250(e)
25186.05.....	95265
25186.1, 1 st and 2 nd sent.....	95270
25186.1, 3 rd sent.....	95200(a)
25186.1, 4 th sent.....	95200(b)

Existing Provision	Proposed New Provision
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25186.2, 2 nd sent.....	95275(b)
25186.2, 3 rd sent.....	95275(c)
25186.2, 4 th sent	95275(d)
25186.2, 5 th sent	95275(e)
25186.2, 6 th sent	95275(f)
25186.2.5, 1 st sent	95280(a)
25186.2.5, 2 nd sent.....	95280(b)
25186.2.5, 3 rd sent.....	95280(c)
25186.2.5, 4 th sent.....	95280(d)
25186.2.5, 5 th sent	95280(e)
25186.3.....	95205
25186.6.....	95065
25186.7.....	95285
25187(a)(1).....	95360(a) and (b)
25187(a)(2).....	95360(c)
25187(b) (intro para).....	95365(a)
25187(b)(1)	95370
25187(b)(2)	95365(b)
25187(b)(3)	95365(c)
25187(b)(4), 1 st sent	95365(d)
25187(b)(4), 2 nd sent	95365(e)
25187(b)(5)	95375
25187(b)(6)	95350
25187(c)	95380
25187(d).....	95385
25187(e)	95390(a)
25187(f) 2 nd sent.....	95390(a)
25187(f)(1).....	95390(a)
25187(f)(2)(A) 1 st sent	95390(a)
25187(f)(2)(A), 2 nd sent	95390(b)
25187(g), 1 st sent.....	95390(c)
25187(g), 2 nd sent.....	95390(d)
25187(h).....	95395
25187(i).....	95400
25187(j)(1)	95405(a)
25187(j)(2)	95405(b)
25187(k).....	95405(c)
25187(l).....	95355
25187(m).....	95410(a)
25187(n).....	95410(b)
25187(o).....	95410(c)
25187(p), 1 st sent.....	95415(a)
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25187(q).....	95420
25187.1(a)	95300
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Existing Provision	Proposed New Provision
25187.1(c)	95310
25187.1(d)	95315(a)
25187.1(e)	95315(b)
25187.1(f)	95320
25187.2	95720
25187.3(a)	95450
25187.3(b)	95455(a)
25187.3(c)(1)	95460(a)
25187.3(c)(2)(A)	95460(b)
25187.3(c)(2)(B), 1 st sent	95460(c)
25187.3(c)(2)(B), 2 nd sent	95460(d)
25187.3(d)	95455(b)
25187.3(e)	95465
25187.3(f), 1 st sent	95470
25187.3(f), 2 nd sent	95475
25187.5(a)	95500
25187.5(b)	95505
25187.5(c)	95510
25187.5(d)	95515
25187.5(e)	95520
25187.6(a)	95555
25187.6(b)	95560
25187.6(c)	95565
25187.6(d)	95570
25187.6(e)	95575
25187.6(f)	95580(a)
25187.6(g)	95580(b)
25187.6(h)	95550
25187.8(a)	95600
25187.8(b), 1 st sent	95610(a)
25187.8(b), 2 nd sent	95610(b)
25187.8(b), 3 rd sent	95610(c)
25187.8(c)	95620
25187.8(d)	95625
25187.8(e), 1 st sent	95630
25187.8(e), 2 nd sent	95610(d)
25187.8(f), 1 st sent	95640
25187.8(f), 2 nd sent	95645
25187.8(g)(1)	95650
25187.8(g)(2)	95635
25187.8(h), 1 st sent	95605
25187.8(h), 2 nd sent	95615
25187.8(i)	95655
25188	96020
25189(a)	95850
25189(b)	95855
25189(c)	95860

Existing Provision	Proposed New Provision
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25189(e).....	95870
25189(f).....	95875
25189(g).....	95880
25189.1.....	95815
25189.2(a).....	95900
25189.2(b).....	95905
25189.2(c).....	95910
25189.2(d).....	95915
25189.2(e).....	95920
25189.2(f).....	95925
25189.2(g).....	95930
25189.3.....	95210
25189.4.....	96000
25189.5.....	95955
25189.6.....	95960
25189.7.....	95965
25190.....	95970
25191.....	95980
25191.2.....	95015
25191.7.....	95090
25192.....	95715
25193.....	95700
25194.....	95705
25194.5.....	95710
25195.....	95985
25196.....	96005
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25197– 25197.3.....	[not yet recodified]
25198(a).....	not cont'd
25198(b), 1st part.....	90000
25198(b), 2nd part.....	not cont'd
25198(c)-(e).....	90005
25198(f).....	90010
25198.1 – 25214.10.2.....	[not yet recodified]
25205.1 (intro).....	84150
25205.1(a).....	84155
25205.1(b).....	84180
25205.1(c).....	84200
25205.1(d).....	84205
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25205.1(f).....	84210
25205.1(g).....	84215
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25205.1(i).....	84225
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25205.1(o).....	84175, 84235, 84240
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25210.1.....	85505
25210.10.....	85525
25210.12.....	85535
25210.2.....	85510
25210.5.....	85450
25210.6.....	85455
25210.7.....	85460
25210.9.....	85530
25211.....	85550
25211.1.....	85555
25211.2.....	85560
25211.3.....	85565
25211.4.....	85570
25211.5.....	85590
25212.....	85575
25213.....	85580
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25214.1.....	85650
25214.1.5.....	85655
25214.2.....	85660
25214.3.....	85665
25214.3.1.....	85670
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25214.3.5.....	85690
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25214.4.2.....	85705
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25214.5.....	85775
25214.6.....	85780
25214.7.....	85785
25214.8.....	85790
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25214.8.1(b).....	85810
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25214.8.4(b).....	85835
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Existing Provision	Proposed New Provision
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25214.8.5.....	85855
25214.8.6.....	85860
25214.8.10.....	85875
25214.8.11.....	85880
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25214.8.12(b)-(f).....	85890
25214.8.14.....	85895
25214.8.11.5(a), (b), (c), (d),(e)(1), (f), and (g), and (h)	85900
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25214.10.1.....	86010
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25249.1.....	85475
25249.2.....	85480
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25214.11(b).....	85150
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25214.12 (a)	85180
25214.12 (b).....	85185
25214.12 (c).....	85195
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25214.12 (e)	85200
25214.12 (f).....	85210
25214.12 (g).....	85215
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25214.13(a)	85315
25214.13(b).....	85310(b)
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Existing Provision	Proposed New Provision
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25214.15(a).....	85350
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25214.15(c).....	85360
25214.15(d).....	not cont'd
25214.15(e).....	85365
25214.15(f).....	not cont'd
25214.15(g).....	not cont'd
25214.15(h).....	not cont'd
25214.15(i).....	85370 (a), (b)
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25214.21.....	85270(a)
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25214.23 (except 2 nd sent. of (a)(3)).....	85275
25214.23(a)(3) (2 nd sent.).....	85395
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25244.....	90050
25244.01.....	90075
25244.1.....	90055
25244.2.....	90060
25244.4.....	90130
25244.5.....	90080
25244.6.....	90085
25244.7.....	90115
25244.8.....	90105
25244.9.....	90110
25244.10.....	90100
25244.12.....	84850
25244.13.....	84855
25244.13.1.....	84865
25244.14 (intro).....	84880
25244.14(a).....	84885
25244.14(b).....	84890
25244.14(c).....	84895
25244.14(d).....	84900
25244.14(e).....	84905
25244.14(f).....	84910

Existing Provision	Proposed New Provision
25244.14(g).....	84915
25244.14(h).....	84920
25244.14(i).....	84925
25244.14(j).....	84930
25244.14(k).....	84935
25244.15.....	84860
25244.15.1(a).....	84950
25244.15.1(b).....	84955
25244.15.1(c).....	84960
25244.15.1(d).....	84965
25244.15.1(e).....	84970
25244.16(a).....	85065
25244.16(b).....	85050
25244.17.....	85070
25244.17.1.....	85005
25244.17.2(a).....	85015(a), (b)
25244.17.2(b), (c).....	85020
25244.17.2(d).....	85015(c)
25244.18.....	85045
25244.19.....	85030
25244.20.....	85035
25244.21(a), (b).....	85040
25244.21(c).....	85050
25244.22(a).....	84985
25244.22(b).....	84990
25244.23.....	85075
25245–25250.65.....	[not yet recodified]
25251 (intro).....	84400
25251(a).....	84405
25251(b).....	84415
25251(c).....	84420
25251(d).....	84425
25251(e).....	84430
25251(f).....	84435
25252(a), 1st and 2nd sent.....	84525
25252(a), 3rd sent.....	84530
25252(b)(1).....	84535
25252(b)(2), (b)(3).....	84540
25252.5(a).....	84600(a)
25252.5(b).....	84605
25252.5(c).....	84610
25252.5(d).....	84615
25252.5(e).....	84600(b)
25252.5(f).....	84600(c)
25252.5(g).....	84595
25253(a)(1).....	84555
25253(a)(2).....	84560

Existing Provision	Proposed New Provision
25253(b).....	84570
25253(c).....	84565
25253(d).....	84575
25253(e)(1).....	84580(a)
25253(e)(2).....	84580(b)
25253(f).....	84580(c)
25253.5.....	84485
25253.6.....	84480
25253.7(a)(1), 1st sent	84670(a)
25253.7(a)(1), 2nd sent.....	84670(b)
25253.7(a)(1), 3rd sent.....	84675(a)
25253.7(a)(1), 4th sent.....	84670(c)
25253.7(a)(2)(A).....	84675(b)
25253.7(a)(2)(B).....	84675(c)
25253.7(a)(2)(C).....	84680
25253.7(a)(3).....	84685
25253.7(a)(4).....	84690
25253.7(a)(5).....	84695
25253.7(b).....	84700
25253.9.....	84490
25254(a).....	84500(a)
25254(b), 1st sent.....	84500(b)
25254(b), 2nd sent.....	84500(c)
25254(c), 1st sent.....	84505(a)
25254(c), 2nd sent.....	84500(d)
25254(d).....	84505(b)
25255.....	84510
25256, 1st sent	84630
25256, 2nd sent, 1st part.....	84650
25256, 2nd sent, 2nd part.....	84655
25256.1.....	84635
25256.2.....	84640
25256.3.....	84645
25257(a), 1st sent.....	84720(a)
25257(a), 2nd sent.....	84720(b)
25257(b).....	84725
25257(c), 1st sent.....	84720(c)
25257(c), 2nd sent.....	84720(d)
25257(d).....	84730
25257(e).....	84740
25257(f).....	84745
25257.1(a).....	84455
25257.1(b).....	84460
25257.1(c).....	84465
25257.2(a).....	84765
25257.2(b).....	84770
25257.2(c).....	84775

Existing Provision	Proposed New Provision
25257.2(d).....	84780
25257.2(e).....	84785
25257.2(f).....	84790
25257.2(g).....	84795
25257.2(h).....	84800
25258– 25259.....	[not yet recodified]

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 46 of the Health and Safety Code, as reflected in this cumulative draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Existing Provision
83000	25100
83005	25101
83010	25103
83015	25105
83020	25106
83035	new
83040	new
83045	new
83050	new
83055	new
83060	new
83075	25110
83080	25110.02
83085	25110.1
83090	25110.3
83095	25110.4
83100	25110.5
83105	25110.8
83110	25123.7(b)
83115	25110.8.5 (except 2nd sentence of subd. (b))
83120	25110.8.5, 2nd sentence of subd. (b)
83125	25110.9.1(a)
83130	25110.9.1(b)
83135	25110.9(a)
83140	25110.9(b)
83145	25110.9.3
83150	25110.10(a)
83155	25110.11
83160	25111
83165	25112
83170	25112.5(a) (preceding numbered paragraphs)
83175	25113
83180	25114
83185	25160(a)(2)
83190	25114.5
83195	25115
83200	25115.1
83205	25116
83210(a)	25117(a)-(c)
83210(b)	25117.5

83215	25117.1
83220	25117.2
83225	25116.5
83230	25117.13
83235	25117.10
83240	25117.4.1(a)
83245	25117.4.1(b)
83250	25160(a)(1), (3)
83255	25117.6
83260	25117.8
83265	25117.9
83270	25117.9.1
83275	25117.11
83280	25117.12
83285	25123.7(c)
83290	25117.14
83288	25180.1
83295	25118
83300	25119
83305	25120
83310	25120.2
83315	25120.5
83320	25121
83325	25121.1
83335	25121.3(a)
83330	25121.2
83340	25121.5
83345	25122.7
83350	25122.9
83355	25123
83360	25123.3(b), initial clause
83365	25123.4
83370	25123.5
83375	25123.7(d)
83380	25123.7(a)
83385	25123.8
83390	25123.6
83395	25124
83420	25170
83450	25150
83455	25151
83460	25150.65
83465	25152
83470	25150.5
83500	25177
83505	25173
83550	25178

83575	25172.6
83650	25125(a), (b), (c)
83655	25125(d)
83660	25125(f)
83665	25125(m)
83670	25125(o)
83675	25125(l)
83700	25125(e)
83705(a).....	25125(i)
83705(b).....	25125(k)
83710	25125(j)
83715	25125(n)
83720	25125(h)
83725	25125(g)
83750	25125.2(a)
83755	25125.3
83760	25125.6
83775	25125.2(b)(1)
83780	25125.2(b)(2)
83785	25125.2(b)(3)
83790	25125.2(b)(4)
83795	25125.2(b)(5)
83800	25125.2(b)(6)
83805	25125.2(b)(7)
83810	25125.7
83815	25125.9
83835	25125.4
83845	25125.8(a), 1st sentence
83850	25125.8(a), 2nd sentence
83855	25125.8(b)
83860	25125.8(c)
83865	25125.8(d)
83870	25125.8(e)
83900	25174(a)
83905	25174(b)
83910	25174(d)
83915	25174.9
84000	25173.6(a)
84005	25173.6(b), (c)
84010	25173.6(d), (e)
84015	25173.6(f)
84020	25173.6(g), (h)
84025	25173.7(a)
84030	25173.7(b)
84045	25174(c)
84050	25173.7(c)
84075(a).....	25174.02(a)

84075(b)	25174.02(b), 2 nd sent.
84080	25174.02(b), 1 st sent
84085	25174.02(c)
84090	25174.02(d)
84095	25174.02(e)
84150	25205.1 (intro)
84155	25205.1(a)
84160	25205.1(l) (part applicable to “Class 1 modification”)
84165	25205.1(l) (part applicable to “Class 2 modification”)
84170	25205.1(l) (part applicable to “Class 3 modification”)
84175	25205.1(o) (part applicable to “disposal”)
84180	25205.1(b)
84185	25205.1(e)
84190	25205.1(m)
84195	25205.1(n)
84200	25205.1(c)
84205	25205.1(d)
84210	25205.1(f)
84215	25205.1(g)
84220	25205.1(h)
84225	25205.1(i)
84230	25205.1(j)
84235	25205.1(o) (part applicable to “storage”)
84240	25205.1(o) (part applicable to “treatment”)
84245	25205.1(k)
84400	25251(intro)
84405	25251(a)
84410	new
84415	25251(b)
84420	25251(c)
84425	25251(d)
84430	25251(e)
84435	25251(f)
84455	25257.1(a)
84460	25257.1(b)
84465	25257.1(c)
84480	25253.6
84485	25253.5
84490	25253.9
84500(a).....	25254(a)
84500(b).....	25254(b), 1st sent
84500(c).....	25254(b), 2nd sent
84500(d).....	25254(c), 2nd sent
84505(a).....	25254(c), 1st sent
84505(b).....	25254(d)
84510	25255
84525	25252(a), 1st and 2nd sent

84530	25252(a), 3rd sent
84535	25252(b)(1)
84540	25252(b)(2), (b)(3)
84555	25253(a)(1)
84560	25253(a)(2)
84565	25253(c)
84570	25253(b)
84575	25253(d)
84580(a).....	25253(e)(1)
84580(b).....	25253(e)(2)
84580(c).....	25253(f)
84595	25252.5(g)
84600(a).....	25252.5(a)
84600(b).....	25252.5(e)
84600(c).....	25252.5(f)
84605	25252.5(b)
84610	25252.5(c)
84615	25252.5(d)
84630	25256, 1st sent
84635	25256.1
84640	25256.2
84645	25256.3
84650	25256, 2nd sent, 1st part
84655	25256, 2nd sent, 2nd part
84670(a).....	25253.7(a)(1), 1st sent
84670(b).....	25253.7(a)(1), 2nd sent
84670(c).....	25253.7(a)(1), 4th sent
84675(a).....	25253.7(a)(1), 3rd sent
84675(b).....	25253.7(a)(2)(A)
84675(c).....	25253.7(a)(2)(B)
84680	25253.7(a)(2)(C)
84685	25253.7(a)(3)
84690	25253.7(a)(4)
84695	25253.7(a)(5)
84700	25253.7(b)
84720(a).....	25257(a), 1st sent
84720(b).....	25257(a), 2nd sent
84720(c).....	25257(c), 1st sent
84720(d).....	25257(c), 2nd sent
84725	25257(b), 2nd sent
84730	25257(d)
84735	25257(b), 1st sent
84740	25257(e)
84745	25257(f)
84765	25257.2(a)
84770	25257.2(b)
84775	25257.2(c)

84780	25257.2(d)
84785	25257.2(e)
84790	25257.2(f)
84795	25257.2(g)
84800	25257.2(h)
84850	25244.12
84855	25244.13
84860	25244.15
84865	25244.13.1
84880	25244.14 (intro)
84885	25244.14(a)
84890	25244.14(b)
84895	25244.14(c)
84900	25244.14(d)
84905	25244.14(e)
84910	25244.14(f)
84915	25244.14(g)
84920	25244.14(h)
84925	25244.14(i)
84930	25244.14(j)
84935	25244.14(k)
84950	25244.15.1(a)
84955	25244.15.1(b)
84960	25244.15.1(c)
84965	25244.15.1(d)
84970	25244.15.1(e)
84985	25244.22(a)
84990	25244.22(b)
85000	25244.17
85005	25244.17.1
85015	25244.17.2(a), (d)
85020	25244.17.2(b), (c)
85030	25244.19
85035	25244.20
85040	25244.21(a), (b)
85045	25244.18
85050	25244.21(c)
85065	25244.16(a)
85070	25244.16(b)
85075	25244.23
85150	25214.11(b)
85155	25214.11(a)
85160	25214.20
85165	25214.19
85180	25214.12 (intro)
85185	25214.12(b)
85190	25214.12(a)

85195	25214.12(c)
85200	25214.12(e)
85205	25214.12(d)
85210	25214.12(f)
85215	25214.12(g)
85220	25214.12(h)
85225	25214.12(i)
85230	25214.12(j)
85235	25214.12(k)
85240	25214.12(l)
85245	25214.12(m)
85250	25214.12(n)
85270	25214.21
85275	25214.23 (excepting 2 nd sent. of 25214.23(a)(3))
85280	25214.24
85285	25214.18
85290	25214.17(a)
85295	25214.17(b)
85310(a)	25214.13(b)
85310(b)	25214.13(c)
85315	25214.13(a)
85330	25214.17.14(a), (b), (d)
85335	25214.14(c), (e), (f), (g)
85350	25214.15(a)
85355	25214.15(b)
85360	25214.15(c)
85365	25214.15(e)
85370(a), (b)	25214.15(i)
85370(c)	25214.15(j)
85375	25214.16
85390	25214.22
85395	2 nd sent. of 25214.23(a)(3)
85410	25214.22.1
85475	25249.1
85480	25249.2
85500	25210
85505	25210.1
85525	25210.10
85535	25210.12
85510	25210.2
85450	25210.5
85455	25210.6
85460	25210.7
85530	25210.9
85550	25211
85555	25211.1
85560	25211.2

85565	25211.3
85570	25211.4
85575	25212
85580	25213
85585	25214
85590	25211.5
85655	25214.1.5
85650	25214.1
85655	25214.1.5
85660	25214.2
85665	25214.3
85670	25214.3.1
85675	25214.3.2
85680	25214.3.3
85685	25214.3.4
85690	25214.3.5
85695	25214.4
85675	25214.3.2
85700	25214.4.1
85705	25214.4.2
85750	25214.4.3
85775	25214.5
85780	25214.6
85785	25214.7
85780	25214.6
85785	25214.7
85790	25214.8
85810	25214.8.1(b)
85815	25214.8.1(a)
85820	25214.8.2
85825	25214.8.3
85830	25214.8.4(a)
85835	25214.8.4(b)
85840	25214.8.4(c)
85845	25214.8.4(d)
85850	25214.1
85855	25214.8.5
85860	25214.8.6
85875	25214.8.10
85880	25214.8.11
85885	25214.8.11.2(a)
85890	25214.8.12(b)-(f)
85895	25214.8.14
85900	25214.8.11.5(a), (b), (c), (d),(e)(1), (f), (g), (h)
85905	25214.8.11.5(e)(2)
85910	25214.8.11.6
85915	25214.8.12

85920	25214.8.13(a)
85925	25214.8.13(b)
85930	25214.8.13.5
85935	25214.8.14
85940	25214.8.15
85945	25214.8.16
85950	25214.8.17
85955	25214.8.18
85960	25214.8.19
86000	25214.9
86005	25214.10
86010	25214.10.1
86015	25214.10.2
90000	25198(b), 1st part
90005	25198(c), (d), (e)
90010	25198(f)
90050	25244
90055	25244.1
90060	25244.2
90075	25244.01
90080	25244.5
90085	25244.6
90100	25244.10
90105	25244.8
90110	25244.9
90115	25244.7
90130	25244.4
95000	25180(a)
95005	25180(b)
95010	25180(c)
95015	25191.2
95020	25180(d)
95050	25180.2
95055	25180.5(a), (b)
95060	25180.5(c)
95065	25186.6
95075	25185(a)
95080	25181
95085	25184.1
95090	25191.7
95100(a).....	25185(b)
95100(b).....	25185(c)(1), 1 st sent
95100(c).....	25185(c)(1), 2 nd sent
95100(d).....	25185(c)(2)(A), 1 st sent
95100(e).....	25185(c)(2)(A), 2 nd sent
95100(f).....	25185(c)(2)(A), 3 rd sent
95100(g).....	25185(c)(2)(A), 4 th sent

95100(h)(1).....	25185(c)(2)(A), 5 th sent
95100(h)(2).....	25185(c)(2)(A), 6 th sent
95105	25185(c)(2)(B)
95110	25185(c)(2)(C)
95115	25185(c)(2)(D)
95120(a).....	25185(c)(3), 1 st sent
95120(b).....	25185(c)(3), 2 nd sent
95120(c).....	25185(c)(3), 3 rd sent
95120(d).....	25185(c)(3), 4 th sent
95125(a).....	25185(d), 1 st sent
95125(b).....	25185(d), 2 nd and 3 rd sent
95130	25185.5
95150	25185.6(a)(1)
95155	25185.6(a)(2)
95160	25185.6(b)
95165	25185.6(c)
95170(a).....	25185.6(d)
95170(b).....	25185.6(h), 1 st sent
95170(c).....	25185.6(h), 2 nd sent
95170(d).....	25185.6(h), 3 rd sent
95175	25185.6(e)
95180(a).....	25186.5(f), 1 st sent
95180(b).....	25186.5(f), 2 nd sent
95180(c).....	25185.6(g)
95185(a).....	25186.5(b)
95185(b).....	25186.5(c)
95185(c).....	25185.6(d), 1 st sent
95185(d).....	25185.6(d), 2 nd sent
95185(e).....	25185.6(d), 3 rd sent
95185(f).....	25185.6(e)
95185(g).....	25186.5(f)
95200(a).....	25186.1, 3 rd sent
95200(b).....	25186.1, 4 th sent
95205	25186.3
95210	25189.3
95250(a).....	25186(a)
95250(b).....	25186(b)
95250(c).....	25186(c)
95250(d).....	25186(d)
95250(e).....	25186(f)
95255	25186(e)
95260	25186.5(a)
95265	25186.05
95270	25186.1, 1 st and 2 nd sent
95275(a).....	25186.2, 1 st sent
95275(b).....	25186.2, 2 nd sent
95275(c).....	25186.2, 3 rd sent

95275(d).....25186.2, 4th sent
95275(e).....25186.2, 5th sent
95275(f).....25186.2, 6th sent
95280(a).....25186.2.5, 1st sent
95280(b).....25186.2.5, 2nd sent
95280(c).....25186.2.5, 3rd sent
95280(d).....25186.2.5, 4th sent
95280(e).....25186.2.5, 5th sent
9528525186.7
9530025187.1(a)
9530525187.1(b)
9531025187.1(c)
95315(a).....25187.1(d)
95315(b).....25187.1(e)
9532025187.1(f)
9535025187(b)(6)
9535525187(l)
95360(a) and (b)25187(a)(1)
95360(c).....25187(a)(2)
95365(a).....25187(b) (intro para)
95365(b).....25187(b)(2)
95365(c).....25187(b)(3)
95365(d).....25187(b)(4), 1st sent
95365(e).....25187(b)(4), 2nd sent
9537025187(b)(1)
9537525187(b)(5)
9538025187(c)
9538525187(d)
95390(a).....25187(e), 25187(f) 2nd sent, 25187(f)(1), 25187(f)(2)(A) 1st sent
95390(b).....25187(f)(2)(A), 2nd sent
95390(c).....25187(g), 1st sent
95390(d).....25187(g), 2nd sent
9539525187(h)
9540025187(i)
95405(a).....25187(j)(1)
95405(b).....25187(j)(2)
95405(c).....25187(k)
95410(a).....25187(m)
95410(b).....25187(n)
95410(c).....25187(o)
95415(a).....25187(p), 1st sent
95415(b).....25187(p), 2nd sent
9542025187(q)
9545025187.3(a)
95455(a).....25187.3(b)
95455(b).....25187.3(d)
95460(a).....25187.3(c)(1)

95460(b).....	25187.3(c)(2)(A)
95460(c).....	25187.3(c)(2)(B), 1 st sent
95460(d).....	25187.3(c)(2)(B), 2 nd sent
95465	25187.3(e)
95470	25187.3(f), 1 st sent
95475	25187.3(f), 2 nd sent
95500	25187.5(a)
95505	25187.5(b)
95510	25187.5(c)
95515	25187.5(d)
95520	25187.5(e)
95550	25187.6(h)
95555	25187.6(a)
95560	25187.6(b)
95565	25187.6(c)
95570	25187.6(d)
95575	25187.6(e)
95580(a).....	25187.6(f)
95580(b).....	25187.6(g)
95600	25187.8(a)
95605	25187.8(h), 1 st sent
95610(a).....	25187.8(b), 1 st sent
95610(b).....	25187.8(b), 2 nd sent
95610(c).....	25187.8(b), 3 rd sent
95610(d).....	25187.8(e), 2 nd sent
95615	25187.8(h), 2 nd sent
95620	25187.8(c)
95625	25187.8(d)
95630	25187.8(e), 1 st sent
95635	25187.8(g)(2)
95640	25187.8(f), 1 st sent
95645	25187.8(f), 2 nd sent
95650	25187.8(g)(1)
95655	25187.8(i)
95700	25193
95705	25194
95710	25194.5
95715	25192
95720	25187.2
95800	25182
95805	25183
95810	25184
95815	25189.1
95850	25189(a)
95855	25189(b)
95860	25189(c)
95865	25189(d)

95870	25189(e)
95875	25189(f)
95880	25189(g)
95900	25189.2(a)
95905	25189.2(b)
95910	25189.2(c)
95915	25189.2(d)
95920	25189.2(e)
95925	25189.2(f)
95930	25189.2(g)
95950	25180.7
95955	25189.5
95960	25189.6
95965	25189.7
95970	25190
95975	25185.6(i)
95980	25191
95985	25195
96000	25189.4
96005	25196
96010	25181.5
96015	25196.1
96020	25188

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapter 6.5 of Division 20 of the Health and Safety Code, the Legislature directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2024 Cal. Stat. res. ch. 138. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.5, the Commission has identified the substantive issues listed below for possible future study. Unless otherwise indicated, all statutory citations refer to provisions of the Health & Safety Code. All references to proposed provisions refer to provisions of the proposed legislation in this recommendation.

- (1) Should the provisions defining different types of violations (see proposed Sections 83115, 83120, and 83255, which define “class I violation,” “class II violation,” and “minor violation,” respectively) be revised for consistency and clarity?
- (2) Should the definition of “treatment” (proposed Section 83370) be restated for clarity?
- (3) Should the use of terms that are undefined in proposed Division 46, but are defined in Part 2 of Division 45, be addressed by incorporating the definitions from Part 2 of Division 45 by reference (either individually or globally)?
- (4) Should proposed Section 83550, which specifies materials that the department is obligated to post on its website, be revised to eliminate obsolescence (see DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f), p. 31 (January 8, 2018))?
- (5) Should the content of parentheticals incorporated in statutory references to the Administrative Procedure Act in California codes be standardized?

