

**Introduced by Senator Blakespear**February 12, 2024

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An act to add Chapter 6 (commencing with Section 25000) to Division 20 of the Health and Safety Code, relating to hazardous waste.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1066, as introduced, Blakespear. Hazardous waste: marine flares: producer responsibility.

(1) Under existing law, as part of the hazardous waste control laws, the Department of Toxic Substances Control (DTSC) generally regulates the management and handling of hazardous waste and hazardous materials.

This bill would create a producer responsibility program for marine flares. The bill would define “covered product” to mean a pyrotechnic device that produces a brilliant light or a plume of colorful smoke as a visual distress signal on marine vessels to attract attention and pinpoint a boater’s location in an emergency. The bill would require a producer of a covered product to register with a product responsibility organization, which would be required to develop and implement a producer responsibility plan for the collection, transportation, and the safe and proper management of covered products. The bill would require DTSC to adopt regulations to implement the act with an effective date no earlier than January 1, 2027.

This bill would require, within 9 months of the effective date of the regulations, a PRO to prepare and submit a product responsibility plan to DTSC. The bill would require the plan to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan. The bill would require, within 90 days of receipt of the plan, DTSC to approve, approve in part, or disapprove the plan, as

provided. The bill would require a PRO to resubmit a plan if its plan is not fully approved.

This bill would require a PRO to implement its plan within 90 days of approval. The bill would require the plan to be fully funded in a manner that equitably distributes the plan's costs among participant producers that reflects sales volumes and the cost to manage the covered products that a producer produces.

This bill would require the PRO to prepare and submit to DTSC and make publicly available an annual report describing the activities carried out pursuant to the plan. The bill would require the PRO to retain specified documents, annually audit its accounting books, and make documents available to DTSC for review, as specified. The bill would require all reports and records provided to DTSC pursuant to the act to be provided under the penalty of perjury. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The bill would require a participant producer, through the PRO, to pay DTSC, on an unspecified schedule, an annual administrative charge, as determined by DTSC. The bill would require the charge be set at an amount that is adequate to cover DTSC's full costs of administering and enforcing the act. The bill would provide for the imposition of administrative civil penalties upon any person who violates the act. The bill would establish the Marine Flare Recovery Fund in the State Treasury and would require the administrative charges collected by DTSC to be deposited into that account for expenditure by DTSC, upon appropriation by the Legislature, to cover DTSC's cost to implement and enforce the act. The bill would also establish the Marine Flare Recovery Penalty Account in the Marie Flare Recovery Fund and would require that the civil penalties collected by DTSC pursuant to the act be deposited in that account, for expenditure by DTSC, upon appropriation by the Legislature, on activities related to the collection, reuse, and safe and proper management of covered products, grants for related purposes, and the administration and enforcement of the act.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) 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 a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 6 (commencing with Section 25000) is  
2 added to Division 20 of the Health and Safety Code, to read:

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CHAPTER 6. MARINE FLARES

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Article 1. Purpose and General Provisions

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25000. (a) This chapter shall be known, and may be cited, as the Marine Flare Producer Responsibility Act of 2024.

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(b) The purpose of this chapter is to provide for the safe and proper management of pyrotechnic marine flares, which pose significant threats to health and safety and may cause significant and costly damage to the environment when managed improperly.

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25001. Except as provided in Section 25014, the department shall adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations to implement this chapter. The department shall not adopt regulations pursuant to this section with an effective date earlier than January 1, 2027.

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Article 2. Definitions

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25005. For purposes of this chapter, the following definitions apply:

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(a) (1) “Approved plan” means a producer responsibility plan that has been approved by the department pursuant to Section 25020 and that has not been revoked by the department pursuant to Section 25052.

- 1 (2) A conditionally approved plan is an approved plan, except  
2 as used in Section 25020.
- 3 (3) A partially approved plan is not an approved plan.
- 4 (b) “Brand” means a trademark, including both a registered  
5 trademark and an unregistered trademark, a logo, a name, a symbol,  
6 a word, an identifier, or a traceable mark that identifies a covered  
7 product and identifies the owner or licensee of the brand.
- 8 (c) “Collection site” means a permanent or temporary location  
9 where a covered product is collected and prepared for transport in  
10 accordance with the requirements of this chapter.
- 11 (d) “Consumer” means a person who owns a covered product  
12 and includes the ultimate purchaser, owner, or lessee of a covered  
13 product, who is not, as to that covered product, the distributor,  
14 importer, producer, recycler, retailer, or stewardship organization.
- 15 (e) “Contact information” means name, physical address,  
16 mailing address, email address, and telephone number.
- 17 (f) “Covered product” means a pyrotechnic device that produces  
18 a brilliant light or a plume of colorful smoke as a visual distress  
19 signal on marine vessels to attract attention and pinpoint a boater’s  
20 location in an emergency.
- 21 (g) “Department” means the Department of Toxic Substances  
22 Control.
- 23 (h) “Distributor” means a person that has a contractual  
24 relationship with one or more producers to market and sell covered  
25 products to retailers.
- 26 (i) “Importer” means either of the following:
  - 27 (1) A person qualifying as an importer of record for purposes  
28 of Section 1484(a)(2)(B) of Title 19 of the United States Code  
29 regarding the import of a covered product that is sold, distributed  
30 for sale, or offered for sale in or into the state that was  
31 manufactured or assembled by a company outside of the United  
32 States.
  - 33 (2) A person importing into the state for sale, distributing for  
34 sale, or offering for sale in the state a covered product that was  
35 manufactured or assembled by a company physically located  
36 outside of the state.
- 37 (j) (1) “Producer” means a person who manufactures a covered  
38 product and who sells, offers for sale, or distributes a covered  
39 product into the state under the person’s own name or brand.

1 (2) If there is no person in the state who is the producer for  
2 purposes of paragraph (1), the producer of the covered product is  
3 the owner or licensee of a brand under which the covered product  
4 is sold or distributed into the state. For purposes of this subdivision,  
5 an exclusive licensee is a person holding the exclusive right to use  
6 a brand in the state in connection with the manufacture, sale, or  
7 distribution for sale in or into the state of the covered product.

8 (3) If there is no person in the state who is the producer for  
9 purposes of paragraph (1) or (2), the producer of the covered  
10 product is the person that imports the covered product into the  
11 state for sale, distribution, or installation.

12 (4) If there is no person in the state who is the producer for  
13 purpose of paragraph (1), (2), or (3), the producer of the covered  
14 product is the distributor, retailer, dealer, or wholesaler who sells  
15 the product in or into the state.

16 (5) For purposes of this chapter, the sale of a covered product  
17 shall be deemed to occur in the state if the covered product is  
18 delivered to the consumer in the state.

19 (k) “Producer responsibility organization” or “PRO” means an  
20 organization that is exempt from taxation under Section 501(c)(3)  
21 of the federal Internal Revenue Code of 1986 that is appointed by  
22 one or more producers to act as an agent on behalf of all producers  
23 to design, submit, and administer a producer responsibility plan  
24 pursuant to this chapter.

25 (l) “Producer responsibility plan” or “plan” means the plan  
26 developed by a PRO for the collection, transportation, and the safe  
27 and proper management of covered products pursuant to Article  
28 4 (commencing with Section 25020) and submitted to the  
29 department for approval pursuant to Section 25020.

30 (m) “Retailer” means a person who sells or offers for sale a  
31 covered product in or into the state to a person through any means,  
32 including, but not limited to, sales outlets, catalogs, the telephone,  
33 the internet, or any electronic means.

34 (n) “Stewardship program” means a program established by a  
35 program operator pursuant to this chapter for free at drop off,  
36 convenient, and safe collection, transportation, and proper  
37 management of covered products.

Article 3. Producer Responsibility Organization

25010. (a) All producers shall register with a single PRO to develop and implement a plan on behalf of all producers. Subject to subdivision (c) of Section 25013 and Section 25055, there shall be only one PRO.

(b) No later than 30 days after the effective date of the regulations described in Section 25001, a producer shall notify the department electronically that the producer has registered with the PRO to develop and implement a plan on its behalf and to identify the PRO.

(c) A producer shall register with the PRO in accordance with the procedures and requirements established by the PRO.

(d) A producer shall not sell, offer for sale, import, or distribute a covered product in the state unless all the following are met:

- (1) The producer has registered with the PRO.
- (2) The covered product is accounted for in the plan.
- (3) The department has approved the PRO’s plan.

(e) A producer shall provide notice of its intent to comply with the requirements of this chapter to all persons through which it sells, distributes, imports, or offers for sale a covered product in or into the state. A producer shall provide this notice no later than 180 days after the effective date of this chapter.

(f) If an entity does not meet the definition of producer and is not subject to this chapter but, at any point, meets the definition of a producer, that entity shall be deemed a producer and shall register with the PRO and otherwise comply with the requirements of this chapter before beginning to sell, offer for sale, import, or distribute covered products in the state.

25011. (a) No later than 30 days after the effective date of the regulations described in Section 25001, a producer shall provide to the department, in a form and manner established by the department, the following:

- (1) The producer’s contact information.
- (2) A list of covered products and brands of covered products that the producer sells, distributes for sale, imports for sale, or offers for sale in or into the state.

(b) A producer shall provide to the department updates to the information described in subdivision (a) on or before January 15

1 of each year, within 30 days of changes to the information, and  
2 upon the department's request.

3 25012. A PRO shall notify the department within 30 calendar  
4 days of any of the following:

5 (a) The end of a three-month period in which the PRO  
6 unsuccessfully attempted to obtain a fee, records, or information  
7 from a producer registered with the PRO.

8 (b) The date that a producer no longer participates in the PRO's  
9 approved plan.

10 (c) Any instance of noncompliance by a participant producer.

11 25013. (a) A PRO shall demonstrate in its plan that it has  
12 adequate financial responsibility and financial controls in place,  
13 including fraud prevention measures and an audit schedule, to  
14 ensure proper management of funds.

15 (b) The activities of the PRO shall be limited to carrying out  
16 the requirements of this chapter.

17 (c) In the event that the department determines that the PRO no  
18 longer meets the requirements of this chapter or fails to implement  
19 or administer an approved plan in a manner that effectuates the  
20 purposes of this chapter, the department may revoke its approval  
21 of the plan and may approve an alternative plan submitted by  
22 another PRO pursuant to Section 25055.

23 25014. (a) The department shall establish performance  
24 standards for the PRO.

25 (b) Performance standards categories shall include, but not be  
26 limited to, collection of the covered product.

27 (c) The performance standards shall specify dates for  
28 compliance.

29 (d) The department may adjust performance standards and  
30 compliance dates based on information included in the plan and  
31 annual reports, other information provided by the PRO, department  
32 waste characterization studies, economic information, and any  
33 other relevant information.

34 (e) Performance standards published by the department pursuant  
35 to this subdivision shall not be subject to the requirements of  
36 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
37 3 of Title 2 of the Government Code.

38 (f) The PRO shall meet the performance standards described in  
39 subdivision (a).

40 25015. The PRO shall implement its approved plan.

## 1 Article 4. Producer Responsibility Plans

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25020. (a) Within nine months of the effective date of the regulations described in Section 25001, a PRO shall develop and submit a proposed plan to the department, in a form and manner determined by the department.

(b) The department shall review the plan for compliance with this chapter. Within 90 calendar days of receipt of the plan from the PRO, the department shall respond with an approval, disapproval, conditional approval, request for additional information, or timeline for a decision on approval or disapproval.

(c) The department shall approve, approve in part, or deny a proposed plan after providing a 30-day public comment period.

(d) If the department approves a proposed plan, a revised plan, or a conditionally approved plan, then the department shall notify the PRO of the approval. The PRO shall implement the approved plan within 90 days of receipt of the notice of approval, or as otherwise agreed to by the department.

(e) If the department conditionally approves the plan, then the department shall explain, in writing, how the plan or parts of the plan does not comply with this chapter, and the PRO shall ensure the conditions are met and resubmit a revised plan within 12 months.

(f) If the department disapproves the plan, the department shall explain, in writing, how the plan does not comply with this chapter, and the PRO shall resubmit a plan to the department. If the department finds that the plan resubmitted by the PRO does not comply with the requirements of this chapter, the PRO shall not be deemed in compliance with this chapter until the organization submits a plan that the department finds complies with the requirements of this chapter.

(g) An approved plan shall be public record published on the department's internet website, except that financial, production, or sales data reported by the PRO to the department for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department may release financial or sales data in summary form only so the information cannot be attributable to a specific entity.

25021. A plan shall do all of the following:

1 (a) (1) Be developed to accept and manage all covered products  
2 at the end of their useful life. An expiration date on a covered  
3 product shall be determinative of its useful life.

4 (2) A plan shall include all covered products and shall not  
5 exclude covered products on the basis that the covered products  
6 are not from a producer registered with the PRO.

7 (b) Include the contact information of each producer registered  
8 with the PRO and covered by the plan.

9 (c) Demonstrate how the PRO will comply with Section 25030,  
10 including a five-year budget that demonstrates how the PRO will  
11 comply with subdivision (b) of Section 25030.

12 (d) Describe how collection sites will be managed, including  
13 all of the following:

14 (1) How the PRO will provide a free and convenient collection  
15 system for covered products, which shall include permanent  
16 collections sites and may include temporary collections sites.

17 (2) A description of how the PRO will provide to the collection  
18 sites, at no cost to consumers or other entities involved in the  
19 collection, the appropriate training, signage, safety guidance,  
20 educational materials, and any other items or information necessary  
21 for the safe collection and temporary storage of covered materials.

22 (3) An explanation of the process by which the PRO will provide  
23 for the transport of covered products from the collection sites.

24 (4) A list of all proposed rules, conditions, and requirements  
25 for collection sites and recyclers.

26 (5) A list of all proposed rules, conditions, and requirements  
27 for collection sites and recyclers, including a template proposed  
28 agreement for each of those types of entities as applicable.

29 (e) Describe how the PRO will meet performance standards  
30 with associated metrics, and the dates by which the performance  
31 standards will be achieved for the performance standards categories  
32 identified in Section 25014.

33 (f) Describe the process by which collected covered products  
34 will be handled and managed following collection, including all  
35 of the following:

36 (1) A description of how covered products will be handled and  
37 managed according to the waste management practices specified  
38 in Section 40051 of the Public Resources Code, including a  
39 description of how the PRO will use the best available management  
40 technologies.

1 (2) A description of the annual assessment the PRO will conduct  
2 and the metrics it will use to determine how collection, sorting,  
3 transportation, and management outcomes aligned with projections.

4 (3) A description of how the PRO will achieve an equitable and  
5 circular system that improves the collection, processing, and  
6 management operations for covered products, including, but not  
7 limited to, pilot programs to test new processes, methods, or  
8 equipment.

9 (g) Include a contingency plan in the event the plan expires or  
10 is revoked. The contingency plan shall guarantee that all the  
11 contracts, financial data, and any other necessary authority and  
12 assets to operate the program shall vest in a trustee approved by  
13 the department. The trustee shall operate the most recently  
14 approved plan, subject to the direction of the department, until the  
15 time a new plan is approved. Upon plan expiration or revocation  
16 of the plan, the balance of the PRO's operating reserves collected  
17 shall be transferred to the control of the trustee within five calendar  
18 days. All documents, digital records, contracts, and files related  
19 to the operation of the plan shall be transferred to the control of  
20 the trustee within five calendar days.

21 25022. A plan shall include a section describing a  
22 comprehensive statewide education and outreach program designed  
23 to educate consumers and promote participation in the program  
24 offered by the PRO. The comprehensive statewide education and  
25 outreach program shall do all of the following:

26 (a) Promote the safe and proper management of covered  
27 products and shall not promote the disposal of covered products  
28 in a manner inconsistent with the services offered by the plan.

29 (b) Include information for consumers on how to avoid improper  
30 disposal of covered products.

31 (c) Include a description of the education and outreach efforts  
32 to various audiences, including, but not limited to, consumers to  
33 promote their participation in achieving the purposes of the plan.  
34 These education and outreach materials shall include, but not be  
35 limited to, all of the following:

36 (1) An internet website that publicizes the entire process for  
37 collection, including collection location sites in addition to any  
38 other information necessary to consumers for the safe collection  
39 and handling of covered products.

1 (2) Signage at point of sale and in marinas that is prominently  
2 displayed and easily visible.

3 (3) All signage and material required for collection sites by the  
4 PRO, and the method by which the collection sites can access  
5 replacement materials at no cost to the collection site.

6 (4) Promotional materials, activities, or both that explain the  
7 purpose of the PRO and the means by which it is managing covered  
8 products.

9 (5) A description of strategies, goals, and metrics the PRO will  
10 use to annually assess and evaluate the efficacy of the  
11 comprehensive statewide education and outreach program.

12 25023. (a) The PRO shall review its approved plan at least  
13 every five years and determine whether revisions are necessary.

14 (b) If the PRO determines that revisions to its approved plan  
15 are necessary, the PRO shall submit to the department a revised  
16 plan for review and approval using the procedures set forth in  
17 Section 25020. The PRO shall submit the revised plan to the  
18 department pursuant to this subdivision at least 12 months before  
19 the review deadline outlined in subdivision (a). The revised plan  
20 shall include a cover letter that summarizes the revisions to the  
21 plan.

22 (c) If the PRO determines that no revisions to the plan are  
23 necessary, the PRO shall send a letter to the department, 12 months  
24 before the review deadline outlined in subdivision (a) explaining  
25 that the PRO has reviewed the plan and determined that no  
26 revisions are needed. The department may, after hearing public  
27 input, disapprove the PRO's determination within 30 days of  
28 receipt of the letter if the department concludes that the PRO cannot  
29 implement the objectives of this chapter without revising the plan.  
30 In the event the department disapproves the PRO's determination,  
31 the department may indicate to the PRO which sections, at  
32 minimum, of the plan need revision, and the PRO shall submit to  
33 the department a revised plan, or plan sections, for review and  
34 approval, following the procedures set forth in Section 25020. The  
35 PRO shall submit the revised plan pursuant to this subdivision  
36 within 60 days of receipt of the department's disapproval.

37 (d) The department may consult with or submit the revised plan  
38 to another state agency or department if the department determines  
39 it is necessary for making its determination. The duration of time

1 the department takes for this consultation is not included in the  
2 time allotted to the department for review pursuant to this section.

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Article 5. Financial Provisions

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6 25030. The PRO shall do all of the following:

7 (a) Establish a method for fully funding its plan in a manner  
8 that equitably distributes the plan’s costs among participating  
9 producers that reflects sales volumes and the cost to manage the  
10 covered products the producer produces.

11 (b) (1) Operate on a budget that establishes a funding level  
12 sufficient to operate the PRO in a prudent and responsible manner.  
13 The budget shall demonstrate how the PRO’s estimated revenues  
14 cover all the PRO’s budgeted costs for each cost category.  
15 Budgeted costs shall include, but not be limited to, administrative  
16 costs, capital costs, and a reserve.

17 (2) Administrative costs shall include the department’s actual  
18 and reasonable regulatory costs, which include full personnel costs,  
19 to implement and enforce this chapter, as the criteria for all costs  
20 are defined in the regulations described in Section 25001. For  
21 purposes of this paragraph, PRO implementation begins once the  
22 department approves the PRO’s plan, except the department’s  
23 costs shall include actual regulatory development costs and other  
24 startup costs incurred prior to plan submittal and approval.

25 (3) The reserve shall include funds to operate the PRO should  
26 there be unexpected events, losses of income, or large unbudgeted  
27 expenses. It shall also protect the infrastructure the PRO relies on  
28 in its plan during any lapse in producer participation during the  
29 life of the program. The reserve cost category shall include a  
30 reserve level amount description justifying the reserve level amount  
31 indicated. The PRO shall maintain reserve funds sufficient to  
32 operate the plan for not less than six months. In the event that a  
33 new PRO is approved by the department, the PRO shall establish  
34 its reserve and maintain the required reserve fund balance by the  
35 end of the second year of plan operation. In the event the PRO’s  
36 plan expires or is revoked, the reserve balance shall be transferred  
37 to a successor PRO or a trustee pursuant to the portion of the plan  
38 described in subdivision (g) of Section 25021.

1 (c) On a schedule determined by the department, pay the  
2 department fees to cover the department's reasonable regulatory  
3 cost as described in Section 25032.

4 (d) Establish a process by which the financial activities of the  
5 PRO that are related to implementation of the plan will be subject  
6 to an independent audit consistent with generally accepted  
7 accounting principles (GAAP) and pursuant to Section 25042.  
8 Written certification by an authorized representative of the PRO  
9 that, at the time of submission to the department, all aspects of the  
10 plan are in compliance with all applicable state and federal laws  
11 and regulations.

12 25031. Each producer shall, through the PRO, pay all  
13 administrative and operation costs associated with establishing  
14 and implementing the PRO's approved plan, including the cost of  
15 collection, transportation, and the safe and proper management of  
16 covered products.

17 25032. (a) Within four months of the effective date of the  
18 regulations described in Section 25001, the department shall notify  
19 the PRO of the estimated regulatory costs and the criteria for the  
20 costs specified in the regulations. Those costs shall include the  
21 costs associated with developing the regulations and other  
22 department activities that occur before plan submittal and approval,  
23 including, but not limited to, full personnel costs related to  
24 implementing and enforcing this chapter. The costs shall not exceed  
25 the department's reasonable regulatory costs to implement and  
26 enforce this chapter.

27 (b) The department shall deposit all moneys received from the  
28 PRO pursuant to this section into the Marine Flare Recovery Fund,  
29 which is hereby established in the State Treasury.

30 (c) Upon appropriation by the Legislature, moneys in the Marine  
31 Flare Recovery Fund shall be expended by the department to  
32 implement and enforce this chapter, as well as to reimburse any  
33 standing loans made from other funds used to finance regulation  
34 development, and startup costs of the department's activities  
35 pursuant to this chapter.

36 (d) The moneys in the Marine Flare Recovery Fund shall only  
37 be expended for purposes described in subdivision (c).

38 25033. (a) (1) A PRO, as part of its plan, shall set up a trust  
39 fund or an escrow account, into which it shall deposit all  
40 unexpended funds and ongoing consumer assessments, for use in

1 accordance with this section in the event that the plan terminates  
2 or is revoked.

3 (2) For purposes of this subdivision, “unexpended funds” means  
4 assessment moneys in the PRO’s accounts that the PRO is not  
5 already obligated to pay pursuant to a contract, claim, or similar  
6 mechanism.

7 (b) If a plan terminates or is revoked, the trustee or escrow agent  
8 of a trust fund or escrow account set up pursuant to subdivision  
9 (a) shall do both of the following, starting within 30 days:

10 (1) Accept payments directly from producers into the trust fund  
11 or escrow account that would have been made to the PRO prior to  
12 the plan’s termination or revocation.

13 (2) Make payments from the trust fund or escrow account as  
14 the department shall direct, in writing, to implement the most  
15 recently approved plan.

16 (c) If a new plan has not been approved by the department within  
17 one year after termination or revocation, the department may make  
18 modifications to the previously approved plan, as it deems  
19 necessary, and continue to direct payments from the trust fund or  
20 escrow account in accordance with paragraph (2) of subdivision  
21 (b) to implement the modified plan.

22 (d) A trustee or escrow agent in possession of assessment funds  
23 shall, as directed by the department, transfer those funds to a  
24 successor PRO with an approved plan.

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26 Article 6. Records, Audits, and Reports

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28 25040. (a) The PRO shall keep board minutes, books, and  
29 records that clearly reflect the activities and transactions of the  
30 PRO. Each producer or PRO with an approved plan shall maintain  
31 all records relating to the approved plan for a period of not less  
32 than five years.

33 (b) The department may audit the PRO annually.

34 (c) The failure of the PRO, a producer, or their respective agent  
35 who holds records to produce documents or data that is requested  
36 by the department, required to be collected or generated to carry  
37 out operation of the plan in the form and manner determined by  
38 the department as part of a department audit, or review of a  
39 third-party audit, shall constitute a violation of this chapter.

1 25041. (a) A producer, PRO, manufacturer, distributor, retailer,  
2 dealer, or importer shall do both of the following:

3 (1) Upon request, provide the department with reasonable and  
4 timely access, as determined by the department, to its facilities  
5 and operations, as necessary to determine compliance with this  
6 chapter.

7 (2) Upon request, within 14 days, provide the department with  
8 relevant records, as determined by the department, necessary to  
9 determine compliance with this chapter.

10 (b) All reports and records provided to the department pursuant  
11 to this chapter shall be provided under penalty of perjury.

12 (c) The department may impose administrative civil penalties  
13 pursuant to Article 7 (commencing with Section 25050) on a  
14 producer, PRO, manufacturer, distributor, retailer, dealer, or  
15 importer that fails to provide the department with the access  
16 required pursuant to this section.

17 25042. (a) The PRO shall retain an independent public  
18 accountant, certified in the United States, to annually audit the  
19 accounting books of the PRO. The department shall review the  
20 independent certified public accountant audit for compliance with  
21 this chapter and consistency with the PRO's approved plan and  
22 the annual report required by Section 25043. After the department  
23 conducts its own audit, the department shall notify the PRO of any  
24 conduct or practice that does not comply with this chapter or of  
25 any inconsistencies identified in the audit. The PRO may obtain  
26 copies of the department's audit, including proprietary information  
27 contained in the department's audit, upon request. The producer  
28 or PRO may withhold from disclosure confidential proprietary  
29 information to the extent allowed under Section 1040 of the  
30 Evidence Code and the California Public Records Act (Division  
31 10 (commencing with Section 7920.000) of Title 1 of the  
32 Government Code). The items submitted to the department as part  
33 of the independent audit shall include:

34 (1) Financial statements audited in accordance with generally  
35 accepted accounting principles (GAAP).

36 (2) An audit of the PRO's compliance with this chapter.

37 (3) An audit of the PRO's adherence to, execution of, and  
38 consistency with its approved plan.

39 (b) The PRO shall include the independent audit in its annual  
40 report submitted to the department pursuant to Section 25043

1 commencing within 18 months of plan approval by the department.  
2 The department shall review the audit for compliance with this  
3 chapter and consistency with the PRO's approved plan.

4 25043. On or before January 1 of each year, the PRO shall  
5 submit to the department, and make publicly available, an annual  
6 report, in a format prescribed by the department, that includes, at  
7 minimum, all of the following information for the preceding  
8 calendar year, unless otherwise specified:

9 (a) The PRO's costs, according to the cost categories established  
10 in the plan, and revenues.

11 (b) A summary of any anticipated changes to allocations in cost  
12 categories for the next calendar year.

13 (c) Any changes to the distribution of costs to the producers  
14 registered with the PRO.

15 (d) The names and updated contact information for the producers  
16 registered with the PRO.

17 (e) An estimate of the quantity of covered products sold in or  
18 into the state by the producers registered with the PRO, as  
19 determined by the best available commercial data.

20 (f) The number of collection sites, listed by name, location, and  
21 type, from which the covered products were picked up.

22 (g) The total number of covered products collected.

23 (h) The number of covered products picked up from each  
24 collection site.

25 (i) A complete accounting of the ultimate disposition of all  
26 covered products collected by the PRO, including the total weight  
27 of materials that were disposed of.

28 (j) Metrics and a description of the progress towards attaining  
29 the performance standards included in the approved plan.

30 (k) An evaluation of the effectiveness of methods and processes  
31 used to achieve the performance goals of the program.

32 (l) A description of methods used to collect, transport, and  
33 manage covered products by the PRO, including a description of  
34 all of the following:

35 (1) How the PRO handled and managed covered products  
36 according to the waste hierarchy as defined in Section 40051 of  
37 the Public Resources Code.

38 (2) Results of the PRO's assessment of the efficacy of the  
39 collection and transportation process pursuant to subdivision (f)  
40 of Section 25021.

1 (m) A description of how the PRO improved the convenience  
2 of collection and improved processing operations for covered  
3 products, including, but not limited to, pilot programs to test new  
4 processes, methods, or equipment.

5 (n) A summary of the public education used to promote  
6 consumer knowledge of the program, including the PRO's  
7 evaluation of the efficacy of the comprehensive statewide education  
8 and outreach program pursuant to Section 25022.

9 (o) Recommendations for any future proposed substantial  
10 changes to the program that may submitted for the department's  
11 approval pursuant to Section 25020, if applicable.

12 (p) Any other information required by regulations adopted  
13 pursuant to Section 25001.

14 25044. (a) No later than 90 days of receipt of an annual report,  
15 the department shall start a 30-day public comment period  
16 regarding an annual report.

17 (b) No later than 120 days after receipt of an annual report, and  
18 after completion of the public comment period required by  
19 subdivision (a), the department shall notify the PRO if the annual  
20 report is compliant or noncompliant.

21 (c) If the department determines that the annual report is  
22 noncompliant due to failure to meet the requirements of this  
23 chapter, the department may require the resubmittal of the annual  
24 report and take enforcement action.

25 (d) The department may consult with or submit the annual report  
26 to a state agency or department if it determines it is necessary for  
27 making a determination of compliance or noncompliance of an  
28 annual report. The duration of time the department takes for this  
29 consultation shall not be included in the time allotted to the  
30 department for review pursuant to subdivision (a).

31  
32 Article 7. Enforcement  
33

34 25050. A retailer, dealer, importer, or distributor shall not sell,  
35 distribute, offer for sale, or import a covered product in or into the  
36 state unless the producer of the covered product is listed as a  
37 compliant producer pursuant to Section 25051 or received a  
38 certification letter described in subdivision (e) of Section 25051.

39 25051. (a) Within 12 months of the effective date of the  
40 regulations described in Section 25001, and on or before July 1 of

1 each year thereafter, the department shall publish on the  
2 department's internet website, a list of the names of producers that  
3 are compliant with this chapter. The department shall list, as  
4 appropriate, the reported brands of covered products for each  
5 producer.

6 (b) A retailer, importer, or distributor shall monitor the  
7 department's internet website to determine if a producer, brand,  
8 or covered product is in compliance with this chapter for that brand.

9 (c) Notwithstanding any other provision of this chapter, upon  
10 identification of a producer that is not registered with the PRO  
11 with an approved plan, the department shall issue a notice of  
12 noncompliance to the producer.

13 (d) If the department determines a producer is not in compliance  
14 with this chapter, the department shall remove the producer, along  
15 with its brands of covered products, from the compliance list.

16 (e) A producer that is not listed on the department's internet  
17 website pursuant to subdivision (b) that demonstrates compliance  
18 with this chapter before the next list is posted by the department  
19 may either be added to the internet website or be provided a  
20 certification letter from the department stating that the producer  
21 of a covered product is in compliance with this chapter.

22 25052. (a) A civil penalty up to the following amounts may  
23 be administratively imposed by the department on any person who  
24 is in violation of any provision of this chapter:

25 (1) Ten thousand dollars (\$10,000) per day.

26 (2) Fifty thousand dollars (\$50,000) per day if the violation is  
27 intentional or knowing.

28 (b) In assessing or reviewing the amount of a civil penalty  
29 imposed pursuant to subdivision (a) or (b) for a violation of this  
30 chapter, the department or the court shall consider all of the  
31 following:

32 (1) The nature and extent of the violation.

33 (2) The number and severity of the violation or violations.

34 (3) The economic effect of the penalty on the violator.

35 (4) Whether the violation took good faith measures to comply  
36 with this chapter and the period of time over which these measures  
37 were taken.

38 (5) The willfulness of the violators misconduct.

39 (6) The deterrent effect that the imposition of the penalty would  
40 have on both the violator and the regulated community.

1 (7) Any other factor that justice may require.

2 (c) Upon written finding that a PRO, producer, importer,  
3 distributor, or any other party regulated has not met a material  
4 requirement of this chapter, in addition to any other penalties  
5 authorized under this chapter, the department may take one or both  
6 of the following actions to ensure compliance with the requirements  
7 of this chapter, after affording the PRO, producer, importer,  
8 distributor, or any other party regulated, an opportunity to respond  
9 to or rebut the finding:

10 (1) Revoke the PRO's plan approval or require the PRO to  
11 resubmit the plan or plan section.

12 (2) Require additional reporting relating to compliance with the  
13 material requirements of this chapter that were not met.

14 (d) The department shall deposit all penalties collected pursuant  
15 to this section into the Marine Flare Recovery Penalty Account,  
16 which is hereby created in the Marine Flare Recovery Fund. Upon  
17 appropriation by the Legislature, moneys in the Marine Flare  
18 Recovery Penalty Account shall be available for expenditure by  
19 the department on activities related to the collection, reuse, and  
20 safe and proper management of covered products, grants for related  
21 purposes, and the administration and enforcement of this chapter.

22 (e) The Administrative Adjudication Bill of Rights as set forth  
23 in Article 6 (commencing with Section 11425.10) of Chapter 4.5  
24 of Part 1 of Division 3 of Title 2 of the Government Code, applies  
25 to hearings conducted under this chapter and mandates minimum  
26 due process.

27 25053. (a) After the time for judicial review under Section  
28 11523 of the Government Code has expired, the department may  
29 apply to the small claims court or superior court, depending on the  
30 jurisdictional amount and any other remedy sought, in the county  
31 where the penalties, restitution, or other remedy was imposed by  
32 the department, for a judgment to collect any unpaid civil penalties  
33 or restitution or to enforce any other remedy provided by this  
34 chapter. The application, which shall include a certified copy of  
35 the final agency order or decision, shall constitute a sufficient  
36 showing to warrant the issuance of the judgment. The court clerk  
37 shall enter the judgment immediately in conformity with the  
38 application. The judgment so entered shall have the same force  
39 and effect as and shall be subject to all the provisions of law  
40 relating to a judgment in a civil action and may be enforced in the

1 same manner as any other judgment of the court. The court shall  
2 make enforcement of the judgment a priority.

3 (b) If, in the judgment of the Director of Toxic Substances  
4 Control, a person has engaged in or is about to engage in an act,  
5 practice, or omission that constitutes, or will constitute, a violation  
6 of this chapter, the Attorney General may, at the request of the  
7 director, bring an action in the superior court for an order enjoining  
8 the act, practice, or omission. The order may require remedial  
9 measures and direct compliance with this chapter. Upon a showing  
10 by the director that the person has engaged in or is about to engage  
11 in that act, practice, or omission, the superior court may issue a  
12 permanent or temporary injunction, restraining order, or other  
13 order, as appropriate.

14 (c) An action brought by the Attorney General pursuant to this  
15 section shall have precedence in respect to the order of trial over  
16 all other civil actions not brought by or on behalf of the state,  
17 except actions regarding probate bonds.

18 25054. A producer shall not be subject to penalties pursuant  
19 to this article for noncompliance with subdivision (d) of Section  
20 25010 until two years from the effective date of the regulations  
21 described in Section 25001.

22 25055. (a) A PRO that violates this chapter three or more times  
23 shall be ineligible to act as an agent on behalf of a manufacturer  
24 to design, submit, and administer a plan pursuant to this chapter.

25 (b) If a PRO becomes ineligible pursuant to subdivision (a) to  
26 operate as a PRO under this chapter, the successor provisions in  
27 subdivisions (b), (c), and (d) of Section 25033 shall apply.

28

29

#### Article 8. Antitrust Immunity

30

31 25060. (a) Except as provided in subdivision (b), an action  
32 that is taken by a producer or producer responsibility organization,  
33 is not a violation of the Cartwright Act (Chapter 2 (commencing  
34 with Section 16700) of Part 2 of Division 7 of the Business and  
35 Professions Code), the Unfair Practices Act (Chapter 4  
36 (commencing with Section 17000) of Part 2 of Division 7 of the  
37 Business and Professions Code), or the Unfair Competition Law  
38 (Chapter 5 (commencing with Section 17200) of Part 2 of Division  
39 7 of the Business and Professions Code) to the extent the producer

1 or producer responsibility organization, is exercising authority  
2 pursuant to this chapter.

3 (b) Subdivision (a) applies to all of the following actions taken  
4 by the PRO:

5 (1) The creation, implementation, or management of a plan  
6 approved or conditionally approved by the department pursuant  
7 to this chapter and the determination of the types or quantities of  
8 covered products recycled or otherwise managed pursuant to a  
9 plan.

10 (2) The determination of the cost and structure of an approved  
11 plan.

12 (3) The establishment, administration, collection, or  
13 disbursement of a charge associated with funding the  
14 implementation of this chapter.

15 (c) Subdivision (a) does not apply to an agreement that does  
16 any of the following:

17 (1) Fixes a price of or for covered products.

18 (2) Fixes the output or production of covered products.

19 (3) Restricts the geographic area in which, or customers to  
20 whom, covered products will be sold.

21 SEC. 2. The Legislature finds and declares that Section 1 of  
22 this act, which adds Section 25020 to the Health and Safety Code,  
23 imposes a limitation on the public's right of access to the meetings  
24 of public bodies or the writings of public officials and agencies  
25 within the meaning of Section 3 of Article I of the California  
26 Constitution. Pursuant to that constitutional provision, the  
27 Legislature makes the following findings to demonstrate the interest  
28 protected by this limitation and the need for protecting that interest:

29 In order to ensure the effective hazardous waste management  
30 of, and viable markets for, marine flares, it is necessary to protect  
31 the proprietary information of producers, retailers, wholesalers,  
32 and solid waste enterprises by keeping confidential the financial,  
33 production, and sales data reported by those entities under Section  
34 1 of this act.

35 SEC. 3. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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