

Senate Bill No. 1889

CHAPTER 715

An act to amend Section 65850.2 of the Government Code, to amend Sections 25531, 25534, 25534.1, 25535, 25537, 25538, 25539, 25540, 25541, 25543.1, and 25543.2 of, to add Sections 25531.2, 25534.05, 25535.1, 25535.5, 25536.5, 25537.5, 25540.5, 25541.3, 25541.5, 25542, and 25543.3 to, to repeal and amend Section 25535.2 of, and to repeal and add Sections 25532, 25533, 25534.2, 25534.5, 25536, and 25543 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 21, 1996. Filed
with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1889, Calderon. Regulated substances.

(1) Existing law requires the administering agency to make a preliminary determination whether there is a significant likelihood that a handler's use of an acutely hazardous material may pose an acutely hazardous materials risk.

If the administering agency determines that there is a significant likelihood of risk, the administering agency is required to require the handler to prepare and submit a risk management and prevention program (RMPP), consisting of specified elements.

This bill would repeal those provisions and would instead provide that the program for the prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to the Clean Air Act is the accidental release prevention program for the state. The bill would define terms and would define the term "regulated substance" as a substance listed in specified federal regulations and criteria and would require the Office of Emergency Services to determine, by June 30, 1997, which of those extremely hazardous substances meet those criteria or pose a regulated substances accident risk. The office would be required to adopt a list of regulated substances. The bill would require the office and administering agencies, as prescribed, to implement the program, except as specified, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require the office to adopt regulations, initially as emergency regulations, for the registration of stationary sources subject to the program and the receipt, review, revision, and audit of remedial action plans (RMPs), consistent with specified federal requirements. The bill would require the owner or operator of a stationary source to prepare an RMP when required under the federal regulations. The bill would also require a stationary source to submit an RMP if the

administering agency determines there is a significant likelihood of a regulated substance accident risk, except as specified. The RMP would be required to be submitted to the Environmental Protection Agency and to the administering agency, except as specified. The bill would impose criminal penalties upon any person or stationary source who makes a false material statement or representation or certification used for compliance with the program, and upon any stationary source who knowingly violates any requirement of the program, thereby imposing a state-mandated local program by creating new crimes.

The bill would require the office to obtain and maintain state delegation of the federal accidental release prevention program. The bill would allow a person to submit a petition to the office to add or delete a material from the regulated substance list or to revise the state threshold quantities and would require the Office of Environmental Health Hazard Assessment to review the petition, as specified. The office, in consultation with the Office of Environmental Health Hazard Assessment, would be required, by June 30, 1998, to review each listed regulated substance and the state threshold quantity for each substance and to adopt regulations which amend the list.

The bill would specify related matters and make conforming changes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 65850.2 of the Government Code is amended to read:

65850.2. (a) Each city and each county shall include in its information list compiled pursuant to Section 65940 for development projects, or application form for projects which do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code and the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.



(2) The requirement that the owner or authorized agent shall certify whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process or will contain a source or modified source of hazardous air emissions.

(b) A city or county shall not find the application complete pursuant to Section 65943 or approve a development project, or a building permit for a project which does not require a development permit other than a building permit, in which a regulated substance will be present in a process in quantities greater than the applicable threshold quantity, unless the owner or authorized agent for the project first obtains from the administering agency with jurisdiction over the facility, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit an RMP. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county, within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMP. The requirement to submit an RMP to the administering agency, shall be met prior to the issuance of a certificate of occupancy or its substantial equivalent. The owner or authorized agent shall submit to the city or county certification from the air pollution control officer that the owner or authorized agent is in compliance with the disclosures required by Section 42303 of the Health and Safety Code.

(c) A city or county shall not issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.



(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section, the following terms have the following meaning:

(1) “Administering agency,” “process,” “regulated substance,” “RMP,” and “threshold quantity” have the same meaning as set forth in Section 25532 of the Health and Safety Code.

(2) “Hazardous air emissions” means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(i) This section shall not apply to applications solely for residential construction.

SEC. 2. Section 25531 of the Health and Safety Code is amended to read:

25531. (a) The Legislature finds and declares that a significant number of chemical manufacturing and processing facilities generate, store, treat, handle, refine, process, and transport hazardous materials. The Legislature further finds and declares that, because of the nature and volume of chemicals handled at these facilities, some of those operations may represent a threat to public health and safety if chemicals are accidentally released.

(b) The Legislature recognizes that the potential for explosions, fires, or releases of toxic chemicals into the environment exists. The protection of the public from uncontrolled releases or explosions of hazardous materials is of statewide concern.

(c) There is an increasing capacity to both minimize and respond to releases of toxic air contaminants and hazardous materials once they occur, and to formulate efficient plans to evacuate citizens if these discharges or releases cannot be contained. However, programs designed to prevent these accidents are the most effective way to protect the community health and safety and the environment. These programs should anticipate the circumstances that could result in their occurrence and require the taking of



necessary precautionary and preemptive actions, consistent with the nature of the hazardous materials handled by the facility and the surrounding environment.

(d) As required by Clean Air Act amendments enacted in 1990 (P.L. 101-549), the Environmental Protection Agency has developed a program for the prevention of accidental releases of regulated substances. In developing the program, the Environmental Protection Agency thoroughly reviewed a wide variety of chemical and hazardous substances to identify substances that might pose a risk to public health or safety or to the environment in the event of an accidental release. The Environmental Protection Agency developed a program to prevent accidental releases of those substances determined to potentially pose the greatest risk of immediate harm to the public and the environment. The federal program provides no options for implementing agencies to diminish the requirements or applicability of the federal program.

(e) In light of this new federal program, the Legislature finds and declares that the goals of reducing regulated substances accident risks and eliminating duplication of regulatory programs can best be accomplished by implementing the federal risk management program in the state, with certain amendments that are specific to the state. Therefore, it is the intent of the Legislature that the state seek and receive delegation of the federal program for prevention of accidental releases of regulated substances established pursuant to Section 112(r) of the federal Clean Air Act (42 U.S.C. Section 7412(r)), by implementing the federal program as promulgated by the Environmental Protection Agency, with certain amendments that are specific to the state.

SEC. 3. Section 25531.2 is added to the Health and Safety Code, to read:

25531.2. The Legislature finds and declares that as the state implements the federal accidental release prevention program pursuant to this article, the Office of Emergency Services will play a vital and increased role in preventing accidental releases of extremely hazardous substances. The Legislature further finds and declares that as an element of the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), a single fee system surcharge mechanism is established by Section 25404.5 to cover the costs incurred by the office pursuant to this article. It is the intent of the Legislature that this existing authority be used to fully fund the activities of the office necessary to implement this article.

SEC. 4. Section 25532 of the Health and Safety Code is repealed.

SEC. 5. Section 25532 is added to the Health and Safety Code, to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:



(a) “Accidental release” means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) Administering agency means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) “Covered process” means a process that has a regulated substance present in more than a threshold quantity.

(d) “Modified stationary source” means an addition or change to a stationary source, which qualifies as a “major change,” as defined in Subpart A of Part 68 of Title 40 of the Code of Federal Regulations. “Modified stationary source” does not include an increase in production up to the source’s existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) “Process” means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) “Qualified person” means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) “Regulated substance” means any substance which is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations which is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than ten millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:



(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and therefore should remain on the list of regulated substances until completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) “Regulated substances accident risk” means a potential for the accidental release of a regulated substance into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) “RMP” means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) “State threshold quantity” means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) “Stationary source” means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(l) “Threshold quantity” means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

SEC. 6. Section 25533 of the Health and Safety Code is repealed.

SEC. 7. Section 25533 is added to the Health and Safety Code, to read:

25533. (a) The program for prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)), with the additional provisions specified in this article, is the accidental release prevention program for the state. The program shall be implemented by the office and the



appropriate administering agency in each city or county. The state's implementation of the federal program adopted by the Environmental Protection Agency is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding this article or Division 26 (commencing with Section 39000), the accidental release prevention program submitted by the office to the Environmental Protection Agency to receive delegation of federal authority to implement the federal program shall include only those regulated substances and threshold quantities specified in the regulations adopted by the Environmental Protection Agency.

(b) The office and the administering agency shall, to the maximum extent feasible, coordinate implementation of the accidental release prevention program with the federal Chemical Safety and Hazard Investigation Board, the Emergency Response Commission and local emergency planning committees, the unified program elements specified in subdivision (c) of Section 25404, the permitting programs implemented by the air quality management districts and air pollution control districts pursuant to Title V of the Clean Air Act (42 U.S.C. Section 7661 et seq.), and with other agencies, as specified in Section 25404.2.

(c) Section 39602 does not apply to the accidental release prevention program promulgated and implemented pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)).

(d) The administering agency in each jurisdiction is the agency designated to implement and enforce any requirements specified by the Environmental Protection Agency and pertaining to any of the following:

(1) Verification of stationary source registration and submission of an RMP or revised RMP.

(2) Verification of source submission of stationary certifications or compliance schedules.

(3) Mechanisms for ensuring that stationary sources permitted pursuant to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) are in compliance with the requirements of this article.

(e) Notwithstanding subdivision (d) and paragraph (2) of subdivision (a) of Section 25404.1, if, after a public hearing, the office determines that an administering agency is not taking reasonable actions to enforce the statutory provisions and regulations pertaining to accidental releases of regulated substances, the office may exercise any of the powers of that administering agency as necessary to implement this article.

(f) Notwithstanding any other provision of law, at any time there is no local agency certified to implement in a city or unincorporated portion of a county the unified program established pursuant to



Chapter 6.11 (commencing with Section 25404), the office shall do one of the following:

(1) Authorize the administering agency which implemented this article in the city or county as of December 31, 1993, to continue to implement this article until such time as a local agency is certified to implement the unified program.

(2) Assume authority and responsibility to implement this article in that city or county until a local agency is certified to implement the unified program, in which case all references in this article to the administering agency shall be deemed to refer to the office.

SEC. 8. Section 25534 of the Health and Safety Code is amended to read:

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

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

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

(A) Require the preparation and submission of an RMP, but need not do so if it determines that the likelihood of an regulated substances accident risk is remote, unless otherwise required by federal law,

(B) Reclassify a covered process from program 3 to program 2 or from program 2 to program 1, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Title 40 of the Code of Federal Regulations, unless the classification of the covered process is specified in those regulations.

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

(c) The requirements of this section apply to a stationary source which is not otherwise required to submit an RMP pursuant to Part



68 (commencing with Section 68.1) of Subchapter C of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 9. Section 25534.05 is added to the Health and Safety Code, to read:

25534.05. (a) The office, in consultation with the administering agencies, industry, the public, and other interested parties, shall adopt regulations, initially as emergency regulations, for all of the following activities:

(1) The registration of stationary sources subject to this article.

(2) The receipt, review, revision, and audit of RMPs.

(3) The resolution of disagreements between stationary source operators and administering agencies.

(4) Providing for the public availability of RMPs, consistent with subsection (c) of Section 114 of the federal Clean Air Act (42 U.S.C. Section 7414(c)).

(5) The provision of technical assistance to stationary sources subject to the accidental release prevention program.

(b) The regulations shall also require each stationary source to work closely with the administering agency in deciding which process hazard review technique is best suited for each stationary source's covered processes.

(c) The regulations shall provide that the process hazard analysis shall include the consideration of external events, including seismic events, if applicable.

(d) The regulations shall also require each stationary source to work closely with the administering agency in determining for each RMP an appropriate level of detail for the document elements specified in Section 68.150(a) of Title 40 of the Code of Federal Regulations and for documentation of the external events analysis.

(e) Administering agencies shall implement the regulations adopted pursuant to this section.

SEC. 10. Section 25534.1 of the Health and Safety Code is amended to read:

25534.1. Each RMP required to be prepared pursuant to this article shall give consideration to the proximity of the facility or proposed facility to populations located in schools, residential areas, general acute care hospitals, long-term health care facilities, and child day care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. "School" means any school used for the purpose of the education of more than 12 children in kindergarten or any grades 1 to 12, inclusive.

SEC. 11. Section 25534.2 of the Health and Safety Code is repealed.



SEC. 12. Section 25534.2 is added to the Health and Safety Code, to read:

25534.2. Any new or modified stationary source which is required to prepare an RMP pursuant to this article shall be subject to the requirements of Section 65850.2 of the Government Code.

SEC. 13. Section 25534.5 of the Health and Safety Code is repealed.

SEC. 14. Section 25534.5 is added to the Health and Safety Code, to read:

25534.5. The administering agency with jurisdiction over a stationary source or facility may have access to inspect the stationary source and review all technical and other information in the stationary source's possession which is reasonably necessary to allow the administering agency to make a determination regarding the stationary source's compliance with this article. Upon request of the administering agency, the stationary source shall provide to the administering agency information regarding the stationary source's compliance with this article.

SEC. 15. Section 25535 of the Health and Safety Code is amended to read:

25535. (a) An owner or operator of a stationary source submitting an RMP pursuant to this article shall submit the RMP to the administering agency after the RMP is certified as complete by a qualified person and the stationary source owner or operator. The administering agency shall review the RMP and may authorize the air pollution control district or air quality management district in which the stationary source is located to conduct a technical review of the RMP. If, after review by the administering agency and technical review, if any, by the air pollution control district or air quality management district, the administering agency determines that the stationary source's RMP is deficient in any way, the administering agency shall notify the stationary source of these defects. The stationary source shall submit a corrected RMP within 60 days of the notification of defects, unless granted a one-time extension of no more than 30 days, of the notice to correct the RMP by the administering agency. Failure to fully comply with this notice or the unified program of this section shall be deemed a violation of this article for purposes of Section 25540.

(b) Upon implementation of an RMP, the stationary source shall notify the administering agency that the RMP has been implemented and shall summarize the steps taken in preparation and implementation of the RMP.

(c) The stationary source shall continue to carry out the program and activities specified in the RMP at the stationary source after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator of the stationary source shall implement all programs and activities in the RMP before operations



commence, in the case of a new stationary source, or before any new activities involving regulated substances are taken, in the case of a modified stationary source.

SEC. 16. Section 25535.1 is added to the Health and Safety Code, to read:

25535.1. (a) Except as otherwise provided in this article, an owner or operator of a stationary source shall prepare an RMP if an RMP is required pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations or if the administering agency makes a determination pursuant to Section 25534 that an RMP is required.

(b) An owner or operator of a stationary source required to prepare an RMP pursuant to this article shall submit the RMP to the Environmental Protection Agency and to the administering agency.

(c) Notwithstanding subdivision (b), if an RMP is required only because the administering agency has determined, pursuant to Section 25534, that an RMP is required, the RMP shall be submitted only to the administering agency.

SEC. 17. Section 25535.2 of the Health and Safety Code, as added by Chapter 1662 of the Statutes of 1990, is repealed.

SEC. 18. Section 25535.2 of the Health and Safety Code, as added by Chapter 816 of the Statutes of 1991, is amended to read:

25535.2. Within 15 days after the administering agency determines that an RMP is complete, the administering agency shall make the RMP available to the public for review and comment for a period of at least 45 days. A notice briefly describing and stating that the RMP is available for public review at a certain location shall be placed in a daily local newspaper and mailed to interested persons and organizations. The administering agency shall review the RMP, and any comments received, following the regulations adopted pursuant to subdivision (a) of Section 25534.05.

SEC. 19. Section 25535.5 is added to the Health and Safety Code, to read:

25535.5. Any fee imposed on any stationary source to cover the administering agency's cost of implementing the accidental release prevention program pursuant to this article shall be imposed only through the single fee system established pursuant to Section 25404.5.

SEC. 20. Section 25536 of the Health and Safety Code is repealed.

SEC. 21. Section 25536 is added to the Health and Safety Code, to read:

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

(b) If the administering agency makes a determination pursuant to Section 25534 that a stationary source is required to prepare and



submit an RMP, the stationary source shall submit the RMP in accordance with a schedule established by the administering agency after consultation with the stationary source. The administering agency shall not require an RMP to be submitted earlier than 12 months or later than three years after the owner or operator has received a notice of that determination from the administering agency.

SEC. 22. Section 25536.5 is added to the Health and Safety Code, to read:

25536.5. (a) Any business which was required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, and which is required to prepare and submit an RMP pursuant to this article, shall continue to implement the risk management and prevention program until the business has submitted an RMP as specified in this article.

(b) Any business which was required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, and which is not required to prepare an RMP pursuant to this article is required to comply only with those requirements of this chapter that apply to the business.

(c) Any stationary source which was not required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, but which is required to prepare and submit an RMP pursuant to this article, shall submit and implement an RMP not later than the deadlines specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter 7 of Title 40 of the Code of Federal Regulations.

SEC. 23. Section 25537 of the Health and Safety Code is amended to read:

25537. (a) The administering agency shall inspect every stationary source required to be registered pursuant to this article at least once every three years to determine whether the stationary source is in compliance with this article.

The requirements of this section do not alter or affect the immunity provided a public entity pursuant to Section 818.6 of the Government Code.

(b) Subdivision (a) shall not be construed to affect the exemption from audit requirements established pursuant to Section 68.220(c) of Title 40 of the Code of Federal Regulations.

SEC. 24. Section 25537.5 is added to the Health and Safety Code, to read:

25537.5. (a) Where a stationary source has one or more covered processes, and is subject to the requirements of Article 1 (commencing with Section 25500) for the same substance, compliance with this article shall be deemed compliance with Article



1 (commencing with Section 25500) for that substance, to the extent not inconsistent with federal law and with Article 1 (commencing with Section 25500).

(b) Any stationary source which relies on subdivision (a) for compliance with the applicable requirements of Article 1 (commencing with Section 25500) shall annually submit to the administering agency a statement that the stationary source has made no changes required to be reported pursuant to Article 1 (commencing with Section 25500), or identifying all reportable changes.

SEC. 25. Section 25538 of the Health and Safety Code is amended to read:

25538. (a) If a stationary source believes that any information required to be reported, submitted or otherwise provided to the administering agency pursuant to this article, involves the release of a trade secret, the stationary source shall provide the information to the administering agency and shall notify the administering agency in writing of that belief. Upon receipt of a claim of trade secret related to a RMP, the administering agency shall review the claim and shall segregate properly substantiated trade secret information from information which shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). As used in this section, "trade secret" has the same meaning as found in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the administering agency shall not disclose any properly substantiated trade secret which is so designated by the owner or operator of a stationary source.

(c) The administering agency may disclose trade secrets received by the administering agency pursuant to this article to authorized officers or employees of other governmental agencies only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) Any officer or employee or former officer or employee of the administering agency or any other government agency who, because of that employment or official position, has possession of, or has access to, information designated as a trade secret pursuant to this section, shall not knowingly and willfully disclose the information in any manner to any person not authorized to receive the information pursuant to this section. Notwithstanding Section 25515, any person who violates this subdivision, and who knows that disclosure of this information to the general public is prohibited by the section, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars (\$1,000), or by both fine and imprisonment.



(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize any stationary source to refuse to disclose to the administering agency any information required pursuant to this article.

(g) (1) Upon receipt of a request for the release of information to the public which includes information which the stationary source has notified the administering agency is a trade secret pursuant to subdivision (a), the administering agency shall notify the stationary source in writing of the request by certified mail, return receipt requested. The owner or operator of the stationary source shall have 30 days from receipt of the notification to provide the administering agency with any materials or information intended to supplement the information submitted pursuant to subdivision (a) and needed to substantiate the claim of trade secret. The administering agency shall review the claim of trade secret and shall determine whether the claim is properly substantiated.

(2) The administering agency shall inform the stationary source in writing, by certified mail, return receipt requested, of any determination by the administering agency that some, or all, of a claim of trade secret has not been substantiated. Not earlier than 30 days after the stationary source's receipt of notice of the determination, the administering agency shall release the information to the public, unless, prior to the expiration of the 30-day period, the stationary source files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) or for an injunction prohibiting disclosure of the information to the public and promptly notifies the administering agency of that action.

SEC. 26. Section 25539 of the Health and Safety Code is amended to read:

25539. The office and each administering agency, in implementing this article, shall, upon request, involve and cooperate with local and state government officials, emergency planning committees, and professional associations.

SEC. 27. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five



thousand dollars (\$25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year.

SEC. 28. Section 25540.5 is added to the Health and Safety Code, to read:

25540.5. Any person or stationary source who violates any rule or regulation, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry, established pursuant to this article and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subsections (l) and (r) of Section 112 of the Clean Air Act (42 U.S.C. Sections 7412(l) and 7412(r)) or the regulations adopted pursuant thereto, is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

SEC. 29. Section 25541 of the Health and Safety Code is amended to read:

25541. Any person or stationary source who knowingly makes any false material statement, representation or certification in any record, report, or other document filed, maintained, or used for the purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person or stationary source shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment in the state prison for one, two, or three years or in the county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

SEC. 30. Section 25541.3 is added to the Health and Safety Code, to read:

25541.3. Any person or stationary source who knowingly violates any requirement of this article, including any fee or filing requirement, for which delegation of federal implementation and enforcement authority has been obtained pursuant to subsections (l) and (r) of Section 112 of the federal Clean Air Act (42 U.S.C. Sections



7412(l) and 7412(r)), or who knowingly renders inaccurate any federally required monitoring device or method, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) for each day of violation.

SEC. 31. Section 25541.5 is added to the Health and Safety Code, to read:

25541.5. If civil penalties are recovered pursuant to Section 25540 or 25540.5, the same offense shall not be the subject of a criminal prosecution pursuant to Section 25541 or 25541.3. When an administering agency refers a violation to a prosecuting agency and a criminal complaint is filed, any civil action brought pursuant to this article for that offense shall be dismissed.

SEC. 32. Section 25542 is added to the Health and Safety Code, to read:

25542. (a) It is the intent of the Legislature that for those facilities with an RMP incorporating some, or all, of the federal or state process safety management program under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) and the Occupational Safety and Health Act of 1973, Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, where a violation may be penalized pursuant to this article and the process safety management program, penalties shall be imposed under only one program.

(b) It is the further intent of the Legislature that for any facility described in subdivision (a), the Division of Industrial Safety of the Department of Industrial Relations shall, to the maximum extent feasible, coordinate with the administering agency and other agencies in accordance with paragraph (4) of subdivision (a) of Section 25404.2.

SEC. 33. Section 25543 of the Health and Safety Code is repealed.

SEC. 34. Section 25543 is added to the Health and Safety Code, to read:

25543. The office shall obtain and maintain state delegation of the federal accidental release prevention program established pursuant to subsection (r) of Section 7412 of Title 42 of the United States Code. Substances that are regulated under this article only because they are regulated substances pursuant to paragraph (2) of subdivision (g) of Section 25532 and state threshold quantities shall not be a part of the state program for which delegation of federal implementation and enforcement authority is sought pursuant to this section and subdivision (a) of Section 25533.

SEC. 35. Section 25543.1 of the Health and Safety Code is amended to read:

25543.1. (a) Any person may submit a petition to the office for the addition of a material to, or for the deletion of a material from, the regulated substances list adopted pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532 or to revise the



existing state threshold quantities that are used as the standards for registration and RMP compliance.

(b) A petition submitted pursuant to subdivision (a) shall be accompanied by a submission fee, to be established by the office, in consultation with the Office of Environmental Health Hazard Assessment. The fee shall be in an amount that is sufficient to pay for the reasonable costs incurred by the office and the Office of Environmental Health Hazard Assessment necessary to carry out this section. Upon the receipt of the petition and fee, the office shall transmit to the Office of Environmental Health Hazard Assessment funds sufficient to pay for the reasonable costs incurred by the Office of Environmental Health Hazard Assessment to carry out this section.

(c) An owner or operator of a stationary source shall not delay implementation of this article in anticipation of a ruling on a petition to delist a regulated substance or to change a state threshold quantity.

(d) The office shall notify administering agencies of petitions for adding or delisting regulated substances or for changing state threshold quantities and shall take comments from administering agencies on the petitions. All comments shall be responded to in writing.

(e) The office shall notify the public of petitions for adding or delisting regulated substances or for changing state threshold quantities and shall take public comment on the petitions. All comments shall be responded to in writing.

(f) (1) The office shall request the Office of Environmental Health Hazard Assessment to review the petitions and make recommendations to the office regarding the petitions.

(2) Each recommendation made pursuant to paragraph (1) shall be based on current scientific knowledge and a sound and open scientific review and shall contain a finding whether a substance should be added to, or deleted from, the regulated substance list, or whether the state threshold quantity for a regulated substance should be revised.

(g) The petition review by the Office of Environmental Health Hazard Assessment shall take into consideration all of the following factors:

(1) The severity of any acute adverse health effect associated with an accidental release of the substance.

(2) The likelihood of an accidental release of the substance.

(3) The potential magnitude of human exposure to an accidental release of the substance.

(4) The results of other preexisting evaluations of the substances potential risks which take into account the factors specified in paragraphs (1), (2), and (3), including, but not limited to, studies or research undertaken by, or on behalf of, the Environmental Protection Agency for the purpose of complying with paragraph (3)



of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412 (r)(3)).

(5) The likelihood of the substance being handled in this state.

(6) The accident history of the substance.

(h) Upon receipt of a recommendation made pursuant to subdivision (f), the office may add or remove a substance or change an existing state threshold quantity as a requirement for this article.

(i) In reviewing a petition under this section, the office shall consider the views of administering agencies that have indicated support or opposition to the petition.

SEC. 36. Section 25543.2 of the Health and Safety Code is amended to read:

25543.2. (a) A stationary source that intends to modify a facility which may result either in a significant increase in the amount of regulated substances handled by the facility or in a significantly increased risk in handling a regulated substance, as compared to the amount of substances and the amount of risk identified in the facility's RMP relating to the covered process proposed for modification, shall do all the following, prior to operating the modified facility:

(1) Where reasonably possible, notify the administering agency in writing of the stationary source's intent to modify the facility at least five calendar days before implementing any modifications. As part of the notification process, the stationary source shall consult with the administering agency when determining whether the RMP should be reviewed and revised. Where prenotification is not reasonably possible, the stationary source shall provide written notice to the administering agency no later than 48 hours following the modification.

(2) Establish procedures to manage the proposed modification, which shall be substantially similar to the procedures specified in Section 1910.119 of Title 29 of the Code of Federal Regulations pertaining to process safety management, and notify the administering agency that the procedures have been established.

(b) The stationary source shall revise the appropriate documents, as required pursuant to subdivision (a), expeditiously, but not later than 60 days from the date of the facility modification.

SEC. 37. Section 25543.3 is added to the Health and Safety Code, to read:

25543.3. On or before June 30, 1998, the office, in consultation with the Office of Environmental Health Hazard Assessment, shall do all of the following:

(a) Review each regulated substance on the list established pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532 and, taking into consideration the factors specified in subdivision (g) of Section 25543.1, determine if the regulated substance should remain subject to regulation under this article or should be deleted from that list of regulated substances.



(b) Review the state threshold quantity for each regulated substance that the office determines should remain on the list of regulated substances, and determine, taking into consideration the factors specified in subdivision (g) of Section 25543.1, if the state threshold quantity should be revised.

(c) Adopt regulations, which amend the list of regulated substances adopted pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532, and adopt state threshold quantities for regulated substances, based on the determinations of the office under subdivisions (a) and (b).

SEC. 38. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

