

MEMORANDUM 2025-50

Recodification of Toxic Substances Statutes: Next Portion

The Commission¹ is preparing a nonsubstantive recodification of [Chapter 6.5 \(commencing with Section 25100\) of Division 20 of the Health and Safety Code](#), a chapter addressing multiple aspects of hazardous waste control and related provisions, to improve the organization and expression of the law, pursuant to [2024 Cal. Stat. res. ch. 138](#) (ACR 169, Kalra).²

As Chapter 6.5 contains an unusually large amount of statutory material,³ at each of its meetings the Commission has been evaluating proposed recodification of distinct portions of that chapter for inclusion in an eventual tentative recommendation proposing recodification of the entire chapter.⁴

This memorandum presents a staff draft of the next portion of Chapter 6.5 proposed to be recodified and included in a tentative recommendation. Consistent with prior presented drafts, this draft again includes proposed Commission Comments corresponding to each recodified section, Staff Notes explaining the recodification process and identifying issues seeking public comment, and disposition and derivation tables corresponding to the recodified provisions.

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 Commission recommendations recodifying former Chapter 6.8 of Division 20 were submitted to and thereafter enacted by the Legislature. [Hazardous Substance Account Recodification Act](#) (Preprint – Dec. 2021), [2022 Cal. Stat. ch. 257](#) (AB 2293, Committee on Environmental Safety and Toxic Materials); [Hazardous Substance Account Recodification Act: Conforming Revisions](#) (Preprint – Dec. 2021), [2022 Cal. Stat. ch. 258](#) (AB 2327, Committee on Environmental Safety and Toxic Materials).

³ Chapter 6.5 contains approximately 850 code sections, many of which are quite lengthy, set out in 55 distinct statutory articles. An extrapolation based on the Commission's earlier recodification of former Chapter 6.8 (commencing with Section 25300) of Division 20) of the Health and Safety Code ([2022 Cal. Stat. ch. 257](#) (AB 2293, Committee on Environmental Safety and Toxic Materials)), which contained roughly a fifth the amount of statutory text contained in Chapter 6.5, suggests that a printed final recommendation proposing recodification of Chapter 6.5 may require approximately 1,400 pages in what would likely be two Commission bound volumes.

⁴ Due to the volume of material that will eventually appear in the tentative recommendation, the precise placement of the recodified provisions within the proposed recodification of Chapter 6.5 remains provisional until the tentative recommendation is fully assembled.

If the Commission provisionally approves the content of the presented draft, it will be incorporated and presented to the Commission at a future Commission meeting in a continually updated cumulative draft of a proposed recodification of Chapter 6.5.⁵

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 existing codes.

Comments on any aspect of the attached draft,⁶ including suggestions that a substantive issue raised by a proposed revision should be considered for future study,⁷ are welcome.

GENERAL DRAFTING APPROACH

Consistent with prior draft legislation proposed in this study, the staff continues to take a conservative approach to drafting proposed recodified provisions.⁸ Except as described below, existing statutory text is repeated verbatim in the proposed recodification of the provision.

In accordance with the Commission’s prior decisions in the study, certain minor changes to existing statutory text continue to be made as a matter of course.⁹ However, other than those changes necessarily made to implement the recodification,¹⁰ these minor changes are still shown in the draft in ~~strikeout~~ and underscore.

On occasion, the staff may determine that a provision could be nonsubstantively clarified in a manner that does not allow the improvement to be easily presented using only ~~strikeout~~ and underscore. In those instances, a “clean” revision of the provision is proposed in the draft without ~~strikeout~~ or underscore, but with the original text of the provision presented in a boxed Staff Note following the proposed provision, soliciting public comment on the proposed revision.¹¹

⁵ See e.g., [Memorandum 2025-37](#).

⁶ 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](#).

⁷ 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.” [2024 Cal. Stat. res. ch. 138](#) (ACR 169) Kalra, para. 13.

⁸ Memorandum [2020-13](#), p. 3.

⁹ See Memorandum [2020-13](#), pp. 3-4, [Minutes](#) (May 2020), p. 4; Memorandum [2021-19](#), pp. 3-4.

¹⁰ For example, renumbering and/or redesignating statutory parts, chapters, articles, sections, and components of sections, including cross-references within provisions.

¹¹ See e.g., Staff Note following proposed Section 85655 in the attached draft.

Finally, if the staff identifies an interpretation issue or substantive question presented by the text of an existing section, the issue or question is also raised in a boxed Staff Note following the proposed provision to solicit public comment.

Does the Commission provisionally approve the proposed recodification in the attached draft for inclusion in a future tentative recommendation?

Respectfully submitted,

Steve Cohen
Senior Staff Counsel

PROPOSED ARTICLES 7, 8 AND 9 OF CHAPTER 5
OF PART 4 OF DIVISION 46
OF THE HEALTH & SAFETY CODE

Staff Note. The content of this draft, proposing recodification of a portion of Chapter 6.5 of Division 20 of the Health & Safety Code in a new Division 46 of the Health & Safety Code, is a work in progress, and subject to change. For the current provisional outline of the entire proposed organization of new Division 46, see the draft attached as an exhibit to Memorandum 2025-49.

All proposed changes to existing statutory text in this draft other than technical changes are either shown in strikeout and underscore or described in a Staff Note following the section in which the change is proposed.

Comments. A draft of an official Commission “Comment” follows each proposed code section in the recodification. Comments, which are included in a final Commission recommendation, are phrased as if the corresponding code section had been repealed and replaced with the proposed section. Thus, in Comments, existing code provisions are referred to as “former” provisions.

Comments indicate the source of each recodified code provision, and describe how the recodified provision compares with any predecessor provision. Courts have routinely held that Commission Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

Staff Notes. Some provisions in this draft are followed by one or more “Staff Notes.” Staff Notes are intended to be temporary, and normally will not be included in a Commission final recommendation. Unlike Comments, Staff Notes reflect the current state of the law. Thus, in Staff Notes, code provisions are referred to as “existing” and “proposed” provisions.

Staff Notes flag issues requiring special attention or treatment. When a Staff Note in a draft solicits public comment, it will typically be continued in the Commission’s tentative recommendation as a “Note” calling for that same comment. However, if a Staff Note asks for public comment on a proposed revision and the Commission thereafter decides not to propose the revision, the Staff Note will typically not appear in the tentative recommendation.

Cross-references. In many instances the provisions proposed for recodification in this draft cross-refer to other provisions contained in Chapter 6.5. Where that cross-referenced provision has not yet been included in a recodification draft, the section number in the cross-reference is left unchanged, but shown in bold text. Bracketed text designates cross-references that have been updated in form, but may still require further updating to reflect proposed recodification.

Each of these cross-references will be updated as the draft of the recodification progresses.

Tables. A “disposition table” at the end of this draft identifies in tabular form the disposition of every provision of existing Chapter 6.5 that is included in the draft. Following that table is a “derivation table” identifying the statutory derivation of every new provision in the draft.

Substantive Issues for Possible Future Study. Part of the Legislature’s assignment to the Commission in this study was to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” To the extent a recodified provision in this draft raises such an issue, it will appear in a list following the disposition and derivation tables.

Public comment. The Commission welcomes public comment at any time, on any issue relating to the content of this draft or on 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 ...

7 PART 4. TOXICS REDUCTION

8 ...

9 CHAPTER 5. RULES FOR SPECIFIC PRODUCTS

10 ...

11 Article 7. Mercury-Added Equipment

12 **§ 85610. Definitions**

13 85610. For purposes of this article, the following definitions shall apply:

14 ~~(1)~~ (a) “Mercury-added product” means any product or device that contains
15 mercury.

16 ~~(2)~~ (b)(1) “Mercury-added thermostat” means a product or device that uses a
17 mercury switch to sense and control room temperature through communication with
18 heating, ventilating, or air-conditioning equipment.

19 (2) “Mercury-added thermostat” includes thermostats used to sense and control
20 room temperature in residential, commercial, industrial, and other buildings ~~but~~.

21 (3) “Mercury-added thermostat” does not include a thermostat used to sense and
22 control temperature as part of a manufacturing process.

23 (c) “Mercury diostat” means a mercury switch that controls a gas valve in an oven
24 or oven portion of a gas range.

25 ~~(3)~~ (d)(1) “Mercury relay” means a mercury-added product or device that opens
26 or closes electrical contacts to effect the operation of other devices in the same or
27 another electrical circuit.

28 (2) “Mercury relay” includes, but is not limited to, mercury displacement relays,
29 mercury wetted reed relays, and mercury contact relays.

30 ~~(4)~~ (e)(1) “Mercury switch” means a mercury-added product or device that opens
31 or closes an electrical circuit or gas valve.

32 ~~(A)~~ (2) A mercury switch includes, but is not limited to, ~~mercury~~ all of the
33 following:

- 1 (A) Mercury float switches actuated by rising or falling liquid levels, ~~mercury~~ .
2 (B) Mercury tilt switches actuated by a change in the switch position, ~~mercury~~ .
3 (C) Mercury pressure switches actuated by a change in pressure, ~~mercury~~ .
4 (D) Mercury temperature switches actuated by a change in temperature, ~~and~~
5 ~~mercury~~ .
6 (E) Mercury flame sensors.
7 ~~(B)~~ (3) A mercury switch does not include a mercury-added thermostat or a
8 mercury diostat.
9 ~~(C)~~ “Mercury diostat” means a mercury switch that controls a gas valve in an oven
10 or oven portion of a gas range.
11 **Comment.** Section 85610 continues former Section 25214.8.1(b) without substantive change.

12 **§ 85615. Legislative declarations**

- 13 85615. ~~(a)~~ The Legislature finds and declares all of the following:
14 ~~(1)~~ ~~(a)~~ ~~Once mercury~~ Mercury released into the environment can change to methyl
15 mercury, a highly toxic compound.
16 ~~(b)~~ Methyl mercury is easily taken up in living tissue and bioaccumulates over
17 time, causing serious health effects, including neurological and reproductive
18 disorders in humans and wildlife.
19 ~~(c)~~ ~~Since mercury does not break down in the environment, it~~ Mercury has become
20 a significant health threat to humans and wildlife because it does not break down in
21 the environment.
22 ~~(2)~~ ~~(d)~~ ~~Due to the bioaccumulation of mercury and other contaminants in fish, the~~
23 The California Environmental Protection Agency has issued a warning advising that
24 adults and women who are pregnant or who may become pregnant should limit their
25 fish intake from several state waterways due to the bioaccumulation of mercury and
26 other contaminants in fish
27 ~~(3)~~ ~~(e)~~ Increasingly stringent mercury discharge limits for wastewater treatment
28 plants make the identification and elimination of unnecessary sources of mercury a
29 critical task, because the cost of mercury removal at a wastewater treatment plant is
30 far greater than the societal benefits of continuing use of mercury-containing
31 products, as currently formulated.
32 ~~(4)~~ ~~(f)~~ Thermostats and other switches and relays are among the largest remaining
33 sources of mercury in consumer products that can be legally sold in California.
34 ~~(5)~~ ~~(g)~~ Most thermostats contain 3,000 milligrams of mercury and have a 35-year
35 lifespan.
36 ~~(6)~~ ~~(h)~~ Many other mercury-containing switches hold up to 4 grams of mercury,
37 and mercury relays hold as much as 153 grams.
38 ~~(7)~~ ~~(i)~~ Esophageal dilators contain as much as two pounds of mercury.
39 ~~(8)~~ ~~(j)~~ Mercury thermostats, switches, relays, measuring devices, esophageal
40 dilators, and gastrointestinal tubes ~~are~~ constitute hazardous waste when discarded,
41 ~~and on~~.

1 (k) On and after January 1, 2006, ~~all disposal of mercury thermostat thermostats,~~
2 ~~switch switches, relay relays,~~ measuring device devices, esophageal dilator dilators,
3 and gastrointestinal tube wastes ~~will be prohibited from disposal~~ in a solid waste
4 landfill is prohibited under the regulations adopted pursuant to this ~~chapter~~ division.

5 (†) (l) Economical alternatives to mercury thermostats, relays, switches,
6 measuring devices, esophageal dilators, and gastrointestinal tubes are available for
7 commercial and, when applicable, residential applications.

8 **Comment.** Section 85615 continues former Section 25214.8.1(a) without substantive change.
9 See Sections 85610(d) (“mercury relay”), 85610(e) (“mercury switch”).

10 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
11 25214.8.1(a) in proposed Section 85615 substantively changes the meaning of the existing section.

12 **§ 85620. Mercury-added thermostats**

13 85620. On and after January 1, 2006, a person shall not sell, offer to sell, or
14 distribute for promotional purposes in this state, a mercury-added thermostat, unless
15 the mercury-added thermostat meets either of the following criteria:

16 (a) The mercury-added thermostat will be used for a manufacturing or industrial
17 ~~purposes~~ purpose.

18 (b) The mercury-added thermostat will be used by a blind or visually impaired
19 person.

20 **Comment.** Section 85620 continues former Section 25214.8.2 without substantive change.
21 See Sections 85610(b) (“mercury-added thermostat”).

22 **Staff Note.** The staff welcomes comment on whether the operational date of this provision
23 should continue to be included in the recodification of Section 25214.8.2.
24

25 **§ 85625. Sale or distribution of mercury-added products**

26 85625. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person
27 shall not sell, offer to sell, or distribute for promotional purposes in this state, any
28 of the following new or refurbished mercury-added products:

29 (1) A barometer.

30 (2) An esophageal dilator, bougie tube, or gastrointestinal tube.

31 (3) A flow meter.

32 (4) A hydrometer.

33 (5) A ~~hydrometer~~ or psychrometer.

34 (6) A manometer.

35 (7) A pyrometer.

36 (8) A sphygmanometer.

37 (9) A thermometer.

38 (b) Subdivision (a) does not apply to the sale of a mercury-added product if the
39 use of the product is required under a federal law or federal contract specification,
40 or if the only mercury-added component in the product is a button cell battery.

1 **Comment.** Section 85625 continues former Section 25214.8.3 without substantive change.
2 See Sections 85610(a) (“mercury-added product”).

3 **§ 85630. Prohibited sale or distribution of mercury switch or mercury relay**

4 85630. ~~(a) Except as provided in subdivisions (b) to (e), inclusive, and or in~~
5 ~~Section 25214.8.5, on~~ On or after July 1, 2006, a person shall not sell, offer to sell,
6 or distribute for promotional purposes in this state, a new or refurbished mercury
7 switch or mercury relay individually or as a product component, except as provided
8 in Section 85635, 85640, 85645, 85650, 85655, or 85660.

9 **Comment.** Section 85630 continues former Section 25214.8.4(a) without substantive change.
10 See Sections 85610(c) (“mercury relay”), 85610(d) (“mercury switch”).

11 **Staff Note.** The staff welcomes comment on whether the operational date of this provision
12 should continue to be included in the recodification of Section 25214.8.4(a).

13 **§ 85635. Exemption relating to mercury switch or mercury relay based on specified use as**
14 **component in larger product**

15 85635. ~~Subdivision (a)~~ The prohibition in Section 85630 does not apply if the a
16 mercury switch or mercury relay that is sold, offered to be sold, or distributed for
17 promotional purposes in this state is used to replace a switch or relay that is a
18 component in a larger product in use prior to July 1, 2006, and at least one of the
19 following applies:

20 ~~(1)~~ (a) The larger product is used in manufacturing.

21 ~~(2)~~ (b) The mercury switch or mercury relay is integrated in and not physically
22 separate from other components of the larger product.

23 **Comment.** Section 85635 continues former Section 25214.8.4(b) without substantive change.
24 See Sections 85610(c) (“mercury relay”), 85610(d) (“mercury switch”).

25 **§ 85640. Exemption relating to mercury switch or mercury relay based on federal law or**
26 **federal contract exemption**

27 85640. ~~(e) Subdivision (a)~~ The prohibition in Section 85630 does not apply to the
28 sale of a mercury switch or mercury relay if use of the switch or relay is required
29 under federal law or federal contract specification.

30 **Comment.** Section 85640 continues former Section 25214.8.4(c) without substantive change.
31 See Sections 85610(c) (“mercury relay”), 85610(d) (“mercury switch”).

32 **§ 85645. Exemption relating to mercury switch or mercury relay based on minimal quantity**
33 **of mercury**

34 85645. ~~(d) Subdivision (a)~~ The prohibition in Section 85630 does not apply to a
35 mercury switch or a mercury relay that contains less than 1 milligram of mercury,
36 if the all of the following has occurred:

37 (a) The manufacturer of the mercury switch or relay has notified the department
38 of its plans to operate under an exemption pursuant to this ~~subdivision~~ section.

1 (b) The notification ~~shall be~~ has been resubmitted to the department every three
2 years.

3 (c) The initial and subsequent notifications ~~shall be~~ are signed and dated, and ~~shall~~
4 include all of the following:

5 (1) The name of the manufacturer and the name, position, and contact information
6 for the person who is the manufacturer's contact person on all matters concerning
7 the exemption.

8 (2) An identification and description of the mercury switch or mercury relay to
9 which the exemption applies.

10 (3) A statement that the manufacturer certifies all of the following:

11 (A) The mercury switch or mercury relay is hermetically sealed by the
12 manufacturer.

13 (B) The mercury switch or mercury relay is intended for industrial use in test and
14 measurement instruments or in systems for monitoring and control applications.

15 (C) There is no substantially equivalent nonmercury alternative technology for
16 the intended use of the mercury switch or mercury relay, considering all aspects of
17 electrical performance, size, power consumption, product life, and cost.

18 (D) ~~(4)~~ The manufacturer, individually, or in conjunction with an industry or trade
19 group, has developed and implemented an ongoing program ~~for the~~ incorporating
20 the following:

21 (i) The proper end-of-life collection, transportation, and management of exempted
22 mercury switches or relays sold in this state, including the removal of the mercury
23 switch or mercury relay from the product in which it is contained.

24 ~~(2) The program includes a~~ (ii) A consumer information component to ensure that
25 users of the products that contain the mercury switches or mercury relays are aware
26 of available collection opportunities and legal requirements for management of the
27 mercury switch or mercury relay, and the products that contain the mercury switches
28 or mercury relays, once the mercury switch or mercury relay, or the product
29 containing the mercury switch or mercury relay, becomes a waste.

30 (E) The manufacturer recognizes that the exemption provided by this ~~subdivision~~
31 section becomes null and void if and when either of the following occurs:

32 (i) The manufacturer fails to submit a new exemption notification meeting the
33 requirements of this subdivision within three years following submission of the prior
34 exemption notification.

35 (ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no
36 longer satisfied.

37 **Comment.** Section 85645 continues former Section 25214.8.4(d) without substantive change.

38 See Sections 83160 ("department"), 85610(c) ("mercury relay"), 85610(d) ("mercury switch").

39 **§ 85650. Exemption relating to mercury switch or mercury relay based on resale of**
40 **refurbished imaging and therapy system**

41 85650. ~~(e) Subdivision (a)~~ The prohibition in Section 85630 does not apply to the
42 resale of a refurbished imaging and therapy system utilized for medical diagnostic

1 purposes that includes a mercury switch or mercury relay if the manufacturer of the
2 imaging and therapy system has ~~notified~~ submitted a signed and dated notification
3 to the department of its plans to operate under an exemption pursuant to this
4 subdivision. The notification shall be signed and dated, and shall include section
5 that includes all of the following:

6 ~~(1)~~ (a) The name of the manufacturer ~~and the~~ of the imaging and therapy system.

7 (b) The name, position, and contact information for the person who is the
8 manufacturer's contact person on all matters concerning the exemption.

9 ~~(2)~~ (c) An identification and description of the imaging and therapy system to
10 which the exemption applies.

11 ~~(3)~~ (d) A statement that the manufacturer certifies all of the following:

12 ~~(A)~~ (1) The mercury switch or mercury relay is integrated in, and not physically
13 separate from, other components of the larger product.

14 ~~(B)~~ (2) The larger product was initially manufactured prior to July 1, 2006.

15 ~~(C)~~ (3) The manufacturer, individually, or in conjunction with an industry or trade
16 group, has developed and implemented an ongoing program for the proper end-of-
17 life collection, transportation, and management of mercury switches or mercury
18 relays contained in exempted imaging and therapy systems sold in this state,
19 including ~~the~~ both of the following:

20 (A) The proper removal of the mercury switch or mercury relay from the product
21 in which it is contained.

22 ~~(2)~~ The program includes a (B) A consumer information component to ensure that
23 users of the products that contain the mercury switches or mercury relays are aware
24 of available collection opportunities and legal requirements for management of the
25 mercury switch or mercury relay, and the products that contain the mercury switches
26 or mercury relays, once the switch or relay or the product becomes a waste.

27 ~~(D)~~ (4) The manufacturer recognizes that the exemption provided by this
28 subdivision becomes null and void if and when any of the conditions set forth in
29 subparagraphs (A) and (B) paragraphs (1) and (2) are no longer satisfied.

30 **Comment.** Section 85650 restates former Section 25214.8.4(e) without substantive change.

31 See Sections 83160 ("department"), 85610(c) ("mercury relay"), 85610(d) ("mercury switch").

32 **Staff Note.** Proposed Section 85650 would restate existing Section 25214.8.4(e) to improve
33 readability. The existing section provides:

34 25214.8.4(e). Subdivision (a) does not apply to the resale of a refurbished imaging and therapy
35 system utilized for medical diagnostic purposes that includes a mercury switch or relay if the
36 manufacturer of the imaging and therapy system has notified the department of its plans to operate
37 under an exemption pursuant to this subdivision. The notification shall be signed and dated, and
38 shall include all of the following:

39 (1) The name of the manufacturer and the name, position, and contact information for the person
40 who is the manufacturer's contact person on all matters concerning the exemption.

41 (2) An identification and description of the imaging and therapy system to which the exemption
42 applies.

43 (3) A statement that the manufacturer certifies all of the following:

1 (A) The mercury switch or relay is integrated in, and not physically separate from, other
2 components of the larger product.

3 (B) The larger product was initially manufactured prior to July 1, 2006.

4 (C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has
5 developed and implemented an ongoing program for the proper end-of-life collection,
6 transportation, and management of mercury switches or relays contained in exempted imaging and
7 therapy systems sold in this state, including the removal of the mercury switch or mercury relay
8 from the product in which it is contained.

9 (2) The program includes a consumer information component to ensure that users of the products
10 that contain the mercury switches or relays are aware of available collection opportunities and legal
11 requirements for management of the mercury switch or relay, and the products that contain the
12 mercury switches or relays, once the switch or relay or the product becomes a waste.

13 (D) The manufacturer recognizes that the exemption provided by this subdivision becomes null
14 and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer
15 satisfied.

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

17 **§ 85655. Exemption relating to mercury switch or mercury relay granted by department**

18 85655. (a) A The prohibition in Section 85630 does not apply to a product
19 containing a mercury switch or a mercury relay is exempt from subdivision (a) of
20 Section 25214.8.4, if the manufacturer of the product, or a trade group representing
21 the manufacturer, has obtained an exemption, pursuant to the process described in
22 subdivision (b), for the product pursuant to the process described in subdivision (d).

23 (b) An exemption from the prohibition in Section 85630 granted under
24 subdivision (b) pursuant to this section may apply to all or only to limited uses of
25 the product.

26 (c) An exemption from the prohibition in Section 85630 granted under subdivision
27 (b) pursuant to this section also applies to the sale to the product manufacturer of
28 the mercury switch or relay to be contained in the product covered by the exemption.

29 (b) (d) The department shall grant or renew an exemption from subdivision (a) of
30 Section 25214.8.4 the prohibition in Section 85630 for a period of three years only
31 if all of the following conditions are met:

32 (1) The manufacturer of the product, or a trade group representing the
33 manufacturer, submits a request for an initial or renewed exemption to the
34 department that specifies the use or uses of the product for which an exemption is
35 requested, along with supporting information that complies with the requirements
36 set forth in subdivision (e). includes all of the following:

37 (A) The name of the manufacturer, or the names of the trade group and the
38 manufacturers represented by the trade group, requesting the exemption.

39 (B) The name, position, and contact information for the person who is the
40 manufacturer's or trade group's contact person on all matters concerning the
41 exemption.

42 (C) An identification and description of the product, and the use or uses of the
43 product, for which the exemption is requested.

1 (D) An identification and description of the mercury switch or mercury relay,
2 including identification of the manufacturer of the mercury switch or mercury relay,
3 and an explanation of the need for, and functioning of, the mercury switch or
4 mercury relay in the product.

5 (E) (i) For each use for which an exemption is requested, information that fully
6 and clearly demonstrates there is no technically feasible alternative to the use of the
7 mercury switch or mercury relay in the product, for the purpose intended, at a
8 reasonable cost.

9 (ii) This information shall include, but is not limited to, a description of past,
10 current, and planned future efforts to seek or develop those alternatives, a
11 description of all alternatives that have been considered, and an explanation of the
12 technical or economic reasons as to why each alternative is not satisfactory.

13 (F) Information that fully and clearly demonstrates that the mercury switch or
14 mercury relay or the product is constructed so as to prevent the release of mercury
15 to the environment.

16 (G) A copy of all similar exemption requests, including supporting
17 documentation, submitted by the applicant to another state, and a copy of that state's
18 response to the exemption request.

19 (H) (i) A feasible, effective, detailed, and complete plan for the proper collection,
20 transportation, and management of the product at the end of its useful life, including
21 removal and proper management of the mercury switch or mercury relay contained
22 in the product, and information fully and clearly demonstrating that the
23 manufacturer, individually or in conjunction with an industry or trade group, is
24 committed to and capable of implementing the plan.

25 (ii) The plan shall include an education and outreach component to ensure that
26 users of the product are aware of available collection opportunities and legal
27 requirements for management of the product once it becomes a waste.

28 ~~(2) A~~ The request made by the manufacturer or trade group may submit a request
29 ~~only pursuant to paragraph (1) is for a product and use for which there is no technical~~
30 ~~feasible alternative, available at a reasonable cost, to the use of the mercury switch~~
31 ~~or mercury relay in the product for purposes of that use, for the purpose intended,~~
32 ~~at a reasonable cost.~~

33 ~~(2) (3)~~ The supporting information submitted by the manufacturer or trade group
34 pursuant to paragraph (1) demonstrates that the product is eligible for the exemption.

35 ~~(3) (4)~~ The manufacturer or trade group requesting the exemption pursuant to
36 paragraph (1) enters into a cost reimbursement agreement with the department,
37 pursuant to subdivision ~~(d)~~ (e), and complies with the terms of that agreement.

38 ~~(e) The supporting information that a manufacturer or trade group submits to the~~
39 ~~department, before the department may grant an exemption pursuant to subdivision~~
40 ~~(b), shall include all of the following:~~

41 ~~(1) The name of the manufacturer, or the trade group and the manufacturers~~
42 ~~represented by the trade group, requesting the exemption and the name, position,~~

1 and contact information for the person who is the manufacturer's or trade group's
2 contact person on all matters concerning the exemption.

3 ~~(2) An identification and description of the product, and the use or uses of the~~
4 ~~product, for which the exemption is requested.~~

5 ~~(3) An identification and description of the mercury switch or mercury relay,~~
6 ~~including identification of the manufacturer of the switch or relay, and an~~
7 ~~explanation of the need for, and functioning of, the mercury switch or mercury relay~~
8 ~~in the product.~~

9 ~~(4) For each use for which an exemption is requested, information that fully and~~
10 ~~clearly demonstrates that there is no technically feasible alternative, available at a~~
11 ~~reasonable cost, to the use of the mercury switch or mercury relay in the product for~~
12 ~~purposes of that use. This shall include, but is not limited to, a description of past,~~
13 ~~current, and planned future efforts to seek or develop those alternatives, and a~~
14 ~~description of all alternatives that have been considered and an explanation of the~~
15 ~~technical or economic reasons as to why each alternative is not satisfactory.~~

16 ~~(5) Information that fully and clearly demonstrates that the switch or relay or the~~
17 ~~product is constructed so as to prevent the release of mercury to the environment.~~

18 ~~(6) A feasible, effective, detailed, and complete plan for the proper collection,~~
19 ~~transportation, and management of the product at the end of its useful life, including~~
20 ~~removal and proper management of the mercury switch or mercury relay contained~~
21 ~~in the product, and information fully and clearly demonstrating that the~~
22 ~~manufacturer, individually, or in conjunction with an industry or trade group, is~~
23 ~~committed to and capable of implementing the plan. The plan shall include an~~
24 ~~education and outreach component to ensure that users of the product are aware of~~
25 ~~available collection opportunities and legal requirements for management of the~~
26 ~~product once it becomes a waste. An exemption granted pursuant to subdivision (b)~~
27 ~~shall become null and void if the manufacturer, individually, or in conjunction with~~
28 ~~an industry or trade group, has not implemented the plan submitted in support of the~~
29 ~~exemption request within six months of the effective date of the exemption.~~

30 ~~(7) A copy of all similar exemption requests, including supporting documentation,~~
31 ~~submitted by the applicant to another state, and a copy of that state's response to the~~
32 ~~exemption request.~~

33 ~~(d) (e) A manufacturer or trade group that requests an exemption or an exemption~~
34 ~~renewal pursuant to subdivision (b) paragraph (1) of subdivision (d) shall enter into~~
35 ~~a written agreement with the department pursuant to the procedures set forth in~~
36 ~~**Article 9.2 (commencing with Section 25206.1); to reimburse** all costs incurred by~~
37 ~~the department in processing and responding to the request.~~

38 ~~(e) (f) Trade secrets, as defined in **Section 25173**, that are identified at the time of~~
39 ~~submission of information pursuant to paragraph (1) of subdivision (d) by a~~
40 ~~manufacturer or trade group, shall be treated as confidential as to the extent required~~
41 ~~by department procedures established pursuant to **Section 25173**.~~

42 ~~(g) Any information submitted by a manufacturer or trade group pursuant to~~
43 ~~paragraph (1) of subdivision (d) that is not a trade secret, as defined in **Section**~~

1 **25173**, or that has not been identified by the manufacturer as a trade secret, shall be
2 made available to the public upon request pursuant to the California Public Records
3 Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government
4 Code).

5 ~~(f)(1)~~ (h) The department shall grant or deny an exemption requested pursuant to
6 ~~subdivision (b) paragraph (1) of subdivision (d)~~ no later than 180 calendar days after
7 receiving the exemption request and all information determined by the department
8 to be necessary to determine if all of the conditions specified in ~~subdivision (b)~~
9 paragraph (1) are met, unless the applicant and the department mutually agree to an
10 extension of that time limit.

11 ~~(2)~~ (i) An exemption requested pursuant to paragraph (1) of subdivision (d) shall
12 not be deemed to be granted if the department fails to grant or deny the exemption
13 request within the time limit specified in ~~paragraph (1) subdivision (h)~~.

14 ~~(3) Nothing in this subdivision shall preclude the applicant and the department~~
15 ~~from mutually agreeing to an extension of the time limit specified in paragraph (1).~~

16 **Comment.** Section 85655 restates former Section 25214.8.5 without substantive change.

17 See Sections 83160 (“department”), 85610(c) (“mercury relay”), 85610(d) (“mercury switch”).

18 **Staff Note.** Proposed Section 85655 would restate existing Section 25214.8.5 to improve
19 readability. The existing section provides:

20 25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from
21 subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group
22 representing the manufacture, has obtained an exemption, pursuant to the process described in
23 subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or
24 only to limited uses of the product. An exemption granted under subdivision (b) also applies to the
25 sale to the product manufacturer of the mercury switch or relay to be contained in the product
26 covered by the exemption.

27 (b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4
28 for a period of three years only if all of the following conditions are met:

29 (1) The manufacturer of the product, or a trade group representing the manufacturer, submits a
30 request for an initial or renewed exemption to the department that specifies the use or uses of the
31 product for which an exemption is requested along with supporting information that complies with
32 the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request
33 only for a product and use for which there is no technical feasible alternative, available at a
34 reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of
35 that use.

36 (2) The supporting information submitted by the manufacturer or trade group demonstrates that
37 the product is eligible for the exemption.

38 (3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement
39 agreement with the department, pursuant to subdivision (d), and complies with the terms of that
40 agreement.

41 (c) The supporting information that a manufacturer or trade group submits to the department,
42 before the department may grant an exemption pursuant to subdivision (b), shall include all of the
43 following:

44 (1) The name of the manufacturer, or the trade group and the manufacturers represented by the
45 trade group, requesting the exemption and the name, position, and contact information for the

1 person who is the manufacturer's or trade group's contact person on all matters concerning the
2 exemption.

3 (2) An identification and description of the product, and the use or uses of the product, for which
4 the exemption is requested.

5 (3) An identification and description of the mercury switch or mercury relay, including
6 identification of the manufacturer of the switch or relay, and an explanation of the need for, and
7 functioning of, the mercury switch or mercury relay in the product.

8 (4) For each use for which an exemption is requested, information that fully and clearly
9 demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the
10 use of the mercury switch or mercury relay in the product for purposes of that use. This shall
11 include, but is not limited to, a description of past, current, and planned future efforts to seek or
12 develop those alternatives, and a description of all alternatives that have been considered and an
13 explanation of the technical or economic reasons as to why each alternative is not satisfactory.

14 (5) Information that fully and clearly demonstrates that the switch or relay or the product is
15 constructed so as to prevent the release of mercury to the environment.

16 (6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and
17 management of the product at the end of its useful life, including removal and proper management
18 of the mercury switch or mercury relay contained in the product, and information fully and clearly
19 demonstrating that the manufacturer, individually, or in conjunction with an industry or trade
20 group, is committed to and capable of implementing the plan. The plan shall include an education
21 and outreach component to ensure that users of the product are aware of available collection
22 opportunities and legal requirements for management of the product once it becomes a waste. An
23 exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer,
24 individually, or in conjunction with an industry or trade group, has not implemented the plan
25 submitted in support of the exemption request within six months of the effective date of the
26 exemption.

27 (7) A copy of all similar exemption requests, including supporting documentation, submitted by
28 the applicant to another state, and a copy of that state's response to the exemption request.

29 (d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant
30 to subdivision (b) shall enter into a written agreement with the department pursuant to the
31 procedures set forth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all
32 costs incurred by the department in processing and responding to the request.

33 (e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a
34 manufacturer or trade group, shall be treated as confidential as required by department procedures
35 established pursuant to Section 25173. Any information that is not a trade secret, as defined in
36 Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made
37 available to the public upon request pursuant to the California Public Records Act (Division 10
38 (commencing with Section 7920.000) of Title 1 of the Government Code).

39 (f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no
40 later than 180 calendar days after receiving the exemption request and all information determined
41 by the department to be necessary to determine if all of the conditions specified in subdivision (b)
42 are met.

43 (2) An exemption shall not be deemed to be granted if the department fails to grant or deny the
44 exemption request within the time limit specified in paragraph (1)

45 (3) Nothing in this subdivision shall preclude the applicant and the department from mutually
46 agreeing to an extension of the time limit specified in paragraph (1).

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

1 § 85660. Mercury diostats

2 85660. On or after January 1, 2008, a person shall not sell, offer to sell, or
3 distribute for promotional purposes in this state, a mercury diostat, or a new or
4 refurbished oven or gas range containing a mercury diostat.

5 **Comment.** Section 85660 continues former Section 25214.8.6 without substantive change.
6 See Section 85610(c) (“mercury diostat”).

7 Article 8. Mercury Thermostat Collection Act of 2021

8 § 85675. Name of act

9 85675. This article shall be known, and may be cited, as the Mercury Thermostat
10 Collection Act of 2021.

11 **Comment.** Section 85675 continues former Section 25214.8.10 without substantive change.

12 § 85680. Definitions

13 85680. For purposes of this article, the following definitions apply:

14 (a) “Act” means the Mercury Thermostat Collection Act of 2021.

15 (b) “Department” means the Department of Toxic Substances Control.

16 (c) “Manufacturer” means a business concern that owns or owned a name brand
17 of mercury-added thermostats sold in this state before January 1, 2006.

18 (d) “Mercury-added thermostat” has the same meaning as defined in **paragraph**
19 **(2) of subdivision (b) of Section 25214.8.1.**

20 (e) “Out-of-service mercury-added thermostat” means a mercury-added
21 thermostat that is removed from a building or facility in this state and is intended to
22 be discarded.

23 (f) (1) “Program” means a system for the collection, transportation, recycling, and
24 disposal of out-of-service mercury-added thermostats that is financed, as well as
25 managed or provided, by a manufacturer or collectively by a group of manufacturers
26 pursuant to this act.

27 (2) “Program” also includes the education and outreach campaign conducted by a
28 qualified third party to inform appropriate entities about the out-of-service mercury-
29 added thermostat collection opportunities provided by the program.

30 (g) “Qualified third party” means a nonprofit organization, exempt from taxation
31 pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26
32 U.S.C. Sec. 501(c)(3)); that is selected by a manufacturer, or group of
33 manufacturers, ~~pursuant to Section 25214.8.11.4~~ to implement the program
34 specified in Section 25214.8.11.4.

35 (h) “Retailer” means a person, including a wholesaler as defined in subdivision
36 (j), who sells thermostats of any kind directly to a consumer through a selling or
37 distribution mechanism, including, but not limited to, a sale using catalogs or the
38 internet. ~~A retailer may be a wholesaler if the person meets the definition of a~~
39 ~~wholesaler set forth in subdivision (j).~~

1 (i) ~~(1)~~ “Thermostat” means a product or device that uses a switch to sense and
2 control room temperature through communication with heating, ventilating, or air-
3 conditioning equipment.

4 ~~(2)~~ “Thermostat” includes a thermostat used to sense and control room
5 temperature in residential, commercial, industrial, and other buildings, but does not
6 include a thermostat used to sense and control temperature as part of a
7 manufacturing process.

8 (j) “Wholesaler” means a person, other than a manufacturer as defined in
9 subdivision (c), engaged in the distribution and wholesale selling of who sells at
10 wholesale and distributes heating, ventilation, and air-conditioning components to
11 contractors who install heating, ventilation, and air-conditioning components, and
12 whose total wholesale sales account for 80 percent or more of total sales. A
13 ~~manufacturer, as defined in subdivision (c), is not a wholesaler.~~

14 **Comment.** Section 85680 continues former Section 25214.8.11 without substantive change.

15 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
16 25214.8.11 in proposed Section 85680 substantively changes the meaning of the existing section.

17 **§ 85685. Payment obligations of manufacturers**

18 85685. (a) ~~(1)-(A)~~ On or before September 30, 2022, and on or before September
19 30 of each year thereafter until September 30, 2028, each manufacturer shall, in
20 accordance with this section, individually, or collectively with a group of
21 manufacturers, do ~~both~~ all of the following:

22 ~~(i)~~ (1) Pay to the department an ~~aggregate total, amount~~ calculated in accordance
23 with paragraph ~~(2) (e), and~~ but not to exceed four hundred thousand dollars
24 (\$400,000), to cover in aggregate the actual and reasonable regulatory costs incurred
25 by the department to administer, implement, and enforce this act for the fiscal year
26 in which the payment is made.

27 ~~(ii)~~ (2) Pay to ~~the~~ a qualified third party the amount required pursuant to the
28 annual payment schedule outlined in ~~paragraph (1) of subdivision (e) and provide~~
29 **subdivision (h) of Section 85690.**

30 (3) Provide to the department written notice of each payment made to the
31 department pursuant to this subdivision.

32 ~~(B)~~ (b) On or before September 30, 2022, each manufacturer shall, in accordance
33 with this section, individually, or collectively with a group of manufacturers, pay to
34 the department an amount equal to the department’s actual and reasonable
35 regulatory costs incurred to administer, implement, and enforce this act from
36 January 1, 2022, to June 30, 2022, inclusive.

37 ~~(C)~~ (c) If September 30 falls on a Saturday or Sunday, a payment required
38 pursuant to ~~subparagraphs (A) and (B)~~ subdivision (a) shall be due on the following
39 Monday.

40 ~~(D)~~ (d) A late payment pursuant to ~~clause (i) of subparagraph (A) or subparagraph~~
41 ~~(B)~~ paragraph (1) of subdivision (a), or pursuant to subdivision (b), shall be subject

1 to interest, beginning October 1, 2022, at a rate of 10 percent per annum, pursuant
2 to subdivision (a) of Section 79655.

3 ~~(2)~~ ~~(e)~~ The total aggregate amount required to be paid to the department pursuant
4 to ~~clause (i) of subparagraph (A) of paragraph (1)~~ paragraph (1) of subdivision (a)
5 shall be based on the sum of both of the following, less the amount of any fees paid
6 by a manufacturer, or group of manufacturers, for the prior fiscal year that exceeded
7 the department's actual and reasonable regulatory costs to administer, implement,
8 and enforce this act for that prior fiscal year:

9 ~~(A)~~ (1) An amount that conforms to the total amount of moneys appropriated by
10 the Legislature for expenditure that fiscal year from the fund, which shall not exceed
11 the department's actual and reasonable regulatory costs to administer, implement,
12 and enforce this act for that fiscal year.

13 ~~(B)~~ (2) An amount necessary to ensure a reasonable reserve in the fund that fiscal
14 year for contingencies, including to ensure that funded programs will not be
15 adversely affected by additional baseline expenditure adjustments that may occur in
16 that fiscal year, as determined by the Department of Finance.

17 ~~(3)~~ ~~(A)~~ (f) The department shall deposit all moneys paid by a manufacturer, or
18 group of manufacturers, to the department pursuant to ~~clause (i) of subparagraph~~
19 ~~(A) of paragraph (1) and subparagraph (B) of paragraph (1)~~ paragraph (1) of
20 subdivision (a), and pursuant to subdivision (b), into the Mercury Thermostat
21 Collection Program Fund, which is hereby established.

22 ~~(B)~~ (g) Upon appropriation by the Legislature, moneys in the Mercury Thermostat
23 Collection Program Fund shall be used only for the following purposes:

24 ~~(i)~~ (1) The department's actual and reasonable regulatory costs in administering,
25 implementing, and enforcing this act.

26 ~~(ii)~~ (2) Reimbursement of any loans made to the Mercury Thermostat Collection
27 Program Fund or repayment of any expenditures made from any other fund to
28 finance the department's actual and reasonable regulatory costs incurred to
29 administer, implement, and enforce this act from January 1, 2022, to June 30, 2022,
30 inclusive.

31 ~~(iii)~~ (3) The actual and reasonable regulatory costs incurred by any other agency
32 assisting the department in administering, implementing, and enforcing this act.

33 ~~(C)~~ (h) Notwithstanding any other law, moneys in the Mercury Thermostat
34 Collection Program Fund shall not be loaned to or borrowed by any other special
35 fund or the General Fund.

36 ~~(D)~~ (i) Moneys in the Mercury Thermostat Collection Program Fund shall not be
37 expended for any purpose not enumerated in this act.

38 **Comment.** Section 85685 continues former Section 25214.8.11.2(a) without substantive change.

39 See Sections 85680(a) ("act"), 85680(c) ("manufacturer"), 85680(f) ("program"), 85680(g)
40 ("qualified third party").

41 **Staff Note.** Existing Section 25214.8.11.2(a)(1)(A)(ii) (which would be continued by proposed
42 Section 85685(a)(2)) specifies various payments that manufacturers must make to "*the* qualified
43 third party." (Emphasis added.) The use of the word "the" (rather than "a") makes the identity of

1 this referenced qualified third party confusing, as this is the first reference to a qualified third party
2 in the section.

3 **The staff welcomes comment on whether (1) the article “the” in this reference can be**
4 **changed to “a” without substantively changing the meaning of the provision, or (2) the**
5 **reference is to a qualified third party identified in another code section, and should therefore**
6 **be cross-referenced in this section.**

7 **§ 85690. Remittance of payment by manufacturers**

8 85690. ~~(b)(1) (a) A manufacturer may individually~~ An individual manufacturer
9 or group of manufacturers may remit a payment required pursuant to subparagraph
10 (A) or (B) of paragraph (1) of subdivision (a) subdivision (a) or (b) of Section 85695;
11 ~~or a group of manufacturers may remit a payment on behalf of a group of~~
12 ~~manufacturers.~~

13 (b) Manufacturers shall apportion a payment or payments required pursuant to
14 subparagraphs (A) and (B) of paragraph (1) of subdivision (a) subdivision (a) or (b)
15 of Section 85685 among themselves in a fair and reasonable manner.

16 ~~(2) (c) If a payment required pursuant to subparagraph (A) or (B) of paragraph (1)~~
17 ~~of subdivision (a) subdivision (a) or (b) of Section 85695 is made on behalf of a~~
18 ~~group of manufacturers, the names of the manufacturers shall be included with the~~
19 ~~payment and in the written notice to the department required pursuant to clause (ii)~~
20 ~~of subparagraph (A) of paragraph (1) of subdivision (a) so the department can~~
21 ~~determine each manufacturer’s compliance with this act.~~

22 (d) If a manufacturer that is part of a group of manufacturers making a payment
23 required pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (a)
24 subdivision (a) or (b) of Section 85685 fails to make a payment, the group of
25 manufacturers shall provide to the department a written notice of the nonpaying
26 manufacturer’s identity and the apportioned payment amount for which the
27 nonpaying manufacturer is responsible.

28 ~~(e) (e) If a manufacturer fails to make a payment pursuant to subparagraphs (A)~~
29 ~~and (B) of paragraph (1) of subdivision (a) subdivision (a) or (b) of Section 85685~~
30 ~~in accordance with this section, or pursuant to subdivision (f) (j), the manufacturer’s~~
31 ~~thermostats shall be subject to a sales ban pursuant to **subdivision (b) of Section**~~
32 ~~**25214.8.12.**~~

33 ~~(d) (1) (f) The Legislature intends that, by timely making all payments required~~
34 ~~pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (a)~~
35 ~~subdivision (a) or (b) of Section 85685 and all payments required pursuant to~~
36 ~~subdivision (f) (j), a manufacturer shall be deemed to have satisfied, and will have~~
37 ~~discharged or be released from, any liability, obligation, or violation established or~~
38 ~~alleged pursuant to this article, including the regulations adopted by the department~~
39 ~~pursuant to former Section 25214.8.17, as it existed before January 1, 2022.~~

40 ~~(2) (g) If a manufacturer timely makes all payments required pursuant to~~
41 ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (a) subdivision (a) or (b)~~
42 ~~of Section 85685 and all payments required pursuant to subdivision (f) (j), any~~

1 consent order, summary of violation or violations, or other instrument or document,
2 including, but not limited to, the February 10, 2016, Consent Order entered into
3 between the department and 25 mercury-added thermostat manufacturers pursuant
4 to **Section 25187** and former Section 25214.8.17, establishing or alleging liability,
5 obligations, or violations of that manufacturer pursuant to this article, including the
6 regulations adopted by the department pursuant to former Section 25214.8.17 as it
7 existed before January 1, 2022, shall be deemed stayed prior to the expiration of this
8 act and deemed satisfied, discharged, released, or terminated upon the expiration of
9 this act.

10 ~~(e)~~ (1) (h) A manufacturer, or group of manufacturers, shall ~~do all of the following~~
11 provide to the qualified third party the following amounts for the following
12 purposes:

13 ~~(A)~~ (1) ~~Provide to the a qualified third party two~~ Two million dollars (\$2,000,000)
14 in the first program year to effectively and efficiently develop and implement the
15 education and outreach campaign required pursuant to **subdivisions (c) to (f),**
16 **inclusive, of Section 25214.8.11.5.**

17 ~~(B)~~ (2) ~~Provide to the qualified third party one~~ One million two hundred thousand
18 dollars (\$1,200,000) annually in each of the subsequent five program years to carry
19 out the education and outreach campaign required pursuant to **subdivisions (c) to**
20 **(f), inclusive, of Section 25214.8.11.5.**

21 ~~(C)~~ (3) ~~Provide to the qualified third party one~~ One million one hundred thousand
22 dollars (\$1,100,000) in the seventh program year to carry out the education and
23 outreach campaign required pursuant to **subdivisions (c) to (f), inclusive, of**
24 **Section 25214.8.11.5.**

25 ~~(D)~~ (4) ~~Provide to the qualified third party an~~ An amount equal to the annual costs
26 estimated by the qualified third party to develop and implement the program
27 pursuant to this act.

28 ~~(2)~~ (i) Any funds provided to the qualified third party pursuant to ~~paragraph (1)~~
29 subdivision (h) that are not expended by the qualified third party in the program
30 year in which the funds were received may be used by the qualified third party the
31 following program year for the education and outreach campaign required pursuant
32 to **subdivisions (c) to (f), inclusive, of Section 25214.8.11.5.**

33 ~~(F)~~ (j) A manufacturer, or group of manufacturers, on or before January 1, 2023,
34 and on or before January 1 of each year thereafter until January 1, 2029, shall
35 provide to the qualified third party an amount equal to the actual costs incurred by
36 the qualified third party that exceed the amount provided to the qualified third party
37 pursuant to ~~subparagraph (D) of paragraph (1) of subdivision (e)~~ paragraph (4) of
38 subdivision (h).

39 **Comment.** Section 85690 continues former Section 25214.8.11.2(b)-(f) without substantive
40 change.

41 See Sections 83160 (“department”), 85680(c) (“manufacturer”), 85680(g) (“qualified third
42 party”).

1 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
2 25214.8.11.2(b)-(f) in proposed Section 85690 substantively changes the meaning of the existing
3 section.

4 **§ 85695. Manufacturer obligation to implement act**

5 85695. (a) On or before March 1, 2022, a manufacturer, or group of
6 manufacturers, shall contract with or retain a qualified third party to develop and
7 implement a convenient, cost-effective, and efficient program consistent with this
8 act.

9 (b) A Prior to compliance with subdivision (a), each manufacturer, or group of
10 manufacturers, shall issue a request for proposals for a qualified third party to
11 develop and implement the program required pursuant to this act.

12 (c) When selecting the qualified third party to develop and implement the
13 program, the ~~The~~ manufacturer, or group of manufacturers, shall consider all of the
14 following factors ~~when selecting a qualified third party to develop and implement~~
15 ~~the program:~~

16 (1) The qualified third party's history and success of operating product takeback
17 collection programs.

18 (2) The qualified third party's ability to identify and provide information to
19 consumers about out-of-service mercury-added thermostat collection locations.

20 (3) The qualified third party's ability to ensure that transportation systems move
21 waste safely and effectively.

22 (4) The qualified third party's history of working with recycling or disposal
23 experts, manufacturers, state and local governments, and retailers.

24 (5) The qualified third party's ability to implement an effective education and
25 outreach campaign.

26 (6) The qualified third party's presence in the state and ability to adequately
27 engage with stakeholders in the state to develop and implement the program.

28 (7) Any other factors determined by the manufacturer, or group of manufacturers,
29 to be relevant to the selection of a qualified third party to develop and implement
30 the program.

31 **Comment.** Section 85695 continues former Section 25214.8.14 without substantive change.

32 See Sections 85680(a) ("act"), 85680(c) ("manufacturer"), 85680(e) ("out-of-service mercury-
33 added thermostat"), 85680(f) ("program"), 85680(g) ("qualified third party").

34 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
35 25214.8.14 in proposed Section 85695 substantively changes the meaning of the existing section.

36 **§ 85700. Obligations of qualified third party**

37 85700. A qualified third party selected by a manufacturer or group of
38 manufacturers to develop and implement the program shall do all of the following:

39 (a) Collect, handle, and arrange for the appropriate management of out-of-service
40 mercury-added thermostats in compliance with this act, unless these activities are

1 performed by a manufacturer, or group of manufacturers, pursuant to **paragraph**
2 **(1) of subdivision (a) of Section 25214.8.13.**

3 (b) (1) Ensure that the locations and methods established pursuant to the program
4 to collect out-of-service mercury-added thermostats are sufficiently convenient in
5 all parts of the state, including within rural communities, disadvantaged
6 communities, as identified by the California Environmental Protection Agency
7 pursuant to Section 39711, and low-income communities, as defined in paragraph
8 (2) of subdivision (d) of Section 39713, to encourage the collection of out-of-service
9 mercury-added thermostats.

10 (2) For the purpose of ~~this~~ paragraph (1), “sufficiently convenient” ~~means~~ requires
11 both of the following:

12 (A) For at least 90 percent of state residents, a collection location is located within
13 15 miles of their residence.

14 (B) At least one collection location in each county in the state, unless there is no
15 collection location in the county that is required to participate under this act or
16 willing to participate voluntarily.

17 ~~(2)~~ (3) The qualified third party may, in its discretion, provide for and establish a
18 greater number of collection locations than required pursuant to paragraph (1) to
19 maximize convenience and encourage the collection of out-of-service mercury-
20 added thermostats.

21 (c) On or before July 1, 2022, develop and implement, and update as necessary, a
22 statewide educational and outreach campaign to inform appropriate entities about
23 all of the following:

24 (1) ~~the~~ The importance of safe recycling and disposal of out-of-service mercury-
25 added thermostats, ~~where~~ .

26 (2) Where and how to access out-of-service mercury-added thermostat collection
27 locations, ~~and how~~ .

28 (3) How to access available out-of-service mercury-added thermostat collection
29 incentives, ~~as well as to coordinate~~ .

30 (d) On or before July 1, 2022, coordinate program activities with various
31 stakeholders, including, but not limited to, all of the following:

32 (1) The Contractors State License Board.

33 (2) Heating, ventilation, and air-conditioning contractors.

34 (3) Demolition and environmental contractors, and related associations.

35 (4) Municipal utility districts.

36 (5) Household hazardous waste collection programs.

37 (6) Apartment and property management associations and organizations.

38 (7) Homeowners.

39 (8) Rural districts.

40 (9) Retailers.

41 (10) Disadvantaged communities, as identified by the California Environmental
42 Protection Agency pursuant to Section 39711, or low-income communities, as
43 defined in paragraph (2) of subdivision (d) of Section 39713.

- 1 (11) The general public.
2 (12) The Public Utilities Commission.
3 (13) The State Energy Resources Conservation and Development Commission.
4 ~~(d)~~ ~~(1)~~ (e) On or before July 1, 2022, create and distribute informational materials
5 about the program that include, but are not limited to, all of the following:
6 (A) ~~(1)~~ Signage that is prominently displayed and easily visible to consumers and
7 contractors.
8 ~~(B)~~ ~~(2)~~ Written materials and templates of materials for reproduction by retailers
9 and wholesalers to be provided to consumers at the time of purchase, delivery, or
10 both purchase and delivery of a thermostat.
11 (3) The materials described in paragraph (2) shall include information on all of
12 the following:
13 (A) The prohibition of improper disposal of out-of-service mercury-added
14 thermostats, requirements .
15 (B) Requirements for the proper management of out-of-service mercury-added
16 thermostats, out-of-service .
17 (C) Out-of-service mercury-added thermostat collection locations, and the .
18 (D) The availability of out-of-service mercury-added thermostat collection bins.
19 ~~(C)~~ ~~(3)~~ Advertising or other promotional materials, or both, that include
20 references to out-of-service mercury-added thermostat collection opportunities.
21 ~~(D)~~ ~~(4)~~ Materials to be used in direct communications with consumers and
22 contractors at the time of purchase of a thermostat.
23 ~~(E)~~ ~~(5)~~ A public service announcement promoting the proper management of out-
24 of-service mercury-added thermostats, ~~and a plan for a public service campaign~~
25 ~~using the public service announcement that includes the media and markets into~~
26 ~~which the public service announcement is to be distributed and aired on behalf of~~
27 ~~the program. Copies of the public service announcement~~ copies of which shall be
28 provided to the department for its use and promotion.
29 (6) A plan for a public service campaign using the public service announcement
30 required by paragraph (5) that includes the media and markets into which the public
31 service announcement is to be distributed and aired on behalf of the program.
32 ~~(F)~~ ~~(7)~~ Written materials, signage, and other advertising and promotional
33 materials that provide information to consumers about how to access the available
34 out-of-service mercury-added thermostat collection incentives.
35 ~~(2)~~ ~~(f)~~ ~~(1)~~ The informational materials created and distributed by the qualified
36 third party pursuant to ~~this~~ subdivision (e) shall be made available in a manner
37 necessary to ensure ~~that~~ the informational materials are available to and accessible
38 by all state residents, ~~and~~ .
39 (2) The informational materials shall also be translated into Spanish, Chinese,
40 Tagalog, Vietnamese, and Korean when distributed where any of these languages
41 are spoken by a substantial number of the public ~~to which the materials are being~~
42 ~~distributed.~~

1 ~~(e)~~ (1) (g) On or before July 1, 2022, establish an internet website for the program
2 that is accessible to the public. ~~The qualified third party shall post~~ and on which
3 of the following ~~on the internet website~~ shall be posted:

4 ~~(A)~~ (1) Templates of educational materials, in a form and format that can be easily
5 downloaded.

6 ~~(B)~~ (2) Location information, by county, of all established out-of-service
7 mercury-added thermostat collection sites in the state. ~~Location information, which~~
8 shall be posted and updated in a manner that allows members of the public to easily
9 identify the most convenient location for collection of out-of-service mercury-added
10 thermostats.

11 ~~(C)~~ (3) Information about accessing available out-of-service mercury-added
12 thermostat collection incentives.

13 ~~(2) The department shall display on its internet website a link to the internet~~
14 ~~website for the program established by the qualified third party pursuant to~~
15 ~~paragraph (1).~~

16 ~~(f)~~ (h) On or before July 1, 2022, develop strategies to work with all of the
17 following to encourage their participation in the collection and proper management
18 of out-of-service mercury-added thermostats:

19 (1) ~~(A)~~ State utilities participating in demand response programs involving the
20 replacement of thermostats.

21 ~~(B) These strategies~~ Strategies relating to these utilities may include an
22 educational insert in their customers' utility bills.

23 (2) Wholesalers of thermostats in the state.

24 (3) Retailers and other outlets that sell thermostats directly to consumers in the
25 state.

26 (4) Household hazardous waste collection facilities to partner with local take-back
27 centers, including retailers and wholesalers, to facilitate convenient out-of-service
28 mercury-added thermostat collection options for community members.

29 ~~(g)~~ (i) (1) Provide out-of-service mercury-added thermostat collection incentives
30 to consumers of no less than thirty dollars (\$30) per out-of-service mercury-added
31 thermostat collected, and educate contractors, service technicians, and residents on
32 the availability of ~~the~~ these incentives.

33 (2) ~~(A)~~ A collection incentive available pursuant to paragraph (1) shall be
34 available only to a consumer or service technician that attests, under penalty of
35 perjury, to both of the following:

36 ~~(i)~~ (A) Their California state residency.

37 ~~(ii)~~ (B) That the returned out-of-service mercury-added thermostat or thermostats
38 were removed from a building or facility in the state.

39 ~~(B)~~ (3) For the purpose of ~~subparagraph (A)~~ paragraph (2), “consumer” means an
40 individual resident of the state who returns an out-of-service mercury-added
41 thermostat to an established collection location and who is not a retailer or
42 wholesaler.

1 ~~(h)~~ (j) Notwithstanding any other provision in this act, the qualified third party
2 shall only be required to implement subdivisions (c) ~~to (f)~~ through (h), inclusive,
3 after January 1, 2029, if unspent funds from previous program years are available
4 to further the implementation of these subdivisions.

5 **Comment.** Section 85700 continues former Section 25214.8.11.5(a) through (d), (e)(1), and (f)
6 through (h) without substantive change.

7 See Sections 85680(a) (“act”), 85680(c) (“manufacturer”), 85680(e) (“out-of-service mercury-
8 added thermostat”), 85680(f) (“program”), 85680(g) (“qualified third party”).

9 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
10 25214.8.11.5(a) through (d), (e)(1), and (f) through (h) in proposed Section 85700 substantively
11 changes the meaning of the existing section.

12 **§ 85705. Required internet display of program by department**

13 85705. The department shall display on its internet website a link to the internet
14 website for the program established by a qualified third party pursuant to
15 subdivision (g) of Section 85700.

16 **Comment.** Section 85705 continues former Section 25214.8.11.5(e)(2) without substantive
17 change.

18 See Sections 83160 (“department”), 85680(g) (“qualified third party”).

19 **§ 85710. Department review of qualified third party plan**

20 85710. (a) On or before June 1, 2022, the qualified third party shall provide to the
21 department for review and approval the plan developed by the qualified third party
22 to carry out the program elements identified in **Sections 25214.8.11.5 and**
23 **25214.8.13.**

24 (b) (1) Within 30 days of receipt of the qualified third party’s plan pursuant to
25 subdivision (a), the department shall review the plan, determine whether the plan is
26 complete, and notify the qualified third party, in writing, of the department’s
27 determination.

28 (2) For the purpose of the department’s determination pursuant to paragraph (1),
29 the qualified third party’s plan shall be deemed complete if the plan addresses each
30 program element identified in Sections 25214.8.11.5 and 25214.8.13.

31 ~~(2) (c)(1)~~ If the department determines that ~~the~~ a plan submitted pursuant to
32 subdivision (a) or revised plan submitted pursuant to paragraph (2) is incomplete,
33 the department shall identify, and notify the qualified third party in writing, as to
34 what additional information or modifications must be submitted to the department
35 to complete the plan.

36 (2) ~~The~~ A qualified third party that receives a written notification from the
37 department pursuant to paragraph (1) shall submit to the department a revised plan
38 within 30 days of the date of the department’s written notification.

39 ~~(e)~~ (d) (1) If the department determines that the plan submitted pursuant to
40 subdivision (a) or revised plan submitted pursuant to paragraph (2) of subdivision

1 ~~(b)~~ (c) is complete, the department shall have 30 days from the date of its
2 determination to review and approve the plan or revised plan.

3 (2) The department shall review ~~the~~ a plan or revised plan determined to be
4 complete for compliance with this act, and shall thereafter do any of the following:

5 (A) Approve the plan or revised plan, in which case the department shall provide
6 written notification to the qualified third party of the department's approval of the
7 plan.

8 (B) (i) Conditionally approve the plan or revised plan, in which case the
9 department shall provide written notification to the qualified third party of the
10 department's conditional approval of the plan.

11 (ii) The department shall include in its written notification the basis for its
12 conditional approval and describe, in detail, the requirements with which the
13 qualified third party needs to comply in order to proceed to implement the plan in
14 compliance with this act.

15 (C) (i) Disapprove the plan or revised plan, in which case the department shall
16 provide written notification to the qualified third party of the department's
17 disapproval of the plan.

18 (ii) The department shall include in its written notification the basis for its
19 disapproval, and require the qualified third party to submit to the department a
20 revised plan within 30 days of the date of the department's written notification
21 disapproving the plan.

22 ~~(e) (1) The department shall review the~~ If a revised plan is submitted to the
23 department pursuant to subparagraph (C) of paragraph (2) of subdivision (d), the
24 department shall review the plan within 15 days of receipt.

25 ~~(ii) (2) If the department determines after review that the revised plan submitted~~
26 ~~pursuant to clause (i) does not comply with this act, the manufacturer, or group of~~
27 ~~manufacturers, that contracted with or retained the qualified third party shall not be~~
28 ~~deemed to be in compliance with this act until the qualified third party submits, and~~
29 ~~the department approves or conditionally approves, a plan that complies with the~~
30 ~~requirements of this act.~~

31 ~~(d) (f)~~ The time taken by the department to review and approve the qualified third
32 party's plan or revised plan pursuant to this section shall toll the qualified third
33 party's July 1, 2022, deadline to develop and implement the statewide educational
34 and outreach campaign required pursuant to **subdivisions (c) to (f), inclusive, of**
35 **Section 25214.8.11.5** and the July 1, 2022, deadlines pursuant to **clauses (ii) to (iv),**
36 **inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section**
37 **25214.8.13.**

38 ~~(e) (g)~~ The program required by this article as it existed before January 1, 2022,
39 shall remain in effect until the plan submitted by the qualified third party pursuant
40 to this section is approved by the department and fully implemented by the qualified
41 third party.

42 **Comment.** Section 85710 restates former Section 25214.8.11.6 without substantive change.

1 See Sections 85680(a) (“act”), 83160 (“department”), 85680(c) (“manufacturer”), 85680(f)
2 (“program”), 85680(g) (“qualified third party”).

3 **Staff Note.** The staff welcomes comment on whether the proposed revision of Section
4 25214.8.11.6 in proposed Section 85710 in any way substantively changes the meaning of the
5 existing section.

6 **§ 85715. Ban on sale of thermostats produced by noncompliant manufacturer**

7 85715. (a) A manufacturer that fails to have a plan submitted by the qualified third
8 party approved by the department pursuant to Section **25214.8.11.6** or a
9 manufacturer that fails to make a payment required pursuant to either subparagraph
10 **(A) or (B) of paragraph (1) of subdivision (a) or subdivision (f) of Section**
11 **25214.8.11.2** ~~shall be subject to the sales ban pursuant to subdivision (b)~~ is not in
12 compliance with this act.

13 (b) On or before July 1, 2023, and on or before January 1 and July 1 of each year
14 thereafter, the department shall post a notice on its internet website listing
15 manufacturers that are not in compliance with this act.

16 (c) (1) A person shall not sell or offer for sale in this state a thermostat ~~that is~~
17 produced by a manufacturer that is not in compliance with this act.

18 (2) The sales prohibition in paragraph (1) shall be effective on the 120th day after
19 the notice described in subdivision ~~(c)~~ listing noncompliant manufacturers (b) is
20 posted on the department’s internet website and shall remain in effect until the
21 manufacturer is no longer listed on the department’s internet website.

22 ~~(c) On or before July 1, 2023, and on or before January 1 and July 1 of each year~~
23 ~~thereafter, the department shall post a notice on its internet website listing~~
24 ~~manufacturers that are not in compliance with this act.~~

25 (d) A wholesaler or a retailer that distributes or sells mercury-added thermostats
26 shall monitor the department’s internet website to determine if the sale of a
27 manufacturer’s thermostats is in compliance with subdivision ~~(b)~~ (c).

28 **Comment.** Section 85715 restates former Section 25214.8.12 without substantive change.

29 See Sections 85680(a) (“act”), 83160 (“department”), 85680(c) (“manufacturer”), 85680(d)
30 (“mercury-added thermostat”), 85680(g) (“qualified third party”).

31 **Staff Note.** The staff welcomes comment on whether the proposed revision of Section
32 25214.8.12 in proposed Section 85715 in any way substantively changes the meaning of the
33 existing section.

34 **§ 85720. Collection of out-of-service mercury-added thermostats**

35 85720. (a) ~~(1) (A) Subject to paragraph (2), each~~ Each manufacturer, or group of
36 manufacturers, shall do all of the following, or retain a qualified third party to do all
37 of the following:

38 ~~(i)~~ (a) Collect, handle, and arrange for the appropriate management of out-of-
39 service mercury-added thermostats in compliance with this act.

1 ~~(ii)~~ (b) On and after July 1, 2022, provide collection bins for out-of-service
2 mercury-added thermostat collection at no cost to a wholesaler in the state that sells
3 thermostats.

4 ~~(iii)~~ (c) On and after July 1, 2022, provide collection bins for out-of-service
5 mercury-added thermostat collection at no cost to a retailer in the state that sells
6 thermostats and requests a collection bin.

7 ~~(iv)~~ (d) On and after July 1, 2022, provide collection bins for out-of-service
8 mercury-added thermostat collection at no cost to a local governmental agency that
9 requests a collection bin for use at a household hazardous waste collection facility
10 or household hazardous waste event, and at no cost to a licensed contractor that
11 requests a collection bin.

12 ~~(v)~~ (e) ~~Either arrange~~ Arrange for pickup of the collection bins or pay for the costs
13 of shipping the collection bins provided pursuant to ~~clauses (ii) to (iv)~~ subdivisions
14 (b) to (d), inclusive, for proper handling and recycling or disposal of the out-of-
15 service mercury-added thermostats.

16 (f) (1) On or before June 1, 2022, provide to the department for review and
17 approval the plan developed by the manufacturer, or group of manufacturers, to
18 carry out the requirements of this section.

19 (2) The department shall review the plan in accordance with the procedures and
20 timeframes outlined in subdivisions (b) to (d), inclusive, of Section 25214.8.11.6.

21 ~~(vi)~~ (g)(1) On or before April 1, 2023, and on or before April 1 of each year
22 thereafter, submit an annual report to the department covering the one-year period
23 ending December 31 of the previous calendar year.

24 (2) Each report shall also be posted on the internet website created by the qualified
25 third party pursuant to subdivision (e) of Section 25214.8.11.5.

26 (3) The annual report required by paragraph (1) shall include all of the following:

27 ~~(I)~~ (A) The number of out-of-service mercury-added thermostats collected in the
28 state during the previous calendar year.

29 ~~(II)~~ (B) The estimated total amount of mercury contained in the collected out-of-
30 service mercury-added thermostats.

31 ~~(III)~~ (C) The number of incentives provided to consumers and the total amount of
32 incentives paid to consumers pursuant to the program during the previous calendar
33 year.

34 ~~(IV)~~ (D) An evaluation of the effectiveness of the program and the extent to
35 which each element of the planned activities has been successful or could be
36 modified to improve the effectiveness of the program.

37 ~~(V)~~ (E) An accounting of the program administrative costs, including the most
38 recent copy of Internal Revenue Service Form 990 for the qualified third party.

39 ~~(VI)~~ (F) A description of the outreach strategies employed to increase
40 participation, convenience, and collection rates, including dedicated outreach to
41 rural communities, disadvantaged communities, as identified by the California
42 Environmental Protection Agency pursuant to Section 39711, and low-income

1 communities, as defined in paragraph (2) of subdivision (d) of Section 39713, and
2 an assessment of the effectiveness of those outreach strategies.

3 ~~(VII)~~ (G) Examples of outreach and educational materials used, including:

4 ~~(aa)~~ (i) A description of the education and outreach conducted for each of the
5 groups identified in **subdivision (c) of Section 25214.8.11.5**.

6 ~~(ab)~~ (ii) The date and form of education and outreach conducted for or at each
7 collection location.

8 ~~(ae)~~ (iii) Data describing the scope, by medium, of all education and outreach
9 conducted by the qualified third party, including, as applicable, online, digital,
10 social, print, broadcast, or other media.

11 ~~(VIII)~~ (H) Names and locations of all participating out-of-service mercury-added
12 thermostat collection locations.

13 ~~(IX)~~ (I) The number of out-of-service mercury-added thermostats collected at
14 each collection location.

15 ~~(X)~~ (J) The address for the internet website created by the qualified third party
16 pursuant to **subdivision (e) of Section 25214.8.11.5** where the annual report may
17 be viewed online.

18 ~~(XI)~~ (K) A description of how the collected out-of-service mercury-added
19 thermostats were managed.

20 ~~(XII)~~ (L) The results and analysis of the annual survey conducted by the qualified
21 third party pursuant to **Section 25214.8.13.5**.

22 ~~(XIII)~~ (M) Proposed modifications to the program.

23 ~~(XIV)~~ (N) A description of the qualified third party's expenditures incurred in
24 developing and implementing the program.

25 ~~(b) Subject to paragraph (2), on or before June 1, 2022, a manufacturer, or group~~
26 ~~of manufacturers, shall provide to the department for review and approval the plan~~
27 ~~developed by the manufacturer, or group of manufacturers, to carry out the~~
28 ~~requirements of this paragraph. The department shall review the plan in accordance~~
29 ~~with the procedures and timeframes outlined in subdivisions (b) to (d), inclusive, of~~
30 ~~Section 25214.8.11.6.~~

31 ~~(2) A manufacturer, or group of manufacturers, may retain, but is not required to~~
32 ~~retain, the qualified third party to implement the requirements of paragraph (1).~~

33 **Comment.** Section 85720 continues former Section 25214.8.13(a) without substantive change.

34 See Sections 85680(a) (“act”), 83160 (“department”), 85680(c) (“manufacturer”), 85680(e)
35 (“out-of-service mercury-added thermostat”), 85680(f) (“program”), 85680(g) (“qualified third
36 party”), 85680(h) (“retailer”).

37 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
38 25214.8.13(a) in proposed Section 85720 substantively changes the meaning of the existing section.

39 **§ 85725. Department report on status of program**

40 ~~(b)~~ (1) On or before January 1, 2028, the department shall submit a report to the
41 Legislature on the status of the program.

1 ~~(2)~~ The department shall submit its report pursuant to paragraph (1) in compliance
2 with Section 9795 of the Government Code.

3 **Comment.** Section 85725 continues former Section 25214.8.13(b) without substantive change.
4 See Sections 83160 (“department”), 85680(f) (“program”).

5 **§ 85730. Education and outreach campaign survey**

6 85730. (a) No later than July 1, 2023, and no later than July 1 of each year
7 thereafter until July 1, 2028, the qualified third party shall conduct an annual survey
8 of the groups listed in **subdivision (c) of Section 25214.8.11.5** to evaluate the
9 effectiveness of the education and outreach campaign developed by the qualified
10 third party pursuant to that subdivision and to obtain collection data.

11 (b) The qualified third party shall transmit the annual survey results to the
12 department by September 1 of the same year.

13 ~~(b)~~ (c) The qualified third party shall post the results of the annual survey on the
14 internet website created pursuant to **subdivision (e) of Section 25214.8.11.5** and
15 allow public comment on the survey for up to 30 calendar days after the survey is
16 posted on the internet website.

17 (d) The department shall provide on its internet website a link to the qualified
18 third party’s survey results and public comments.

19 ~~(e)~~ (e) Until December 31, 2028, the qualified third party shall review the annual
20 survey responses and public comments and, if warranted, by November 1 of the
21 same year, submit to the department for its review and approval proposals to modify
22 the program.

23 (f) The department shall evaluate the qualified third party’s proposals, provide
24 feedback on the proposals to the qualified third party, and render a decision on the
25 proposed modifications no later than December 1 of the same year.

26 (g) The modified plan shall be implemented the following calendar year to ensure
27 that all out-of-service mercury-added thermostat collection locations are thoroughly
28 informed about the program and its collection tools, and are provided with any
29 technical assistance that may be needed to increase the program’s effectiveness at
30 ~~out-of-service mercury added thermostat collection~~ those locations, where
31 warranted.

32 **Comment.** Section 85730 continues former Section 25214.8.13.5 without substantive change.
33 See Sections 83160(“department”), 85680(e) (“out-of-service mercury-added thermostat”),
34 85680(f) (“program”), 85680(g) (“qualified third party”).

35 **§ 85735. Responsibilities of wholesalers and retailers**

36 85735. (a) A wholesaler that distributes new thermostats and ~~that~~ has a physical
37 location in the state shall act as a collection location for out-of-service mercury-
38 added thermostats.

39 (b) A retailer or wholesaler that distributes new thermostats by mail to buyers in
40 the state shall include with the sale of the new thermostat, an internet website
41 address and a toll-free telephone number with instructions on obtaining a prepaid

1 mail-in label that a consumer may use to send an out-of-service mercury-added
2 thermostat to a collection location.

3 (c) A wholesaler that distributes new thermostats shall distribute the educational
4 and outreach materials developed by the qualified third party pursuant to **Section**
5 **25214.8.11.5** to the wholesaler’s customers.

6 **Comment.** Section 85735 continues former Section 25214.8.14 without substantive change.

7 See Sections 85680(e) (“out-of-service mercury-added thermostat”), 85680(h) (“retailer”),
8 85680(i) (“thermostat”), 85680(j) (“wholesaler”).

9 **§ 85740. Heating, ventilation, and air-conditioning contractor responsibility**

10 85740. A contractor who installs heating, ventilation, and air-conditioning
11 components and ~~who~~ removes a mercury-added thermostat shall take the out-of-
12 service mercury-added thermostat to a location that is authorized to collect out-of-
13 service mercury-added thermostats.

14 **Comment.** Section 85740 continues former Section 25214.8.15 without substantive change.

15 See Sections 85680(d) (“mercury-added thermostat”), 85680(e) (“out-of-service mercury-added
16 thermostat”).

17 **§ 85745. Demolition responsibilities**

18 85745. A person who demolishes a building shall remove any mercury-added
19 thermostats from the building before demolition in accordance with all applicable
20 statutes and regulations, and take the out-of-service mercury-added thermostat to a
21 location that is authorized to collect out-of-service mercury-added thermostats.

22 **Comment.** Section 85745 continues former Section 25214.8.16 without substantive change.

23 See Sections 85680(d) (“mercury-added thermostat”), 85680(e) (“out-of-service mercury-added
24 thermostat”).

25 **§ 85750. Repeal of chapter of California Code of Regulations**

26 85750. The department shall repeal Chapter 24 (commencing with Section
27 66274.1) of Division 4.5 of Title 22 of the California Code of Regulations.

28 **Comment.** Section 85750 continues former Section 25214.8.17 without substantive change.

29 See Section 83160 (“department”).

30 **Staff Note.** The chapter of the California Code of Regulations referenced in this section appears
31 to have been [repealed](#) in 2023. Comment is invited on whether existing Section 25214.8.17 should
32 nevertheless be continued in this recodification.

33 **§ 85755. Responsibilities related to out-of-service mercury-added thermostats**

34 85755. (a) The collection, handling, storage, and management of out-of-service
35 mercury-added thermostats pursuant to this act shall be performed in compliance
36 with this ~~chapter~~ division and its implementing regulations.

37 (b) Nothing in this act shall be construed as affecting or modifying a person’s
38 responsibility to otherwise comply with this ~~chapter~~ division, including its
39 implementing regulations, with respect to hazardous waste.

1 (c) Except as provided, nothing in this act shall limit or restrict the department’s
2 enforcement authority pursuant to this ~~chapter~~ division and its implementing
3 regulations.

4 (d) Notwithstanding any other law, a qualified third party shall not be liable
5 pursuant to this ~~chapter~~ division for violations of this act.

6 **Comment.** Section 85755 continues former Section 25214.8.18 without substantive change.
7 See Sections 85680(a) (“act”), 83160 (“department”), 83210 (“hazardous waste”).

8 **§ 85760. Effective end date for obligations imposed by article**

9 85760. (a) Unless otherwise provided in this article, the obligations imposed by
10 this article shall remain in effect until January 1, 2030.

11 (b) The Mercury Thermostat Collection Program Fund created by **subparagraph**
12 **(A) of paragraph (3) of subdivision (a) of Section 25214.8.11.2** shall be abolished
13 on November 30, 2032.

14 (c) Any unencumbered moneys remaining in the fund on November 30, 2032,
15 shall be refunded to the manufacturer, or group of manufacturers, that paid to the
16 department the fees required pursuant to **clause (i) of subparagraph (A) of**
17 **paragraph (1) of subdivision (a) and subparagraph (B) of paragraph (1) of**
18 **subdivision (a) of Section 25214.8.11.2.**

19 (d) This article shall remain in effect only until January 1, 2033, and as of that
20 date is repealed.

21 **Comment.** Section 85760 continues former Section 25214.8.19 without substantive change.
22 See Sections 83160 (“department”), 85680(c) (“manufacturer”).

23 Article 9. Electronic Waste

24 **§ 85800. Incorporation of other provisions and standards**

25 85800. (a) The requirements and other provisions of Chapter 8.5 (commencing
26 with Section 42460) of Part 3 of Division 30 of the Public Resources Code are
27 incorporated by reference as requirements and provisions of this ~~chapter~~ division.

28 (b) To the extent consistent with the federal act, the department may, by
29 regulation, establish management standards as an alternative to one or more of the
30 standards in this ~~chapter~~, division for any specified activity that involves the
31 management of an electronic waste.

32 **Comment.** Section 85800 continues former Section 25214.9 without substantive change.
33 See Sections 83160 (“department”), 83200 (“federal act”).

34 **§ 85805. Regulation of covered electronic devices**

35 85805. (a) (1) For purposes of this section, “electronic device” has the same
36 meaning as a “covered electronic device,” as defined in subparagraph (A) of
37 paragraph (1) of subdivision (g) of Section 42463 of the Public Resources Code.

1 (2) For purposes of this section, “~~Covered~~ covered electronic device” does not
2 include a covered battery-embedded product, as defined in subparagraph (B) of
3 paragraph (1) of subdivision (g) of Section 42463 of the Public Resources Code.

4 (b) The department shall adopt regulations in accordance with this section that
5 prohibit an electronic device from being sold or offered for sale in this state if the
6 electronic device is prohibited from being sold or offered for sale in the European
7 Union on and after its date of manufacture, to the extent that Directive 2002/95/EC,
8 adopted by the European Parliament and the Council of the European Union on
9 January 27, 2003, and as amended thereafter by the Commission of European
10 Communities, prohibits that sale due to the presence of certain heavy metals.

11 (c) The regulations adopted pursuant to subdivision (b) shall take effect January
12 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European
13 Parliament and the Council of the European Union on January 27, 2003, takes effect,
14 whichever date is later.

15 (d) The department shall exclude, from the regulations adopted pursuant to this
16 section, the sale of an electronic device that contains a substance that is used to
17 comply with the consumer, health, or safety requirements that are required by the
18 Underwriters Laboratories, the federal government, or the state.

19 (e) In adopting regulations pursuant to this section, the department shall not
20 require the manufacture or sale of an electronic device that is different than, or
21 otherwise not prohibited by, the European Union under Directive 2002/95/EC,
22 adopted by the European Parliament and the Council of the European Union on
23 January 27, 2003.

24 (f) (1) The department shall not adopt any regulations pursuant to this section that
25 impose any requirements or conditions that are in addition to, or more stringent than,
26 the requirements and conditions expressly authorized by this section.

27 (2) In complying with this subdivision, the department shall use, in addition to
28 any other information deemed relevant by the department, the published decisions
29 of the Technical Adaptation Committee and European Union member states that
30 interpret the requirements of Directive 2002/95/EC.

31 **Comment.** Section 85805 continues former Section 25214.10 without substantive change.
32 See Section 83160 (“department”).

33 **§ 85810. Regulation of video display devices**

34 85810. (a) For purposes of this section, the following definitions shall apply:

35 (1) “Electronic device” means a video display device, as defined in Section 42463
36 of the Public Resources Code, with a screen size of greater than four inches.

37 (2) “Covered electronic device” has the same meaning as a covered electronic
38 device, as defined in paragraph (1) of subdivision (g) of Section 42463 of the Public
39 Resources Code.

40 (3) “Manufacturer” and “retailer” have the same meaning as set forth in Section
41 42463 of the Public Resources Code.

1 (b) Notwithstanding the definition of “covered electronic device” in paragraph (2)
2 of subdivision (a), the obligations of the department established in subdivisions (c)
3 to (f), inclusive, apply only to covered electronic devices specified in subparagraph
4 (A) of paragraph (1) of subdivision (g) of Section 42463 of the Public Resources
5 Code.

6 (c) The department shall adopt regulations that identify electronic devices that the
7 department determines are presumed to be, when discarded, a hazardous waste
8 pursuant to this ~~chapter~~ division.

9 (d) (1) Except as provided in subdivision (f), a manufacturer of an electronic
10 device that is identified in the regulations adopted by the department shall send a
11 notice in accordance with the schedule specified in subparagraph (A) or (B), as
12 applicable, of paragraph ~~(2)~~ (3) to any retailer that sells that electronic device
13 manufactured by the manufacturer.

14 (2) The notice shall identify the electronic device, and ~~shall~~ inform the retailer
15 that the electronic device is a covered electronic device and is subject to a fee in
16 accordance with subdivision (e).

17 ~~(2)~~ (3) The notice required by this subdivision shall be sent in accordance with
18 the following schedule:

19 (A) On or before October 1, 2004, the manufacturer shall send a notice covering
20 any electronic device manufactured by that manufacturer ~~that is identified in the~~
21 regulations adopted by the department on or before July 1, 2004, ~~that identify the~~
22 identifying electronic devices ~~that~~ the department determines are presumed to be,
23 when discarded, to be a hazardous waste pursuant to this ~~chapter~~ division.

24 (B) On or before April 1, 2005, and on or before every April 1 of each year
25 thereafter, the manufacturer shall send a notice covering any electronic device
26 ~~manufactured by that manufacturer~~ identified in the regulations adopted by the
27 department pursuant to subdivision (c) on or before December 31 of the prior year
28 that were manufactured by that manufacturer.

29 ~~(3) If a retailer sells a refurbished covered electronic device, the~~ The manufacturer
30 is required to comply with the notice requirement of this subdivision based on the
31 sale by a retailer of a refurbished covered electronic device only if the manufacturer
32 directly ~~supplies~~ supplied the refurbished covered electronic device to the retailer.

33 (e) (1) Except as provided in subdivision (f), a covered electronic device ~~that is~~
34 identified in the regulations adopted, by the department on or before July 1, 2004,
35 ~~by the department~~, that identify electronic devices ~~that~~ the department determines
36 are presumed to be when discarded to be a hazardous waste pursuant to this chapter,
37 shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with
38 Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the
39 covered electronic waste recycling fee imposed pursuant to Section 42464 of the
40 Public Resources Code.

41 (2) Except as provided in subdivision (f), a covered electronic device identified in
42 the regulations adopted by the department, pursuant to subdivision (c), shall, on and
43 after July 1 of the year subsequent to the year in which the covered electronic device

1 is first identified in the regulations, be subject to Chapter 8.5 (commencing with
2 Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the
3 covered electronic waste recycling fee imposed pursuant to Section 42464 of the
4 Public Resources Code.

5 (f) (1) If the manufacturer of an electronic device that is identified in ~~the~~
6 regulations adopted by the department pursuant to subdivision (c) obtains the
7 department’s concurrence that an electronic device, when discarded, would not be
8 a hazardous waste, in accordance with procedures set forth in Section 66260.200 of
9 Title 22 of the California Code of Regulations, the electronic device shall cease to
10 be a covered electronic device and shall cease to be subject to subdivisions (d) and
11 (e) on the first day of the quarter that begins not less than 30 days after the date ~~that~~
12 the department provides the manufacturer with a written nonhazardous concurrence
13 for the electronic device pursuant to this subdivision.

14 (2) A manufacturer shall notify each retailer to which that manufacturer has sold
15 a covered electronic device that the device has been determined pursuant to this
16 subdivision to be nonhazardous and is no longer subject to a covered electronic
17 waste recycling fee.

18 (2) (3) No later than 10 days after the date that the department issues a written
19 nonhazardous concurrence to the manufacturer pursuant to paragraph (1), the
20 department shall do both of the following:

21 (A) Post on the department’s internet website a copy of the nonhazardous
22 concurrence, including, ~~but not limited to,~~ an identification and description of the
23 electronic device to which the concurrence applies.

24 (B) Send a copy of the nonhazardous concurrence, including, ~~but not limited to,~~
25 an identification and description of the electronic device to which the concurrence
26 applies, to the Department of Resources Recycling and Recovery and to the
27 California Department of Tax and Fee Administration.

28 (g) Notwithstanding Section 42474 of the Public Resources Code, a fine or
29 penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale,
30 in this state a covered electronic device for which the covered electronic waste
31 recycling fee has not been collected or paid, if the failure to collect the fee was due
32 to the failure of the California Department of Tax and Fee Administration to inform
33 the retailer that the electronic device was subject to the fee.

34 **Comment.** Section 85810 continues former Section 25214.10.1 without substantive change.
35 See Sections 83160 (“department”), 83210 (“hazardous waste”).

36 **Staff Notes. (1)** The staff welcomes comment on whether any proposed revision of Section
37 25214.10.1 in proposed Section 85810 substantively changes the meaning of the existing section.

38 (2) Existing Section 25214.10.1(f)(1) — which would be continued by proposed Section
39 85810(f)(1) and (2) — indicates that a manufacturer of an electronic device who “obtains the
40 department’s concurrence that an electronic device, when discarded, would not be a hazardous
41 waste” is required to send a notice that the device has been determined to be nonhazardous to any
42 retailer to whom the manufacturer has sold the device, but only on a specified date after the
43 department provides the manufacturer *written* nonhazardous concurrence relating to that device.

1 Similarly, Section 25214.10.1(f)(2) — which would be continued by proposed Section
2 85810(f)(3) — imposes requirements on the department within a specified time after the issuance
3 of the written concurrence.

4 (a) Does the intended meaning of a manufacturer “obtaining” this nonhazardous concurrence, as
5 stated in Section 25214.10.1(f)(1), differ in some way from the manufacturer receiving *written*
6 *notice* of the concurrence, and if not, is there a reason the provision cannot be redrafted to simply
7 obligate the manufacturer to act after receiving a written nonhazardous concurrence?

8 (b) Is there text in another section or in regulation that calls for the department to act within a
9 specified time on a submitted request for a nonhazardous concurrence, which would be helpful to
10 add to this recodified section?

11 **The staff welcomes comment on these issues.**

12 **§ 85815. Emergency regulations**

13 85815. (a) A regulation adopted pursuant to this article may be adopted as an
14 emergency regulation in accordance with Chapter 3.5 (commencing with Section
15 11340) of Part 1 of Division 3 of Title 2 of the Government Code, ~~and for the~~
16 ~~purposes of that chapter~~

17 (b) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1
18 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of the
19 Government Code, the adoption of these regulations a regulation pursuant to
20 subdivision (a) is an emergency, and shall be considered by the Office of
21 Administrative Law as necessary for the immediate preservation of the public peace,
22 health, and safety, and general welfare.

23 (c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
24 Division 3 of Title 2 of the Government Code, an emergency regulation adopted by
25 the department pursuant to this section shall be filed with, ~~but~~ and not be repealed
26 by, the Office of Administrative Law, and shall remain in effect for a period of two
27 years or until revised by the department, whichever occurs sooner.

28 **Comment.** Section 85815 continues former Section 25214.10.2 without substantive change.
29 See Section 83160 (“department”).

30 **Staff Note.** The staff welcomes comment on whether any proposed revision of Section
31 25214.10.2 in proposed Section 85815 substantively changes the meaning of the existing section.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as the law existed on January 1, 2025. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	Proposed New Provision
25214.8.1(b).....	85610
25214.8.1(a).....	85615
25214.8.2	85620
25214.8.3	85625
25214.8.4(a).....	85630
25214.8.4(b).....	85635
25214.8.4(c).....	85640
25214.8.4(d).....	85645
25214.8.4(e).....	85650
25214.8.5	85655
25214.8.6	85660
25214.8.10	85675
25214.8.11	85680
25214.8.11.2(a).....	85685
25214.8.12(b)-(f)	85690
25214.8.14	85695
25214.8.11.5(a), (b), (c), (d),(e)(1), (f), and (g), and (h)	85700
25214.8.11.5(e)(2)	85705
25214.8.11.6	85710
25214.8.12	85715
25214.8.13(a).....	85720
25214.8.13(b).....	85725
25214.8.13.5	85730
25214.8.14	85735
25214.8.15	85740
25214.8.16	85745
25214.8.17	85750
25214.8.18	85755
25214.8.19	85760
25214.9	85800
25214.10	85805
25214.10.1	85810
25214.10.2	85815

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 46 reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Existing Provision
85610.....	25214.8.1(b)
85615.....	25214.8.1(a)
85620.....	25214.8.2
85625.....	25214.8.3
85630.....	25214.8.4(a)
85635.....	25214.8.4(b)
85640.....	25214.8.4(c)
85645.....	25214.8.4(d)
85650.....	25214.8.4(e)
85655.....	25214.8.5
85660.....	25214.8.6
85675.....	25214.8.10
85680.....	25214.8.11
85685.....	25214.8.11.2(a)
85690.....	25214.8.12(b)-(f)
85695.....	25214.8.14
85700.....	25214.8.11.5(a), (b), (c), (d),(e)(1), (f), (g), (h)
85705.....	25214.8.11.5(e)(2)
85710.....	25214.8.11.6
85715.....	25214.8.12
85720.....	25214.8.13(a)
85725.....	25214.8.13(b)
85730.....	25214.8.13.5
85735.....	25214.8.14
85740.....	25214.8.15
85745.....	25214.8.16
85750.....	25214.8.17
85755.....	25214.8.18
85760.....	25214.8.19
85800.....	25214.9
85805.....	25214.10
85810.....	25214.10.1
85815.....	25214.10.2