

**CALIFORNIA CUPA FORUM BOARD
LEGISLATIVE CONCEPTS
DECEMBER 2022**

Item #	Topic	Amendment	Page	Current Bill with proposal
Concept # 1	1. CHAPTER 6.95 RETAIL EXEMPTION	This amendment further clarifies consumer Product and provides the UPA with authority to determine what consumer products at a retail facility must be disclosed.	Pages 2 to 3	AB2059
Concept # 2 Technical Bill	2. H&SC CLEAN UP	Various minor corrections to H&SC A. RMP Submission B. CalARP Preliminary Determination of Risk C. HMBP MAP Requirements D. ERM Requirements & Clarification E. UPA Permit Revocation, Issuance, and Suspension F. HMBP Clarification for Exemptions of Refrigerant Gases, Tanks on Motorized Vehicles and Equipment, and Carbon Dioxide & Asphyxiant Mixtures G. UST Emergency Generator Definition Update	Pages 4 to 27 Page 4 Page 5 to 8 Page 9 Page 10 to 16 Page 16 to 21 Page 22 to 24 Page 25 to 26	No Bill Assigned
Concept # 3	3. HMBP – RECORD KEEPING	Requires suppliers of hazardous materials, under certain conditions, to maintain records of hazmat sales and make them available to the UPA's. Provides UPA's with authority to require handlers to provide information on hazardous materials movement.	Page 27 to 29	AB2059

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<p style="text-align: center;">TOPIC 1</p> <p style="text-align: center;">CHAPTER 6.95 RETAIL EXEMPTION</p>

CUPA FORUM BOARD CONTACT: JIM WHITTLE, FRED CHUN, ROYCE LONG

These proposed revisions to the HMBP Retail Exemption are intended to do the following:

1. Help clarify what qualifies as a consumer product;
2. Establish that hazardous materials which are consumer products only qualify for the retail exemption if sales of that product are directly to the end user, thereby excluding sales that are not to the end user;
3. Exclude from the retail exemption, higher hazard consumer products that are stored in quantities three times the standard reporting thresholds;
4. Give the UPA the authority to exclude any consumer product from the retail exemption, which otherwise meets the conditions of the retail exemption, if the material is stored at or above standard reporting thresholds and the UPA determines that storage of the material poses a significant potential hazard.

Health and Safety Code

Section 25501

(j) "Consumer product" means a commodity used for personal, family, or household purposes, or is present in the same form, concentration, and quantity as a product prepackaged for distribution to ~~and use by the general public.~~ **a consumer for personal, family or household purposes. Products that are not typically sold for personal, family or household use shall not meet the definition of Consumer Product.**

(q) "Retail establishment" means a business that sells consumer products prepackaged for **direct** distribution to, ~~and intended for use by,~~ the **end user** general public. A retail establishment may include storage areas or storerooms in establishments that are separated from shelves for display areas but maintained within the physical confines of the retail establishments. A retail establishment does not include a pest control dealer, as defined in Section 11407 of the Food and Agricultural Code.

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**Health and Safety Code
Section 25507**

(b) The following hazardous materials are exempt from the requirements of this section:

(5) Hazardous material **that meets the definition of a Consumer Product contained solely in a consumer product**, handled at, and found in, a retail establishment and intended for **direct** sale to, ~~and for the use by,~~ the **end user** public. The exemption provided for in this paragraph shall not apply to a consumer product handled at the facility **which** that manufactures that product, or a separate warehouse or distribution center of that facility **where there are no direct sales to consumers**, or where a product is dispensed on the retail premises. **The exemption provided for in this paragraph shall not apply to a consumer product sold at a retail establishment that has any NFPA or HMIS rating of 3 or 4 and is stored, at any time, in quantities of 165 gallons (liquid), 600 cubic feet (gas), or 1500 pounds (solid). If the UPA determines that a consumer product stored at a retail establishment is stored at or above reportable thresholds, as defined in section 25507(a) of this chapter, and poses a significant potential hazard, the UPA may require the product to be reported in accordance with this chapter.**

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**TOPIC 2
HEALTH & SAFETY CODE CLEANUP (TECHNICAL CONCEPT)
AKA OMINBUS BILL**

A. RMP SUBMISSION (H&SC 25536)

This statute conflicts with current regulations in CCR Title 19 Section 2745.1(d) that require a California Accidental Release Prevention Program (CalARP) stationary source submit a Risk Management Plan (RMP) to the Unified Program Agency (UPA) prior to the date a regulated substance is present in a process over the threshold quantity. The statute allows CalARP stationary sources that store a regulated substance above the threshold quantity to operate without submitting a RMP until identified by the UPA. Once they are identified by the UPA this statute allows them a minimum of 12 months to operate without a RMP after one has been requested by the UPA. Regulated substances pose a significant threat to Human Health/Safety and the Environment and the current statute allows a stationary source that would otherwise be covered under the CalARP program to operate without complying with the regulations to prevent a release. These same CalARP stationary sources also operate at a significant economic advantage over their competitors. The proposed changes would make the statute consistent with the regulations, help prevent releases of regulated substances at CalARP stationary sources, and eliminate the economic advantage of non-compliance.

**HEALTH AND SAFETY CODE
Section 25536.**

25536. (a) A person or a stationary source with one or more covered processes shall comply with the requirements of this article no later than the latest date specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter 7 of Title 40 of the Code of Federal Regulations.

~~(b) If the administering agency makes a determination pursuant to Section 25534 that a person or stationary source is required to prepare and submit an RMP, the person or stationary source shall submit the RMP in accordance with a schedule established by the administering agency after consultation with the stationary source. The administering agency shall not require an RMP to be submitted earlier than 12 months or later than three years after the owner or operator has received a notice of that determination from the administering agency~~ A stationary source with one or more covered processes shall comply with the provisions of this article and shall submit an RMP to the administering agency prior to the date in which the regulated substance is first present in a process above the listed threshold quantity, as listed in the California Code of Regulations, Title 19, Section 2770.5, except as provided in Section 25534.

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**B. CALARP PRELIMINARY DETERMINATION OF RISK
(H&SC 25534)**

The current statute requires that a Unified Program Agency (UPA) make a preliminary risk determination as to whether a stationary source may pose a regulated substance accident risk. A stationary source is already required to comply with the CalARP requirements if they store a regulated substance above the threshold quantity regardless of their accident risk. A risk determination would only be necessary if the UPA needs to justify a change to the stationary source program level or justify that the stationary source be exempted from the requirements of this article. This proposed change would eliminate the requirement for the UPA to conduct a preliminary risk determination and instead allow for the risk determination to be conducted when necessary.

The current statute uses the language significant likelihood. Significant is not defined. The proposed change would remove significant.

HEALTH AND SAFETY CODE

Section 25534.

25534. (a) For any stationary source with one or more covered processes, the administering agency ~~shall~~may make a ~~preliminary~~ determination as to whether there is a ~~significant~~ likelihood that the use of regulated substances by a stationary source may pose a regulated substances accident risk.

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**B. CALARP PRELIMINARY DETERMINATION OF RISK
(H&SC 25534)**

The current statute states that if a Unified Program Agency (UPA) makes a preliminary risk determination as to whether a stationary source poses a regulated substance accident risk they shall require the stationary source to prepare and submit a Risk Management Plan (RMP). A stationary source is already required to comply with the CalARP requirements and submit a RMP if they store a regulated substance above the threshold quantity regardless of their accident risk. Submittal of an RMP is only one of the requirement of the CalARP program. It would not be logical to require a stationary source to only submit an RMP. The proposed change to this section would remove the language requiring the stationary source submit an RMP.

The current statute allows the UPA to reclassify the covered process from Program 2 to Program 3 if there is a likelihood of a regulated substance accident risk. The language does not include any timeframes specifying when the stationary source must meet the higher program level requirements. The proposed change would allow the stationary source up to 12 months to comply with the higher program level requirements.

The current statute uses the language significant likelihood. Significant is not defined. The proposed change would remove significant.

HEALTH AND SAFETY CODE

Section 25534.

25534. (b)(1) If the administering agency determines that there is a **significant** likelihood of a regulated substances accident risk pursuant to this subdivision, it ~~shall require the stationary source to prepare and submit an RMP, or~~ may reclassify the covered process from program 2 to program 3, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

(A) If the administering agency reclassifies a covered process to a higher program level the stationary source shall comply with all requirements applicable to the higher program level within 12 months of being notified of the reclassification by the administering agency.

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**B. CALARP PRELIMINARY DETERMINATION OF RISK
(H&SC 25534)**

The current statute allows a Unified Program Agency (UPA) to exempt stationary sources from submitting an RMP if there is not a likelihood of a regulated substance accident risk. However, submittal of an RMP is only one of the requirements of the CalARP program. It would not be logical to exempt a stationary source from submitting an RMP but at the same time requiring they meet all other CalARP requirements. It appears that the intent of the current language is to exempt the stationary source from all of the CalARP requirements and not just submittal of the RMP. The proposed change to this section revises the current language to exempt the stationary source from all CalARP requirements. A related proposed change would allow for the UPA to revoke such an exemption if circumstances change and there becomes a likelihood of a regulated substance accident risk at the stationary source.

The current statute uses the language significant likelihood. Significant is not defined. The proposed change would remove significant.

HEALTH AND SAFETY CODE

Section 25534.

25534. (b)(2) If the administering agency determines that there is not a **significant** likelihood of a regulated substances accident risk pursuant to this subdivision, it may do either of the following:

(A) ~~Require the preparation and submission of an RMP, but need not do so if it determines that the likelihood of a regulated substances accident risk is remote, unless otherwise required by federal law.~~
Exempt the stationary source from the provisions of this article.

(i) If the administering agency determines there is a likelihood of a regulated substance accident risk it may revoke the exemption at any time.

(ii) If the administering agency revokes the exemption the stationary source must comply with all applicable requirements of this article and Chapter 4.5, Division 2, Title 19 of the California Code of Regulations, within 12 months.

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**B. CALARP PRELIMINARY DETERMINATION OF RISK
(H&SC 25534)**

The current statute requires that the Unified Program Agency (UPA) consult with the Department of Food and Agriculture or the local agricultural commissioner to evaluate whether the current Risk Management Plan (RMP) is adequate in relationship to the regulated substance risk. The language does not specify what is to be done if the RMP is not adequate or what would be done to remedy the RMP. The RMP is a document that outlines the stationary source accidental release prevention program and the CalARP regulations already specify in great detail what it must include. Beyond adding more language to the RMP this requirement would not provide any additional safeguards in preventing releases. However, the Department of Food and Agriculture or the local agricultural commissioners do have extensive experience in dealing with pesticides. The proposed language would instead require the UPA to consult with either of these agencies when determining the reasonable likelihood that the use of the pesticides by a farm or nursery poses a regulated substance accident risk. This would aid the UPA when considering to exempt or alter the stationary source program level for a regulated pesticide.

The current statute references the definition of economic poison in Section 12753 of the Food and Agriculture Code. Economic poison no longer exists in Section 12753 and has been changed to pesticide. The proposed language would change the language economic poison to pesticide.

HEALTH AND SAFETY CODE

Section 25534.

25534. (b)(3) If the administering agency determines that ~~an economic poison~~ a pesticide, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a regulated substances accident risk pursuant to this article, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate ~~whether the current RMP is adequate in relation to the regulated substances accident risk~~ the reasonable likelihood that the use of the pesticide by a farm or nursery may pose a regulated substances accident risk. This paragraph does not limit the authority of an administering agency to conduct its duties under this article, or prohibit the exercise of that authority.

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C. HAZARDOUS MATERIALS BUSINESS PLAN MAP REQUIREMENTS (H&SC 25505(A)(2))

Many Unified Program Agencies (UPAs) are being cited (deficiency or observation) on their evaluations from the State Agencies with Unified Program responsibilities for businesses not fully complying with the site map requirements. Many UPAs will accept a less comprehensive site map based on the facilities relative off-site risk and the needs of their jurisdictions emergency responders. Obtaining a site map that contains all current required elements places an unreasonable burden on UPA staff and regulated businesses with limited benefit. The proposed changes would clarify that some elements are not required if they are not present.

The current language already provides a process for each individual UPA to adopt a local ordinance that requires addition site map information if they choose (Chapter 6.95, §25505(a)(2).)

HEALTH AND SAFETY CODE

Section 25505

25505(a)(2) A site map that contains north orientation, ~~loading areas, internal roads,~~ adjacent streets, ~~storm and sewer drains,~~ access and exit points, ~~emergency shutoffs,~~ evacuation staging areas for staffed facilities, hazardous material handling and storage areas, emergency response equipment, and if present, loading areas, internal roads, storm and sewer drains, and emergency shutoffs, as well as and additional map requirements the governing body of the unified program agency finds necessary. Any locally required additional map requirements shall be adopted by local ordinance. This ordinance and related public processes are subject to the limitations on the disclosure of hazardous material location information specified in subdivision (b) of Section 25509. The unified program agency shall notify the secretary both before publishing a proposed ordinance to require additional map requirements and within 30 days after those requirements are adopted. A site map shall be updated to include the additional information required pursuant to the local ordinance no later than one year after adoption of the local ordinance.

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

Changes made to clarify the differing requirements between marking containers of ERM during accumulation and marking/labeling/placarding materials for DOT shipment. Clarifies that until such time as the ERM is actually either recycled onsite or offered for shipment offsite, it needs to be marked just as a HW, except to read ERM.

HEALTH AND SAFETY CODE

Section 25143.9(a).

A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2 , unless all of the following requirements are met:

(a) **Until such time as the material is recycled, any container, tank or containment building holding a recyclable material shall be** ~~If the material is held in a container or tank, the container or tank is marked in accordance with the requirements of section 66262.15, 66262.16, or 66262.17, as applicable, of Title 22, California Code of Regulations, except that the container, tank or containment building shall be marked clearly with the words "Excluded Recyclable Material" instead of the words "Hazardous Waste".~~ **If the material is to be recycled at an offsite location, it shall additionally be** labeled, marked, and placarded in accordance with the department's hazardous waste ~~labeling, marking, and placarding~~ requirements ~~which are as~~ applicable to generators , ~~except that the container or tank shall be labeled or marked clearly with the words "Excluded Recyclable Material" instead of the words "Hazardous Waste," and manifest document numbers are not applicable.~~ If the material is used oil, the containers, aboveground tanks, and fill pipes used to transfer oil into underground storage tanks shall also be labeled or clearly marked with the words "Used Oil".

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

Clarifies that if the ERM is generated in large enough quantities, it is subject to disclosure via the HMBP submitted via CERS. The HMBP submittal via CERS will include an emergency plan to satisfy the equivalency with federal recycling requirements. Further clarifies that if the ERM is NOT generated in quantities that would require HMBP submittal, the generator of the ERM is required to have an emergency plan, no less stringent in scope, than that required of hazardous waste generators.

HEALTH AND SAFETY CODE

Section 25143.9(b).

A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2 , unless all of the following requirements are met:

(b) **The material shall be addressed in** a business plan that meets the requirements of **Chapter 6.95 of California Health and Safety Code, Article 1, Section 25504 for the location at which it is generated. If the quantity of the recyclable material is not enough to otherwise require a business plan, the business shall ensure that an emergency plan** including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504, which specifically address the material or that meets the department's emergency response and contingency requirements which are applicable to generators of hazardous waste **is available at the site.**

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

Cleans up section to take one long sentence with multiple clauses and make it three separate subsections. (1) has no change to existing language. (2) was created to provide rule IF a local ordinance does not exist. (3) addresses the subclause "including, but not limited to" regarding containment areas. (c)(3) is not different in implementation from the original language, and as such is not relevant to containment of storage areas with containers or waste piles, neither of which have any containment requirements in Chapter 15 (ISD standards).

HEALTH AND SAFETY CODE

Section 25143.9(c).

A recyclable material shall not be excluded from classification as a waste pursuant to **subdivision (b)** or **(d) of Section 25143.2** , unless all of the following requirements are met:

(c)(1) The material shall be stored and handled in accordance with all local ordinances and codes, including, but not limited to, fire codes, governing the storage and handling of the hazardous material.

(2) If a local jurisdiction does not have an ordinance or code regulating the storage of the material, ~~including, but not limited to, an ordinance or code requiring secondary containment~~ the material shall be stored in tanks, waste piles, or containers meeting the department's interim status regulations ~~establishing design standards~~ applicable to tanks, waste piles, or containers storing hazardous waste.

(3) If a local jurisdiction does not have an ordinance or code requiring secondary containment for hazardous materials storage areas, the material shall be stored in tanks, waste piles, or containers meeting the department's interim status regulations applicable to tanks, waste piles, or containers storing hazardous waste.

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

Reworded to clarify that RMR is required if you “generate” more than 100 kg of ERM in ANY month. Also references new (b) which clarifies reporting due dates and reporting cycle times in place of “by July 1 of every other year” but does not define the window of data to be reported. Also cleans up reporting by referencing the state’s info management system (consistent with HMBP language) requiring posting to CERS.

HEALTH AND SAFETY CODE

Section 25143.10(a).

(a) Except as provided in subdivisions ~~(e) and (f)~~ **and (g)**, any person who **generates or** recycles ~~more than 100 kilograms per month of recyclable~~ a material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 shall **submit the following information using the format established pursuant to subdivision (e), to the statewide information management system , on or before July 1, 1992, and every two years thereafter, provide to the local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180, all of the following information, using the format established pursuant to subdivision (d), in writing:**

- (1) The name, site address, mailing address, and telephone number of the owner or operator of any facility that recycles the material.
- (2) The name and address of the generator of the recyclable material.
- (3) Documentation that the requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including, but not limited to, all of the following:
 - (A) Where a person who recycles the material is not the same person who generated the recyclable material, documentation that there is a known market for disposition of the recyclable material and any products manufactured from the recyclable material.
 - (B) Where the basis for the exclusion is that the recyclable material is used or reused to make a product or as a safe and effective substitute for a commercial product, a general description of the material and products, identification of the constituents or group of constituents, and their approximate concentrations, that would render the material or product hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a waste, and the means by which the material is beneficially used.

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

New section, enacted to replace and clarify old subdivision (a) language "on or before July 1, 1992, and every two years after" which clearly shows a two-year submittal cycle, but does not clearly delineate the window from which the data is drawn. Timelines now provide that report covers activities Jan1, even year through Dec 31, odd year, with the report due 6 months after close of the data window (to allow generators to obtain from offsite recyclers the information).

NEW LANGUAGE

HEALTH AND SAFETY CODE

Section 25143.10(b).

(b) For those facilities that recycle more than 100 kilograms in any month, the information required in subdivision (a) shall be re-submitted by July 1 of each even numbered year, and shall cover all recycling activities from January 1 of the prior even numbered year through December 31 of the previous year (e.g. Jan 1, 2018 through Dec 31, 2019).

Relettered for sequence only, no other changes

HEALTH AND SAFETY CODE

Section 25143.10(c).

~~(b)~~ **(c)** Except as provided in Section 25404.5, the governing body of a city or county may adopt an ordinance or resolution pursuant to Section 101325 to pay for the actual expenses of the activities carried out by local officers or agencies pursuant to subdivision (a).

Relettered for sequence. Clean up source of form (from CCDEH to UPAs) to allow for clean-up of form as needed. Also change distribution from CCDEH to form being available on CERS and containing all Data Dictionary elements that are pertinent.

HEALTH AND SAFETY CODE

Section 25143.10(d).

~~(c)~~ **(d)** If a person who recycles material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 is not the same person who generated the recyclable material, the person who ***generates*** recycles the material shall, ~~on or before July 1, 1992, and every two years thereafter,~~ provide a copy of the ***obtain from the recycler any*** information ***necessary to submit a report*** required to be submitted pursuant to subdivision (a) ~~to the generator of the recyclable material.~~

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**D. EXCLUDED RECYCLABLE MATERIALS REQUIREMENT
CLARIFICATIONS (H&SC 25143.9 AND 25143.10)**

Relettered for sequence. Change to require the generator of the recyclable material to be the entity that reports the information. Existing statute requires the recycler to report the information, but when the recycler is out of state, the section is rendered useless. The onus for reporting recycling is moved back to the generator of the material and made enforceable.

HEALTH AND SAFETY CODE

Section 25143.10(e).

~~(d)~~ **(e)** The person providing the information required by subdivision (a) shall use a format developed by the ~~California Conference of Directors of Environmental Health~~ **Unified Program Agencies** in consultation with the department. ~~The department shall distribute the format to local officers and agencies authorized to enforce this section pursuant to subdivision (a) of Section 25180~~ **format shall be provided to all users via the statewide information management system and shall include, at a minimum, all pertinent data defined in the Data Dictionary of Regulated Activities in Title 27 of the California Code of Regulations.**

Relettered for sequence only, no other changes

HEALTH AND SAFETY CODE

Section 25143.10(f).

~~(e)~~ **(f)** A recyclable material generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste treatment manufacturing unit is not subject to the requirements of this section, until the recyclable material exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the material remains in the unit for more than 90 days after the unit ceases to be operated for manufacturing, storage, or transportation of the product or raw material.

Relettered for sequence only, no other changes

HEALTH AND SAFETY CODE

Section 25143.10(g).

~~(f)~~ **(g)** A local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180 may exempt from subdivision (a) any person who operates antifreeze recycling units or solvent distillation units, where the recycled material is returned to productive use at the site of generation, or may require less information than that required under subdivision (a) from the person.

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E. UPA PERMIT REVOCATION, ISSUANCE AND SUSPENSION
(H&SC 25404.1.1)

Provides clarifying language for when an UPA may withhold issuance, suspend or revoke a permit. Further clarifies that a submittal of a HMBP into CERS satisfies an application for a unified program facility permit. Adds a penalty for failure to obtain or keep a permit. Lastly, the current statute references section 25514.5 which has been changed to 25515.2 and is no longer correct. The proposed change would cite the correct reference.

HEALTH AND SAFETY CODE

SECTION 25404.1.1

(a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section ~~25514.5~~ **25515.2**.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of **Chapter 6.67** Section 25270.4.5, the violator shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the

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violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(6) If the order is for a violation of Chapter 6.11 (commencing with Section 25404) the violator shall be liable for a civil or administrative penalty of not more than five thousand dollars (\$5,000) per day on which the violation continues.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the

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hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA, may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

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(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) **A unified program facility shall pay a permit fee established by the UPA and any fine or penalty associated with the permit.**

~~(12)~~ A unified program agency may **withhold**, suspend or revoke any unified program facility permit, or an element of a unified program facility permit **as outlined or , for not paying the permit fee or a fine or penalty associated with the permit** in accordance with the procedures specified in this **subdivision section**.

(A) Failure to pay permit fee.

(B) Failure to pay a fine or penalty associated with a permit.

(C) Failure to comply with an order or written notice as specified in Section 25510(e)(1)(A).

~~(23)~~ **(A)** If a **permittee unified program facility** does not comply with a written notice from the **unified program agency UPA** to the **permittee unified program facility** to make the payments specified in paragraph (1) by the required date provided in the notice, the **unified program agency UPA** may **withhold issuance of, may** suspend or revoke the permit or permit element.

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(B) If the unified program facility does not have a valid unified program facility permit or if the permit or permit element is suspended or revoked, the unified program facility permittee shall immediately discontinue operating, as applicable, that facility or function of the facility to which the permit or permit element applies until the permit is issued, reinstated or reissued by the UPA.

(C) Subparagraph (B) does not apply to the owner or operator of a facility who submitted a timely application for a unified program facility permit or for a renewal of the permit, and that facility is in compliance with the requirements of this chapter, but has not yet received the permit or the renewed permit from the UPA. A submittal of facility information into the California Environmental Reporting System constitutes a submittal of an application for purposes of this subparagraph.

~~(3)~~ **(4)** A permittee- **unified program facility** may request a hearing to appeal the **withholding of the issuance of, or the** suspension or revocation of **of** a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(l) This section does not do any of the following:

- (1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.
- (2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.
- (3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

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F. HMBP CLARIFICATION FOR EXEMPTION OF REFRIGERANT GASES, TANKS MOTORIZED VEHICLES AND EQUIPMENT, AND CARBON DIOXIDE & ASPHIXIANT MIXTURES (H&SC 25404.1.1)

UPAs and businesses have mentioned that there is inconsistent application on whether fuel on a vehicle or motorized equipment is subject to the business plan program.

Common examples of these would be propane forklifts, Zamboni's, floor cleaners, boom lifts, scissor lifts, automobiles and trucks.

Exemption would clarify that fuel on the vehicle or motorized equipment would be exempt from the HMBP requirements. Any other spare fuel (such as spare propane tanks) would be subject to HMBP if over threshold amounts.

Addition of comfort cooling of 'occupancies' to clarify that exemption is also for normal office/occupied areas cooling and not just for computer rooms.

Addition of clarification that carbon dioxide and simple asphyxiant mixtures are exempt up to 1,000 cubic feet.

**HEALTH AND SAFETY CODE
SECTION 25507.**

(a) Except as provided in this article, a business shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503 if the business meets any of the following conditions at any unified program facility:

(1) (A) It handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is equal to, or greater than, 55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic feet for compressed gas, as defined in subdivision (i) of Section 25501. The physical state and quantity present of mixtures shall be determined by the physical state of the mixture as a whole, not individual components, at standard temperature and pressure.

(B) For the purpose of this section, for compressed gases, if a hazardous material or mixture is determined to exceed threshold quantities at standard temperature and pressure, it shall be reported in the physical state at which it is stored. If the material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations, all amounts shall be reported in pounds.

(2) It is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code.

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(3) It handles at any one time during the reporting year an amount of a hazardous material that is equal to, or greater than, the threshold planning quantity, under both of the following conditions:

(A) The hazardous material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations.

(B) The threshold planning quantity for that extremely hazardous substance listed in Appendices A and B of Part 355 (commencing with Section 355.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations is less than 500 pounds.

(4) (A) It handles at any one time during the reporting year a total weight of 5,000 pounds for solids or a total volume of 550 gallons for liquids, if the hazardous material is a solid or liquid substance that is classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations solely as an irritant or sensitizer, except as provided in subparagraph (B).

(B) If the hazardous material handled by the facility is a paint that will be recycled or otherwise managed under an architectural paint recovery program approved by the Department of Resources Recycling and Recovery pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code, the business is required to establish and implement a business plan only if the business handles at any one time during the reporting year a total weight of 10,000 pounds of solid hazardous materials or a total volume of 1,000 gallons of liquid hazardous materials.

(5) It handles at any one time during the reporting year cryogenic, refrigerated, or compressed gas in a quantity of 1,000 cubic feet or more at standard temperature and pressure, if the gas is any of the following:

(A) Classified as a hazard for the purposes of Section 5194 of Title 8 of the California Code of Regulations only for hazards due to simple asphyxiation or the release of pressure.

(B) Oxygen, nitrogen, and nitrous oxide ordinarily maintained by a physician, dentist, podiatrist, veterinarian, pharmacist, or emergency medical service provider at their place of business.

(C) Carbon dioxide **or carbon dioxide mixtures with simple asphyxiation gases in subparagraph (A).**

(D) Nonflammable refrigerant gases, as defined in the California Fire Code, that are used in refrigeration systems.

(E) Gases used in closed fire suppression systems.

(6) It handles a radioactive material at any one time during the reporting year in quantities for which an emergency plan is required to be considered pursuant to Schedule C (Section 30.72) of Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of

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Chapter I of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with those regulations.

(7) It handles perchlorate material, as defined in subdivision (c) of Section 25210.5, in a quantity at any one time during the reporting year that is equal to, or greater than, the thresholds listed in paragraph (1).

(8) (A) It handles a combustible metal or metal alloy that is defined as a pyrophoric or water-reactive material in the California Fire Code, in any quantity in raw stock, scrap, or powder form at any time during the reporting year.

(B) It handles a combustible metal, or metal alloy, that is defined as a combustible dust, flammable solid, or magnesium in the California Fire Code, in a quantity in raw stock, scrap, or powder form at any one time during the reporting year that is equal to, or greater than, 100 pounds.

(C) It handles a combustible metal, or metal alloy, that poses an explosive potential, when in molten form, in a quantity at any one time during the reporting year that is equal to, or greater than, 500 pounds.

(b) The following hazardous materials are exempt from the requirements of this section:

(1) Refrigerant gases, other than ammonia or flammable gas in a closed cooling system, that are used for comfort ***cooling for occupancies*** or space cooling for computer rooms.

(2) Compressed air in cylinders, bottles, and tanks used by fire departments and other emergency response organizations for the purpose of emergency response and safety.

(3) (A) Lubricating oil, if the total volume of each type of lubricating oil handled at a facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons, at any one time.

(B) For purposes of this paragraph, "lubricating oil" means oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(4) Both of the following, if the aggregate storage capacity of oil at the facility is less than 1,320 gallons and a spill prevention control and countermeasure plan is not required pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(A) Fluid in a hydraulic system.

(B) Oil-filled electrical equipment that is not contiguous to an electric facility.

(5) Hazardous material contained solely in a consumer product, handled at, and found in, a retail establishment and intended for sale to, and for the use by, the

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public. The exemption provided for in this paragraph shall not apply to a consumer product handled at the facility that manufactures that product, or a separate warehouse or distribution center of that facility, or where a product is dispensed on the retail premises.

(6) Propane that is for on-premises use, storage, or both, in an amount not to exceed 500 gallons, that is for the sole purpose of cooking, heating employee work areas, and heating water within that facility, unless the unified program agency finds, and provides notice to the business handling the propane, that the handling of the on-premises propane requires the submission of a business plan, or any portion of a business plan, in response to public health, safety, or environmental concerns.

(7) Liquid or gaseous fuel in fuel tanks on vehicles and/or motorized equipment. For the purposes of this section, the fuel tank is to be integral for the operation of the vehicle.

(c) In addition to the authority specified in subdivision (e), the governing body of the unified program agency may, in exceptional circumstances, following notice and public hearing, exempt a hazardous material specified in subdivision (n) of Section 25501 from Section 25506, if it is found that the hazardous material would not pose a present or potential danger to the environment or to human health and safety if the hazardous material was released into the environment. The unified program agency shall send a notice to the secretary within 15 days from the effective date of any exemption granted pursuant to this subdivision.

(d) The unified program agency, upon application by a handler, may exempt the handler, under conditions that the unified program agency determines to be proper, from any portion of the requirements to establish and maintain a business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment, or affect the ability of the unified program agency and emergency response personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(e) The unified program agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this article upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(f) The unified program agency shall adopt procedures to provide for public input when approving applications submitted pursuant to subdivisions (d) and (e).

(Amended by Stats. 2021, Ch. 115, Sec. 29. (AB 148) Effective July 22, 2021.)

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G. UST – EMERGENCY GENERATORS DEFINITION UPDATE

There are some emergency generator UST systems within the State that provide fuel for other emergency related equipment besides to a power generator (an emergency generator). Examples of this ancillary equipment are a fire pump or onsite steam generation. The original definition referenced NFPA 72 (National Electrical Code) that was very specific in definition to power generation. Current language excludes some UST systems from this definition where these ancillary equipment are connected. This proposed change is to include other emergency related equipment that may be tied to an emergency generator UST system.

Health and Safety Code 25281.5.

(a) Notwithstanding subdivision (m) of Section 25281, for purposes of this chapter, "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to Part 195 (commencing with Section 195.0) of Subchapter D of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles that are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (y) of Section 25281, "underground storage tank" does not include any of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

(3) Unburied fuel piping connected to an emergency generator tank system, if the owner or operator conducts visual inspections of the piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection

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results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel supply and return piping connected to emergency generator tank systems.

(c) For purposes of this chapter, "emergency generator tank system" means an underground storage tank system that **stores diesel fuel or kerosene that is utilized during a power failure. An emergency generator tank system serves solely to supply fuel to one or more stationary sources of mechanical or electrical power such as an emergency or standby power generator, pumping system, or steam generation system required by applicable Federal, State, or local codes or regulations whenever the primary energy supply is disrupted or discontinued during power outages or natural disaster, or when otherwise needed to respond or avert an emergency.** ~~provides power supply in the event of a commercial power failure, stores diesel fuel or kerosene, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.~~

(Amended by Stats. 2018, Ch. 721, Sec. 5. (AB 2902) Effective January 1, 2019.)

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TOPIC 3 HMBP – RECORD KEEPING
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Contact: Royce Long, Fred Chun

The purpose of this change is to do the following:

1. Enhance the UPA’s ability to identify unpermitted businesses that are handling hazardous materials in excess of disclosable quantities and have not disclosed their inventory in California Environmental Reporting System.
2. Provides authority for the UPA’s to request information about the transfer of hazardous materials. This would address an issue where illicit businesses manufacturing hazardous materials under investigation by the UPA are not required to notify the UPA of the future destination of the hazardous material that could potentially create another illicit business that threatens public safety and first responders.

These changes will enhance the safety of first responders, protect public safety and strengthen community right to know which are the foundations of the existing law.

Health and Safety Code

25505.2 (New Section – Supplier, under certain conditions, to keep records of hazmat sales)

(a) A supplier of any hazardous material must maintain electronic records for the sale or provision of hazardous materials, with an NFPA or HMIS rating of 3 or 4, to a business in quantities equivalent to or exceeding, within any 30 day period, 165 gallons of a liquid, 600 cubic feet of a gas at standard temperature and pressure or 1500 pounds of a solid. These records must be maintained by the supplier for at least five years and must be made immediately available, when requested, by any CUPA or PA throughout the State.

(b) Records referred to in (a) must contain the following information about the business who is purchasing or being provided with the hazardous materials:

(1) Name of business

(2) Business address

(3) Destination address of where the hazardous material will be handled

(4) Date of purchase or provision

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(5) Name of the individual conducting the transaction on behalf of the business

Health and Safety Code

25508.3 (New Section – Handler, if required, must notify UPA of hazmat shipping)

(a) A handler subject to the reporting requirements of this chapter, if directed by any UPA, must notify the UPA if any hazardous materials are to be removed from the storage or handling location and transferred to another location. The handler must disclose to the UPA the following information as directed:

(1) Expected date of transfer

(2) Actual date of transfer

(3) Quantity being transferred

(4) Destination address

(5) Method of shipping

(6) Shipping documentation

(7) Any other information relevant to the transfer and place of destination as requested by the UPA.

Health and Safety Code

Section 25501. (Definitions)

Unless the context indicates otherwise, the following definitions govern the construction of this article:

(s) "Supplier" means, for the purpose of this article, a manufacturer, distributor, wholesaler or retailer who sells or provides hazardous materials to a business.

Health and Safety Code

Section 25500

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(b) The Legislature further finds and declares that this article and Article 2 (commencing with Section 25531) do not occupy the whole area of regulating the inventorying of hazardous materials and the preparation of hazardous materials response plans by businesses, and the Legislature does not intend to preempt any local actions, ordinances, or regulations that impose additional or more stringent requirements on **suppliers of hazardous materials or** businesses that handle hazardous materials. Thus, in enacting this article and Article 2 (commencing with Section 25531), it is not the intent of the Legislature to preempt or otherwise nullify any other statute or local ordinance containing the same or greater standards and protections.