

MEMORANDUM 2023-39

Recodification of Toxic Substances Statutes: Next Portion

In this study, the Commission¹ is currently preparing a nonsubstantive recodification of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, which would appear in a new proposed Division 44 of the Health and Safety Code.²

This memorandum presents a staff draft of provisions that would be recodified as proposed Chapter 1 of Part 3 of the proposed Division 44, a chapter relating to “green” chemistry.³ The draft includes proposed Commission Comments, Staff Notes that identify specific issues for which public comment is sought, and disposition and derivation tables for the recodified provisions.

Unless otherwise indicated, all statutory citations in this memorandum are to sections of the existing Health and Safety Code, and all citations to “proposed” sections are to the proposed sections in the attached draft.

Commissioners and other interested persons should review the attached draft and raise any concerns. **Comments on any aspect of the draft, including the identification of issues the Commission should consider adding to a list of items for possible future study,⁴ would be welcome.⁵**

GENERAL DRAFTING APPROACH

As with prior draft legislation proposed in this study, the staff has continued to take a

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

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

² See 2021 Cal. Stat. res. ch. 108 (ACR 24 (Chau)). A Commission recommendation to recodify Chapter 6.8 of Division 20 has already been submitted to and enacted by the Legislature. See *Hazardous Substance Account Recodification Act* (December 2021); 2022 Cal. Stat. ch. 257. See also *Hazardous Substance Account Recodification Act: Conforming Revisions* (December 2021); 2022 Cal. Stat. ch. 258.

³ See general information on this topic on the website of the Department of Toxic Substances Control, at <https://dtsc.ca.gov/dtsc-website-archive/green-chemistry/>.

⁴ See 2021 Cal. Stat. res. ch. 108 (ACR 24 (Chau)).

⁵ Written comments can be in any form. They should be directed to scohen@clrc.ca.gov. Comments may also be made orally at the upcoming Commission meeting (scheduled for August 17, 2023), which will be open to the public. The agenda is available at: http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

conservative approach to drafting proposed recodified provisions.⁶ For the most part, existing statutory text is repeated verbatim in the proposed recodification of the provision.

In accordance with the Commission’s prior decisions in the study, certain minor changes continue to be made as a matter of course.⁷ However, except for changes made to implement the recodification,⁸ to conform to generally accepted legislative drafting practices,⁹ or to make clearly technical corrections, the changes are flagged in the Comment or Staff Note corresponding to the section in which the change is proposed.

Where the staff has discovered an issue with wording of an existing section, the issue is identified in a Staff Note. In instances in which the resolution of the issue seemed apparent, the staff has also proposed that resolution.¹⁰ Where the appropriate resolution seemed unclear, the Staff Note requests public comment on a resolution.¹¹

COMMISSION DECISION

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

Respectfully submitted,

Steve Cohen
Staff Counsel

⁶ See Memorandum 2020-13, p. 3.

⁷ See Minutes (May 2020), p. 4; Memorandum 2020-13, p. 4; Memorandum 2021-19, pp. 3-4.

⁸ For example, converting section numbers and designations, as well as internal cross-references to other provisions in Chapter 6.5.

⁹ These practices include eliminating most uses of the word “such,” changing uses of the word “which” to “that,” and revising gendered pronouns.

¹⁰ See, e.g., Staff Note following proposed Section 63515 in the attached draft.

¹¹ See, e.g., Staff Note following proposed Section 63575 in the attached draft.

PROPOSED CHAPTER 1 OF PART 3 OF DIVISION 44 OF
THE HEALTH & SAFETY CODE

Note. This is a work in progress. The material shown below may be changed. For a tentative outline and discussion of the proposed organization of new Division 44 of the Health & Safety Code, see Memorandum 2020-13, Exhibit pp. 3-5, and Memorandum 2023-33, pp. 2-3. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

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

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

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

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

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

As new Division 44 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

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

All cross-references in this draft to provisions formerly located in Chapter 6.8 of Division 20 have been revised to refer to recodifications of those provisions now located in Part 2 (commencing with Section 78000) of Division 45. See 2022 Cal. Stat. ch. 257. These recodified provisions became effective on January 1, 2023, although they are not operative until January 1, 2024.

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

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

Substantive Issues for Possible Future Study. As part of the Legislature’s assignment to the Commission to conduct this study, the Legislature directed the Commission to “include a list of

substantive issues that the commission identifies in the course of its work, for possible future study.” That list appears in this document following the disposition and derivation tables.

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

Contents

DIVISION 44. TOXICS REDUCTION AND MANAGEMENT.....	1
PART 3. TOXICS REDUCTION.....	1
CHAPTER 1. GREEN CHEMISTRY.....	1
Article 1. Definitions.....	1
63500. Application.....	1
63505. “Chemical manufacturer”.....	1
63510. “Clearinghouse”.....	1
63515. “Consumer product”.....	2
63520. “Council”.....	2
63525. “Office”.....	2
63530. “Panel”.....	2
63535. “Product manufacturer”.....	3
Article 2. Relationship of Chapter to Other Authority.....	3
63550. Authority relating to hazardous materials generally.....	3
63555. Regulatory authority of other departments or agencies.....	3
63560. Duplication or adoption of conflicting regulations.....	4
Article 3. Priorities.....	4
63570. Policy.....	4
63575. Priority Product Work Plan of 2015-17.....	4
63580. Priority Product Work Plans.....	4
Article 4. Green Ribbon Science Panel.....	5
63595. Establishment of panel.....	5
63600. Meetings.....	6
63605. Authorized action by panel.....	6
Article 5. Regulations Identifying and Prioritizing Chemicals of Concern.....	7
63620. Adoption of regulations.....	7
63630. Identification and prioritization process.....	7
63635. Development of evaluation criteria.....	7
63640. Reference and use of information from other sources.....	7
Article 6. Regulations Evaluating Chemicals of Concern.....	8
63660. Adoption of regulations.....	8
63670. Process for evaluation.....	8
63675. Use of tools.....	9
63680. Range of regulatory responses.....	10
63685. Reliance on studies or evaluations in lieu of alternatives analysis.....	10
63690. Public involvement.....	11
Article 7. Multimedia Life Cycle Evaluation.....	12
63710. “Multimedia life cycle evaluation”.....	12
63715. Preparation of evaluation.....	12
63720. Basis of evaluation.....	12
63725. Review by council.....	13
63730. Significant adverse impact determination.....	13
Article 8. Toxics Information Clearinghouse.....	14
63750. Establishment of clearinghouse.....	14
63755. Data to be initially included in clearinghouse.....	14
63760. Operation of clearinghouse.....	14
63765. Department consultation with other governmental entities.....	14
63770. Accessibility to the public.....	15
63775. Operational cost.....	15

Article 9. Department Requests for Information..... 15
63800. Request for information from product manufacturers 15
63805. Response by product manufacturer 15
63810. Request for information from supplier or chemical manufacturer 16
63815. Request for information for category in Priority Product Work Plan 16
63820. Allowed time for response to request..... 17
63825. Assertion of trade secret claims..... 17
63830. Penalties for noncompliance..... 17
Article 10. Trade Secrets 18
63850. Claim of trade secret..... 18
63855. Duty of department employees..... 18
63860. Request for release of information claimed to be trade secret 18
63865. Exchange of information between public agencies 19
63870. Refusal to disclose information to department..... 19
63875. Application of article to hazardous trait submissions..... 19
Article 11. Healthy Nail Salon Recognition..... 20
63900. Publication of guidelines 20
63905. Content of guidelines..... 20
63910. Criteria for cities and counties adopting program 21
63915. Consultation with other agencies..... 21
63920. Promotion of guidelines 21
63925. Outreach 22
63930. Violation of regulation by salon 22
63935. Local rules and ordinances 22
DISPOSITION OF EXISTING LAW 23
DERIVATION OF NEW LAW 25

DRAFT LEGISLATION

1 **Health & Safety Code §60000-[XXXXX] (added). Toxics Reduction and Management**
2 SEC. ____ . Division 44 (commencing with Section 60000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 44. TOXICS REDUCTION AND MANAGEMENT

5 ...

6 PART 3. TOXICS REDUCTION

7 CHAPTER 1. GREEN CHEMISTRY

8 Article 1. Definitions

9 **63500. Application**

10 63500. The definitions in this article apply for purposes of this chapter.

11 **Comment.** Section 63500 restates the introductory text of former Section 25251 without
12 substantive change.

13 **Staff Note.** The introductory text of Section 25251 is restated by proposed Section 63500 as a
14 distinct code section, to allow the definitions in Section 25251 to be recodified as distinct code
15 sections. The introductory text of Section 25251 currently provides:

16 25251. For purposes of this article, the following definitions apply:

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

18 **63505. “Chemical manufacturer”**

19 63505. “Chemical manufacturer” means a person who manufactures a chemical
20 or chemical ingredient that is used in a consumer product.

21 **Comment.** Section 63505 continues former Section 25251(a) without substantive change.

22 See Sections 60295 (“person”), 63515 (“consumer product”).

23 **63510. “Clearinghouse”**

24 63510. “Clearinghouse” means the Toxics Information Clearinghouse established
25 pursuant to Article 8 (commencing with Section 63750).

26 **Comment.** Section 63510 is new. It is added to enhance the clarity of other provisions of this
27 chapter that refer to the Toxics Information Clearinghouse as “the clearinghouse.”

28 **Staff Note.** This nonsubstantive definitional provision, similar to Section 25251(e) (proposed
29 Section 63530) defining the term “panel,” is added for clarity.

1 **63515. “Consumer product”**

2 63515. (a) Except as provided in subdivision (b), “consumer product” means a
3 product or part of the product that is used, brought, or leased for use by a person for
4 any purpose.

5 (b) “Consumer product” does not include any of the following items:

6 (1) A “dangerous drug” or “dangerous device,” as defined in Section 4022 of the
7 Business of Professions Code.

8 (2) “Dental restorative materials,” as defined in subdivision (b) of Section
9 1648.20 of the Business and Professions Code.

10 (3) A “device,” as defined in Section 4023 of the Business of Professions Code.

11 (4) The packaging associated with an item specified in paragraph (1), (2), or (3).

12 (5) “Food,” as defined in subdivision (a) of Section 109935.

13 (6) A “pesticide,” as defined in Section 12753 of the Food and Agricultural Code
14 or as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
15 Sec. 136 et seq.).

16 **Comment.** Section 63515 restates former Section 25251(b) without substantive change.
17 See Section 60295 (“person”).

18 **Staff Note.** Section 25251(b) is restated by proposed Section 63515 for clarity. Section 25251(b)
19 currently provides:

20 25251. (b) “Consumer product” means a product or part of the product that is used, brought, or
21 leased for use by a person for any purposes. “Consumer product” does not include any of the
22 following:

23 (1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of
24 Professions Code.

25 (2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business
26 and Professions Code.

27 (3) A device as defined in Section 4023 of the Business of Professions Code.

28 (4) A food as defined in subdivision (a) of Section 109935.

29 (5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

30 (6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal
31 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

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

33 **63520. “Council”**

34 63520. “Council” means the California Environmental Policy Council established
35 pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

36 **Comment.** Section 63520 continues former Section 25251(c) without substantive change.

37 **63525. “Office”**

38 63525. “Office” means the Office of Environmental Health Hazard Assessment.

39 **Comment.** Section 63525 continues former Section 25251(d) without substantive change.

40 **63530. “Panel”**

41 63530. “Panel” means the Green Ribbon Science Panel established pursuant to
42 Article 4 (commencing with Section 63595).

1 **Comment.** Section 63530 continues former Section 25251(e) without substantive change.

2 **63535. “Product manufacturer”**

3 63535. “Product manufacturer” means a person who manufactures, controls the
4 manufacturing process for, or specifies the use of a chemical to be included in, a
5 consumer product.

6 **Comment.** Section 63535 restates former Section 25251(f) without substantive change.
7 See Sections 60295 (“person”), 63515 (“consumer product”).

8 **Staff Note.** Section 25251(f) is restated by proposed Section 63535 for clarity. Section 25251(f)
9 currently provides:

10 25251. (f) “Product manufacturer” means a person who manufactures a consumer product or a
11 person who controls the manufacturing process for, or specifies the use of a chemical to be included
12 in, a consumer product.

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

14 Article 2. Relationship of Chapter to Other Authority

15 **63550. Authority relating to hazardous materials generally**

16 63550. This chapter does not limit and shall not be construed to limit the existing
17 authority of the department, or the existing authority of any other department or
18 agency, over hazardous materials.

19 **Comment.** Section 63550 restates former Section 25257.1(a) without substantive change.
20 See Section 60160 (“department”).

21 **Staff Notes. (1)** Section 25257.1(a) is restated by proposed Section 63550 for clarity. Section
22 25257.1(a) currently provides:

23 25257.1. (a) This article does not limit and shall not be construed to limit the department’s or
24 any other department’s or agency’s existing authority over hazardous materials.

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

26 **(2)** Section 25257.1(a) refers to “hazardous materials,” which is not a defined term in Chapter
27 6.5. although the term is defined in a chapter of Part 2 of Division 45 (formerly Chapter 6.8), “for
28 purposes of [that] chapter.” See Sections 80200, 80235.

29 The question of whether definitional provisions in Part 2 of Division 45 (formerly Chapter 6.8)
30 should be incorporated to apply when terms are used without definition in proposed Division 44
31 has already been added to the cumulative list of substantive issues for possible future study.

32 **63555. Regulatory authority of other departments or agencies**

33 63555. This chapter does not authorize the department to supersede the regulatory
34 authority of any other department or agency.

35 **Comment.** Section 63555 continues former Section 25257.1(b) without substantive change.
36 See Section 60160 (“department”).

1 **63560. Duplication or adoption of conflicting regulations**

2 63560. The department shall not duplicate or adopt conflicting regulations for
3 product categories already regulated or subject to pending regulation consistent with
4 the purposes of this chapter.

5 **Comment.** Section 63560 continues former Section 25257.1(c) without substantive change.
6 See Section 60160 (“department”).

7 Article 3. Priorities

8 **63570. Policy**

9 63570. The Legislature hereby declares that it is the policy goal of the state to
10 ensure the safety of consumer products sold in California through timely
11 administrative and legislative action on consumer products and chemicals of
12 concern in those products, particularly those products that may have
13 disproportionate impacts on sensitive populations.

14 **Comment.** Section 63570 continues former Section 25253.6 without substantive change.
15 See Section 63515 (consumer product).

16 **63575. Priority Product Work Plan of 2015-17**

17 63575. The department shall revise its 2015–17 Priority Product Work Plan to
18 include lead acid batteries for consideration and evaluation as a potential priority
19 product.

20 **Comment.** Section 63575 continues former Section 25253.5 without substantive change.

21 **Staff Note.** This provision requires that a specific product be addressed in a revision to the
22 2015-17 Priority Product Work Plan. That plan and two subsequent plans have been prepared.
23 See <https://dtsc.ca.gov/scp/priority-product-work-plan/>. It is unclear whether the revision required
24 by this provision was undertaken (and, if so, whether this provision is now obsolete).

25 **Comment on this issue is welcome.**

26 **63580. Priority Product Work Plans**

27 63580. Subject to an appropriation by the Legislature for purposes of this section,
28 the department shall include in each Priority Product Work Plan, commencing with
29 the 2024–26 Priority Product Work Plan, in addition to any other information that
30 the department is required to include pursuant to Section 69503.4 of Title 22 of the
31 California Code of Regulations, or any successor regulation, a brief description of
32 all of the following information:

33 (a) Information that the department has at the time the work plan is issued on the
34 chemicals or chemical ingredients that may be chemicals of concern that are
35 contained in consumer products within each product category or subcategory.

36 (b) Any additional ingredient information that is needed for the department to
37 evaluate the safety of those consumer products, including, but not limited to, the
38 information specified in Article 9 (commencing with Section 63800).

1 (c) Information specifying how the department plans to collect the additional
2 information, if any, described in subdivision (b).

3 (d)(1) Timelines for completion of all of the following with regard to at least five
4 product categories or subcategories in each work plan:

5 (A) The collection of information described in subdivision (b).

6 (B) All actions required pursuant to this chapter for a consumer product that
7 contains a chemical of concern, including, but not limited to, the listing of that
8 product as a priority product, the completion of an alternatives analysis for the
9 product, and the finalization of regulatory response determinations.

10 (2) The length of a timeline pursuant to paragraph (1) shall not exceed seven years
11 from the date of issuance of the work plan.

12 (3) In determining the data needed and actions required pursuant to paragraph (1),
13 the department shall take into account all chemicals that are known to serve or can
14 potentially serve the same function in the product categories or subcategories, such
15 as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one
16 chemical with another chemical on the candidate chemical list.

17 (4) An action to enforce the timelines shall be brought pursuant to Section 1085
18 of the Code of Civil Procedure.

19 **Comment.** Section 63580 continues former Section 25253.9 without substantive change.

20 See Sections 60160 (“department”), 63515 (“consumer product”).

21 Article 4. Green Ribbon Science Panel

22 **63595. Establishment of panel**

23 63595. (a) In implementing this chapter, the department shall establish a Green
24 Ribbon Science Panel. The panel shall be composed of members whose expertise
25 shall encompass all of the following disciplines:

26 (1) Chemistry.

27 (2) Chemical engineering.

28 (3) Environmental law.

29 (4) Toxicology.

30 (5) Public policy.

31 (6) Pollution prevention.

32 (7) Cleaner production methods.

33 (8) Environmental health.

34 (9) Public health.

35 (10) Risk analysis.

36 (11) Materials science.

37 (12) Nanotechnology.

38 (13) Chemical synthesis.

39 (14) Research.

40 (15) Maternal and child health.

1 (b) The department shall appoint all members to the panel on or before July 1,
2 2009.

3 (c) The department shall appoint the members for staggered three-year terms, and
4 may reappoint a member for additional terms, without limitation.

5 (d) The department shall provide for staff and administrative support to the panel.

6 **Comment.** Subdivision (a) of Section 63595 continues former Section 25254(a) without
7 substantive change.

8 Subdivision (b) continues the first sentence of former Section 25254(b) without substantive
9 change.

10 Subdivision (c) continues the second sentence of former Section 25254(b) without substantive
11 change.

12 Subdivision (d) continues the second sentence of former Section 25254(c) without substantive
13 change.

14 See Sections 60160 (“department”), 63530 (“panel”).

15 **Staff Note.** Section 25254(b) (which would be continued by proposed Section 63595(b)) requires
16 that all members of the Green Ribbon Science Panel be appointed by July 1, 2009. It is unclear
17 whether this required appointment has occurred (and, if so, whether this provision is now obsolete).

18 **Comment on this issue is welcome.**

19 **63600. Meetings**

20 63600. (a) The panel shall meet as often as the department deems necessary, with
21 consideration of available resources, but not less than twice each year.

22 (b) The panel meetings shall be open to the public and are subject to the Bagley-
23 Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter
24 1 of Part 1 of Division 3 of Title 2 of the Government Code).

25 **Comment.** Subdivision (a) of Section 63600 continues the first sentence of former Section
26 25254(c) without substantive change.

27 Subdivision (b) continues former Section 25254(d) without substantive change.

28 See Sections 60610 (“department”), 63535 (“panel”).

29 **63605. Authorized action by panel**

30 63605. The panel may take any of the following actions:

31 (a) Advise the department and the council on scientific and technical matters in
32 support of the goals of this chapter of significantly reducing adverse health and
33 environmental impacts of chemicals used in commerce, as well as the overall costs
34 of those impacts to the state’s society, by encouraging the redesign of consumer
35 products, manufacturing processes, and approaches.

36 (b) Assist the department in developing green chemistry and chemicals policy
37 recommendations and implementation strategies and details, and ensure these
38 recommendations are based on a strong scientific foundation.

39 (c) Advise the department and make recommendations for chemicals the panel
40 views as priorities for which hazard traits and toxicological end-point data should
41 be collected.

42 (d) Advise the department in the adoption of regulations required by this chapter.

1 (e) Advise the department on any other pertinent matter in implementing this
2 chapter, as determined by the department.

3 **Comment.** Section 63605 continues former Section 25255 without substantive change.
4 See Sections 60610 (“department”), 63515 (“consumer product”), 63520 (“council”), 63535
5 (“panel”).

6 Article 5. Regulations Identifying and Prioritizing Chemicals of Concern

7 **63620. Adoption of regulations**

8 63620. (a) On or before January 1, 2011, the department shall adopt regulations
9 to establish a process to identify and prioritize those chemicals or chemical
10 ingredients in consumer products that may be considered as being a chemical of
11 concern, in accordance with the review process specified in Article 7 (commencing
12 with Section 63710).

13 (b) The department shall adopt these regulations in consultation with the office
14 and all appropriate state agencies and after conducting one or more public
15 workshops for which the department provides public notice and provides an
16 opportunity for all interested parties to comment.

17 **Comment.** Section 63620 continues the first two sentences of former Section 25252(a) without
18 substantive change.

19 See Sections 60160 (“department”), 63515 (“consumer product”), 63525 (“office”).

20 **63630. Identification and prioritization process**

21 63630. The regulations adopted pursuant to this article shall establish an
22 identification and prioritization process that includes, but is not limited to, all of the
23 following considerations:

24 (a) The volume of the chemical in commerce in this state.

25 (b) The potential for exposure to the chemical in a consumer product.

26 (c) Potential effects on sensitive subpopulations, including infants and children.

27 **Comment.** Section 63630 continues the third sentence of former Section 25252(a) without
28 substantive change.

29 See Section 63515 (“consumer product”).

30 **63635. Development of evaluation criteria**

31 63635. (a) In adopting regulations pursuant to this article, the department shall
32 develop criteria by which chemicals and their alternatives may be evaluated.

33 (b) These criteria shall include, but not be limited to, the traits, characteristics, and
34 endpoints that are referenced in Article 8 (commencing with Section 63750).

35 **Comment.** Section 63635 continues former Section 25252(b)(1) without substantive change.

36 See Section 60160 (“department”).

37 **63640. Reference and use of information from other sources**

38 63640. (a) In adopting regulations pursuant to this article, the department shall
39 reference and use, to the maximum extent feasible, available information from other

1 nations, governments, and authoritative bodies that have undertaken similar
2 chemical prioritization processes, so as to leverage the work and costs already
3 incurred by those entities and to minimize costs and maximize benefits for the
4 state's economy.

5 (b) Subdivision (a) does not require the department, when adopting regulations
6 pursuant to this article, to reference and use only the available information specified
7 in subdivision (a).

8 **Comment.** Section 63640 continues former Section 25252(b)(2) and (b)(3) without substantive
9 change.

10 See Section 60160 (“department”)

11 Article 6. Regulations Evaluating Chemicals of Concern

12 **63660. Adoption of regulations**

13 63660. (a) On or before January 1, 2011, the department shall adopt regulations
14 pursuant to this article that establish a process for evaluating chemicals of concern
15 in consumer products, and their potential alternatives, to determine how best to limit
16 exposure or to reduce the level of hazard posed by a chemical of concern, in
17 accordance with the review process specified in Article 9 (commencing with Section
18 63800).

19 (b) The department shall adopt the regulations in consultation with all appropriate
20 state agencies and after conducting one or more public workshops for which the
21 department provides public notice and provides an opportunity for all interested
22 parties to comment.

23 **Comment.** Section 63660 continues former Section 25253(a)(1) without substantive change.

24 See Sections 60160 (“department”), 63515 (“consumer product”).

25 **63670. Process for evaluation**

26 63670. The regulations adopted pursuant to this article shall establish a process
27 that includes all of the following:

28 (a) An evaluation of the availability of potential alternatives and potential hazards
29 posed by those alternatives.

30 (b) An evaluation of critical exposure pathways.

31 (c) Life cycle assessment tools that take into consideration, but shall not be limited
32 to, all of the following:

33 (1) Product function or performance.

34 (2) Useful life.

35 (3) Materials and resource consumption.

36 (4) Water conservation.

37 (5) Water quality impacts.

38 (6) Air emissions.

39 (7) Production, in-use, and transportation energy inputs.

40 (8) Energy efficiency.

- 1 (9) Greenhouse gas emissions.
- 2 (10) Waste and end-of-life disposal.
- 3 (11) Public health impacts, including potential impacts to sensitive
- 4 subpopulations, including infants and children.
- 5 (12) Environmental impacts.
- 6 (13) Economic impacts.
- 7 **Comment.** Section 63670 continues former Section 25253(a)(2) without substantive change.
- 8 See Sections 60175 (“disposal”), 60390 (“waste”).

9 **Staff Note.** Section 25253(a)(2) is restated by proposed Section 63670 for clarity. Section
10 25253(a)(2) currently provides:

11 25253. (a)(2) The regulations adopted pursuant to this section shall establish a process that
12 includes an evaluation of the availability of potential alternatives and potential hazards posed by
13 those alternatives, as well as an evaluation of critical exposure pathways. This process shall include
14 life cycle assessment tools that take into consideration, but shall not be limited to, all of the
15 following:

- 16 (A) Product function or performance.
- 17 (B) Useful life.
- 18 (C) Materials and resource consumption.
- 19 (D) Water conservation.
- 20 (E) Water quality impacts.
- 21 (F) Air emissions.
- 22 (G) Production, in-use, and transportation energy inputs.
- 23 (H) Energy efficiency.
- 24 (I) Greenhouse gas emissions.
- 25 (J) Waste and end-of-life disposal.
- 26 (K) Public health impacts, including potential impacts to sensitive subpopulations, including
27 infants and children.
- 28 (L) Environmental impacts.
- 29 (M) Economic impacts.

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

31 **63675. Use of tools**

32 63675. (a) The department, in developing the processes and regulations pursuant
33 to this article, shall ensure that the tools available are in a form that allows for ease
34 of use and transparency of application.

35 (b) The department shall also make every feasible effort to devise simplified and
36 accessible tools that consumer product manufacturers, consumer product
37 distributors, product retailers, and consumers can use to make consumer product
38 manufacturing, sales, and purchase decisions.

39 **Comment.** Section 63675 continues former Section 25253(c) without substantive change.
40 See Sections 60160 (“department”), 63515 (“consumer product”), 63535 (“product
41 manufacturers”).

42 **Staff Note.** Are the “tools” referenced in Section 25253(c) intended to be a shorthand reference
43 to the life cycle assessment tools discussed in Section 25253(a)(2)? If not, is the meaning of the
44 term “tools” as used in Section 25253(c) sufficiently clear in practice?

45 **Comment is welcome on this issue. Depending on the comment received, the issue may be**
46 **added to the list of substantive issues for possible future study.**

1 **63680. Range of regulatory responses**

2 63680. The regulations adopted pursuant to this article shall specify the range of
3 regulatory responses that the department may take following the completion of the
4 alternatives analysis, including, but not limited to, any of the following actions:

5 (a) Not requiring any action.

6 (b) Imposing requirements to provide additional information needed to assess a
7 chemical of concern and its potential alternatives.

8 (c) Imposing requirements on the labeling or other type of consumer product
9 information.

10 (d) Imposing a restriction on the use of the chemical of concern in the consumer
11 product.

12 (e) Prohibiting the use of the chemical of concern in the consumer product.

13 (f) Imposing requirements that control access to or limit exposure to the chemical
14 of concern in the consumer product.

15 (g) Imposing requirements for the manufacturer to manage the product at the end
16 of its useful life, including recycling or responsible disposal of the consumer
17 product.

18 (h) Imposing a requirement to fund green chemistry challenge grants where no
19 feasible safer alternative exists.

20 (i) Any other outcome the department determines accomplishes the requirements
21 of this chapter.

22 **Comment.** Section 63680 continues former Section 25253(b) without substantive change.
23 See Sections 60160 (“department”), 60175 (“disposal”), 63515 (“consumer product”).

24 **63685. Reliance on studies or evaluations in lieu of alternatives analysis**

25 63685. (a) In lieu of requiring an analysis of alternatives, as specified in Sections
26 63660, 63670, and 63680, the department may instead rely on all or part of one or
27 more applicable publicly available studies or evaluations of alternatives to the
28 chemical of concern under consideration in a consumer product, in existence at the
29 time of consideration, and may proceed directly to a regulatory response.

30 (b) Any study or evaluation that the department proposes to rely on pursuant to
31 this section shall satisfy one of the reliability criteria in paragraphs (1) to (3),
32 inclusive, of subparagraph (A) of paragraph (57) of subdivision (a) of, and also meet
33 the requirements of subparagraph (B) of paragraph (57) of subdivision (a) of,
34 Section 69501.1 of Title 22 of the California Code of Regulations.

35 (c)(1) The department shall provide public notice and an opportunity for comment
36 from the public, including responsible entities, on the proposal to rely on the studies
37 or evaluations.

38 (2) The proposal may be combined with the proposal to list a chemical-product
39 combination as a priority product.

40 (d)(1) The proposal shall address any relevant factors listed in subdivision (c) of
41 Section 69506 of Title 22 of the California Code of Regulations, as that section may

1 be amended, that product manufacturers would be required to address as part of the
2 regulatory response.

3 (2) If the department determines that a study or evaluation upon which it is relying
4 pursuant to this section does not address one or more relevant factors, the
5 department may augment the study or evaluation with additional information that
6 addresses the relevant factors as part of the proposal to rely on the studies or
7 evaluations.

8 (e)(1) Following public notice and comment, the department shall make a formal
9 determination of whether the studies or evaluations are applicable and meet the
10 reliability criteria and requirements specified in subdivision (b), and whether all
11 relevant factors have been addressed.

12 (2) The department shall publish a summary of its determination, including
13 whether the department plans to proceed to regulatory responses. If regulatory
14 responses are planned, the summary shall not be judicially reviewable until
15 regulatory responses are finalized.

16 (f)(1) Following a formal determination pursuant to subdivision (e), the
17 department may issue regulatory responses based on the studies or evaluations, after
18 providing public notice and an opportunity for comment from the public, including
19 responsible entities, on the regulatory responses.

20 (2) The department shall respond to all comments it receives.

21 **Comment.** Section 63685 continues former Section 25253(d) without substantive change.

22 See Sections 60160 (“department”), 63515 (“consumer product”), 63535 (“product
23 manufacturers”).

24 **63690. Public involvement**

25 63690. (a) The department shall amend Sections 69504 and 69504.1 of Title 22
26 of the California Code of Regulations to allow a person to petition the department
27 for a regulatory response pursuant to Section 63685.

28 (b) The revision of regulations pursuant to subdivision (a) shall be deemed to be
29 a change without regulatory effect.

30 (c) If the department provides public notice of a proposed regulation pursuant to
31 this chapter and an opportunity to comment prior to the adoption of the regulation,
32 the dispute resolution procedures specified in Sections 69507.1 and 69507.2 of Title
33 22 of the California Code of Regulations, as those sections read on January 1, 2021,
34 shall not be available to a person who seeks to dispute the regulation and the
35 requirement to exhaust administrative remedies in subdivision (b) of Section 69507
36 of Title 22 of the California Code of Regulations does not apply.

37 **Comment.** Subdivision (a) of Section 63690 continues former Section 25253(e)(1) without
38 substantive change.

39 Subdivision (b) continues former Section 25253(e)(2) without substantive change.

40 Subdivision (c) continues former Section 25253(f) without substantive change.

41 See Sections 60160 (“department”), 60295 (“person”).

1 Article 7. Multimedia Life Cycle Evaluation

2 **63710. “Multimedia life cycle evaluation”**

3 63710. For the purposes of this article, “multimedia life cycle evaluation” means
4 the identification and evaluation of a significant adverse impact on public health or
5 the environment, including air, water, or soil, that may result from the production,
6 use, or disposal of a consumer product or consumer product ingredient.

7 **Comment.** Section 63710 continues former Section 25252.5(g) without substantive change.
8 See Sections 60175 (“disposal”), 63515 (“consumer product”).

9 **63715. Preparation of evaluation**

10 63715. (a) Except as provided in subdivision (c), the department, in adopting the
11 regulations pursuant to Article 5 (commencing with Section 63620) and Article 6
12 (commencing with Section 63660), shall prepare a multimedia life cycle evaluation
13 conducted by affected agencies and coordinated by the department, and shall submit
14 the regulations and the multimedia life cycle evaluation to the council for review.

15 (b) In coordinating a multimedia evaluation pursuant to subdivision (a), the
16 department shall consult with other boards and departments within the California
17 Environmental Protection Agency, the State Department of Public Health, the State
18 and Consumer Services Agency, the Department of Homeland Security, the
19 Department of Industrial Relations, and other state agencies with responsibility for,
20 or expertise regarding, impacts that could result from the production, use, or
21 disposal of consumer products and the ingredients they may contain.

22 (c) Notwithstanding subdivision (a), the department may adopt regulations
23 pursuant to Article 5 (commencing with Section 63620) and Article 6 (commencing
24 with Section 63660) without subjecting the proposed regulation to a multimedia
25 evaluation if the council, following an initial evaluation of the proposed regulation,
26 conclusively determines that the regulation will not have any significant adverse
27 impact on public health or the environment.

28 **Comment.** Subdivision (a) of Section 63715 continues former Section 25252.5(a) without
29 substantive change.

30 Subdivision (b) continues former Section 25252.5(e) without substantive change.

31 Subdivision (c) continues former Section 25252.5(f) without substantive change.

32 See Sections 60160 (“department”), 60175 (“disposal”), 63515 (“consumer product”), 63520
33 (“council”).

34 **63720. Basis of evaluation**

35 63720. The multimedia evaluation prepared in accordance with this article shall
36 be based on the best available scientific data, written comments submitted by
37 interested persons, and information collected by the department in preparation for
38 adopting the regulations, and shall address, but is not limited to, the impacts
39 associated with all the following:

40 (a) Emissions of air pollutants, including ozone forming compounds, particulate
41 matter, toxic air contaminants, and greenhouse gases.

- 1 (b) Contamination of surface water, groundwater, and soil.
- 2 (c) Disposal or use of the byproducts and waste materials.
- 3 (d) Worker safety and impacts to public health.
- 4 (e) Other anticipated impacts to the environment.

5 **Comment.** Section 63720 restates former Section 25252.5(b) without substantive change.
6 See Sections 60160 (“department”), 60295 (“person”), 60175 (“disposal”).

7 **Staff Note.** The introduction to Section 25252.5(b) is restated by proposed Section 63720 for
8 clarity. The introduction to Section 25252.5(b) currently provides:

9 25252.5. (b) The multimedia evaluation shall be based on the best available scientific data,.....

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

11 **63725. Review by council**

12 63725. (a) The council shall complete its review of the multimedia evaluation
13 prepared in accordance with this article within 90 calendar days following notice
14 from the department that it intends to adopt regulations.

15 (b) If the council determines that the proposed regulations will cause a significant
16 adverse impact on the public health or the environment, or that alternatives exist
17 that would be less adverse, the council shall recommend alternative measures that
18 the department or other state agencies may take to reduce the adverse impact on
19 public health or the environment.

20 (c) The council shall make all information relating to its review available to the
21 public.

22 **Comment.** Section 63725 restates former Section 25252.5(c) without substantive change.
23 See Sections 60160 (“department”), 63520 (“council”).

24 **Staff Note.** The first sentence of Section 25252.5(c) is restated by proposed Section 63725 for
25 clarity. The first sentence of Section 25252.5(c) currently provides:

26 25252.5. (c) The council shall complete its review of the multimedia evaluation within 90
27 calendar days following notice from the department that it intends to adopt regulations.

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

29 **63730. Significant adverse impact determination**

30 63730. Within 60 days of receiving notification from the council of a
31 determination of significant adverse impact, the department shall adopt revisions to
32 the proposed regulation to avoid or reduce the adverse impact, or the affected
33 agencies shall take appropriate action that will, to the extent feasible, mitigate the
34 adverse impact so that, on balance, there is no significant adverse impact on public
35 health or the environment.

36 **Comment.** Section 63730 continues former Section 25252.5(d) without substantive change.
37 See Sections 60160 (“department”), 63520 (“council”).

1 Article 8. Toxics Information Clearinghouse

2 **63750. Establishment of clearinghouse**

3 63750. The department shall establish the Toxics Information Clearinghouse,
4 which shall provide a decentralized, Web-based system for the collection,
5 maintenance, and distribution of specific chemical hazard trait and environmental
6 and toxicological end-point data.

7 **Comment.** Section 63750 continues the first sentence of former Section 25256 without
8 substantive change.

9 See Section 60160 (“department”).

10 **63755. Data to be initially included in clearinghouse**

11 63755. (a) On or before January 1, 2011, the office shall evaluate and specify the
12 hazard traits and environmental and toxicological end-points and any other relevant
13 data that are to be included in the clearinghouse.

14 (b) The office shall conduct this evaluation in consultation with the department
15 and all appropriate state agencies, after one or more public workshops, and an
16 opportunity for all interested parties to comment.

17 (c) The office may seek information from other states, the federal government,
18 and other nations in implementing this section.

19 **Comment.** Section 63755 continues former Section 25256.1 without substantive change.

20 See Sections 60160 (“department”), 63510 (“clearinghouse”), 63525 (“office”), 63750
21 (“clearinghouse”).

22 **63760. Operation of clearinghouse**

23 63760. (a) The department shall develop requirements and standards related to the
24 design of the clearinghouse and data quality and test methods that govern the data
25 that is eligible to be available through the clearinghouse.

26 (b) The department may phase in the access to eligible information and data in the
27 clearinghouse as that information and data become available.

28 (c) The department shall ensure the clearinghouse is capable of displaying
29 updated information as new data becomes available.

30 **Comment.** Section 63760 continues former Section 25256.2 without substantive change.

31 See Sections 60160 (“department”), 63510 (“clearinghouse”).

32 **63765. Department consultation with other governmental entities**

33 63765. The department shall consult with other states, the federal government,
34 and other nations to identify available data related to hazard traits and environmental
35 and toxicological end-points, and to facilitate the development of regional, national,
36 and international data sharing arrangements to be included in the clearinghouse.

37 **Comment.** Section 63665 continues former Section 25256.3 without substantive change.

38 See Sections 60160 (“department”), 63510 (“clearinghouse”).

1 **63770. Accessibility to the public**

2 63770. The department shall make the clearinghouse accessible to the public
3 through a single internet web portal.

4 **Comment.** Section 63770 continues the first part of the second sentence of former Section 25256
5 without substantive change.

6 See Sections 60160 (“department”), 63510 (“clearinghouse”).

7 **63775. Operational cost**

8 63775. The department shall, to the maximum extent possible, operate the
9 clearinghouse at the least possible cost to the state.

10 **Comment.** Section 63775 continues the second part of the second sentence of former Section
11 25256 without substantive change.

12 See Sections 60160 (“department”), 63510 (“clearinghouse”).

13 Article 9. Department Requests for Information

14 **63800. Request for information from product manufacturers**

15 63800. (a) The department may issue a formal request for information from
16 product manufacturers.

17 (b) The request shall be accompanied by a brief statement on why the department
18 is requesting the information.

19 (c) The department’s request may include, but is not limited to, all of the
20 following:

21 (1) Information on ingredient chemical identity, concentration, and functional
22 use.

23 (2) Existing information, if any, related to the use of the products by children,
24 pregnant women, or other sensitive populations.

25 (3) Data on state product sales, or national product sales in the absence of state
26 product sales data.

27 **Comment.** Subdivision (a) of Section 63800 continues the first sentence of former Section
28 25253.7(a)(1) without substantive change.

29 Subdivision (b) continues the second sentence of former Section 25253.7(a)(1) without
30 substantive change.

31 Subdivision (c) continue the fourth sentence of former Section 25253.7(a)(1) without substantive
32 change.

33 See Sections 60160 (“department”), 63535 (“product manufacturer”).

34 **63805. Response by product manufacturer**

35 63805. (a) A product manufacturer shall provide to the department data and
36 information on the ingredients and use of a consumer product upon the department’s
37 request within the time specified in Section 63820.

38 (b) If the product manufacturer certifies in writing that it does not have access to
39 information requested pursuant to Section 63800, in whole or in part, and that it has
40 attempted to, but cannot, obtain that information from one or more suppliers or

1 chemical manufacturers, the product manufacturer shall provide the identity and
2 contact information of those suppliers or chemical manufacturers to the department.

3 (c) To the extent that the product manufacturer satisfies the requirements of
4 subdivision (b), the product manufacturer shall be considered to be in compliance
5 with the requirement to provide the data and information specified in Section 63800,
6 with respect to the information that the product manufacturer has attempted to
7 obtain from the supplier or chemical manufacturer, and shall be absolved of liability
8 for violating this article as it pertains to the provision of that information.

9 **Comment.** Subdivision (a) of Section 63805 continues the third sentence of former Section
10 25253.7(a)(1) without substantive change.

11 Subdivision (b) continues former Section 25253.7(a)(2)(A) without substantive change.

12 Subdivision (c) continues former Section 25253.7(a)(2)(B) without substantive change.

13 See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63515 (“consumer
14 product”), 63535 (“product manufacturer”).

15 **63810. Request for information from supplier or chemical manufacturer**

16 63810. (a) The department may issue an independent information request to a
17 supplier or chemical manufacturer identified by the product manufacturer pursuant
18 to subdivision (b) of Section 63805 for the unknown information that the product
19 manufacturer certifies it does not have access to, as well as for the identity and
20 contact information of other suppliers or chemical manufacturers, as necessary to
21 access the information requested pursuant to Section 63800.

22 (b) Upon the department’s request, a supplier or chemical manufacturer shall
23 provide the information requested pursuant to this section to the department.

24 (c) The supplier or chemical manufacturer shall be considered to be in violation
25 of this section, and is liable for civil penalties pursuant to Section 63830, to the
26 extent that it fails to comply with an information request, pursuant to subdivisions
27 (b) or (c) of Section 63805, in its entirety.

28 **Comment.** Section 63810 continues former Section 25253.7(a)(2)(C) without substantive
29 change.

30 See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63535 (“product
31 manufacturer”).

32 **Staff Note.** The last sentence of Section 25253.7(a)(2)(C) (which would be continued by
33 proposed Section 63810(c)) provides that a supplier or chemical manufacturer shall be considered
34 in violation of Section 25253.7, and liable for civil penalties, “to the extent that it fails to comply
35 with an information request, pursuant to subparagraph (A) or (B), in its entirety.”

36 However, neither of the two cross-referenced subparagraphs, which would be continued by
37 proposed subdivisions (b) and (c) of Section 63805, seem to impose any obligation on a supplier
38 or chemical manufacturer.

39 **Comment is welcome on this issue. Depending on the comment received, the issue may be
40 added to the list of substantive issues for possible future study.**

41 **63815. Request for information for category in Priority Product Work Plan**

42 63815. The department may seek data and information pursuant to Sections
43 63800, 63805, and 63810 for any product category or subcategory published in a

1 previous Priority Product Work Plan or being considered for inclusion in an
2 upcoming Priority Product Work Plan.

3 **Comment.** Section 63815 continues former Section 25253.7(a)(3) without substantive change.
4 See Section 60160 (“department”).

5 **63820. Allowed time for response to request**

6 63820. (a) The department shall provide 30 days for a response to a request for
7 data or information, unless the department concludes additional time is necessary
8 for the entity to obtain the necessary information.

9 (b) If the department determines that a longer time is required, it shall identify the
10 deadline for response, which shall not exceed 120 days.

11 (c) If the entity is in communication with the department and is working in good
12 faith to fulfill the department’s request, the department may exceed 120 days by
13 granting additional time in an amount not to exceed 60 days.

14 **Comment.** Section 63820 continues former Section 25253.7(a)(4) without substantive change.
15 See Section 60160 (“department”).

16 **63825. Assertion of trade secret claims**

17 63825. In providing data or information in response to a request from the
18 department, a product manufacturer, chemical manufacturer, or supplier may raise
19 trade secret claims in accordance with Article 10 (commencing with Section 63850).

20 **Comment.** Section 63825 continues former Section 25253.7(a)(5) without substantive change.
21 See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63535 (“product
22 manufacturer”).

23 **63830. Penalties for noncompliance**

24 63830. (a) A person who violates this article shall be liable for a civil penalty not
25 to exceed fifty thousand dollars (\$50,000) for each separate violation or, for
26 continuing violations, for each day that violation continues.

27 (b) Liability under this section may be imposed in a civil action or may be imposed
28 administratively.

29 (c) A penalty collected pursuant to this section shall be deposited in the Toxic
30 Substances Control Account in the General Fund.

31 (d) In imposing an administrative penalty pursuant to this section, the department
32 shall take into consideration the nature, circumstances, extent, and gravity of the
33 violation, the history of previous violations, the violator’s ability to pay the penalty,
34 and the deterrent effect of the penalty.

35 (e) Nothing in this section shall be construed to impose liability for a civil penalty
36 pursuant to subdivision (a) for a violation of this article resulting from another
37 party’s failure to comply with an independent information request issued by the
38 department pursuant to Section 63810.

39 **Comment.** Section 63830 continues former Section 25253.7(b) without substantive change.
40 See Sections 60160 (“department”), 60295 (“person”).

Article 10. Trade Secrets

63850. Claim of trade secret

63850. (a) A person providing information pursuant to this chapter may, at the time of submission, identify a portion of the information submitted to the department as a trade secret and, upon the written request of the department, shall provide support for the claim that the information is a trade secret.

(b) Except as provided in Section 63860, a state agency shall not release to the public, subject information supplied pursuant to this chapter that is a trade secret, and that is so identified at the time of submission, in accordance with Sections 7924.510 and 7924.700 of the Government Code and Section 1060 of the Evidence Code.

(c) Information not identified as a trade secret pursuant to subdivisions (a) or (b) shall be available to the public unless exempted from disclosure by other provisions of law.

(d) The fact that information is claimed to be a trade secret is public information.

Comment. Subdivision (a) of Section 63850 continues the first sentence of former Section 25257(a) without substantive change.

Subdivision (b) continues the second sentence of former Section 25257(a) without substantive change.

Subdivision (c) continues the first sentence of former Section 25257(c) without substantive change.

Subdivision (d) continues the second sentence of former Section 25257(c) without substantive change.

See Sections 60160 (“department”), 60295 (“person”).

Staff Note. In the second sentence of Section 25257(a) (continued by proposed Section 63850(b)), the meaning of the term “subject information” is unclear.

Comment on this issue is welcome. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.

63855. Duty of department employees

63855. An employee of the department that has access to a properly designated trade secret shall maintain the confidentiality of that trade secret by complying with this section.

Comment. Section 63855 continues the second sentence of former Section 25257(b) without substantive change.

See Section 60160 (“department”).

63860. Request for release of information claimed to be trade secret

63860. (a) Upon receipt of a request for the release of information that has been claimed to be a trade secret, the department shall immediately notify the person who submitted the information.

(b) Based on the request, the department shall determine whether or not the information claimed to be a trade secret is to be released to the public.

1 (c) The department shall make the determination specified in subdivision (b), no
2 later than 60 days after the department receives the request for disclosure, but not
3 before 30 days following the notification of the person who submitted the
4 information.

5 (d) If the department decides that the information requested pursuant to this
6 section should be made public, the department shall provide the person who
7 submitted the information 30 days' notice prior to public disclosure of the
8 information, unless, prior to the expiration of the 30-day period, the person who
9 submitted the information obtains an action in an appropriate court for a declaratory
10 judgment that the information is subject to protection under this article or for a
11 preliminary injunction prohibiting disclosure of the information to the public and
12 promptly notifies the department of that action.

13 **Comment.** Section 63860 continues former Section 25257(d) without substantive change.
14 See Sections 60160 (“department”), 60295 (“person”).

15 **Staff Note.** Two aspects of the text of Section 25257(d)(3) (which would be continued by
16 proposed Section 63860(d)) are somewhat unclear:

17 1. The required calculation of the 30-day notice period, based on the intended application of the
18 text of the provision beginning the word “unless.”

19 2. The reference to a specified person “obtain[ing]” a specified action in an appropriate court,
20 which might be understood as either (a) *commencing* an action, or (b) obtaining one of the specified
21 *results* in an action.

22 **Comment on whether these issues should be added to the list of substantive issues for**
23 **possible future study is welcome.**

24 **63865. Exchange of information between public agencies**

25 63865. This article does not prohibit the exchange of a properly designated trade
26 secret between public agencies, if the trade secret is relevant and necessary to the
27 exercise of the agency’s jurisdiction and the public agency exchanging the trade
28 secrets complies with this section.

29 **Comment.** Section 63865 continues the first sentence of former Section 25257(b) without
30 substantive change.

31 **63870. Refusal to disclose information to department**

32 63870. This article does not authorize a person to refuse to disclose to the
33 department information required to be submitted to the department pursuant to this
34 article.

35 **Comment.** Section 63870 continues the first sentence of former Section 25257(e) without
36 substantive change.

37 See Section 60160 (“department”), 60295 (“person”).

38 **63875. Application of article to hazardous trait submissions**

39 63875. This article does not apply to hazardous trait submissions for chemicals
40 and chemical ingredients pursuant to this chapter.

41 **Comment.** Section 63875 continues the first sentence of former Section 25257(f) without
42 substantive change.

1 See Section 60160 (“department”).

2 Article 11. Healthy Nail Salon Recognition

3 **63900. Publication of guidelines**

4 63900. The department shall, by January 1, 2018, publish guidelines for healthy
5 nail salon recognition (HNSR) programs voluntarily implemented by local cities
6 and counties.

7 **Comment.** Section 63900 continues former Section 25257.2(a) without substantive change.
8 See Section 60160 (“department”).

9 **63905. Content of guidelines**

10 63905. The guidelines for an HNSR program adopted pursuant to Section 63900
11 may include, but shall not be limited to, all of the following:

12 (a) A list of specific chemical ingredients that should not be used by a nail salon
13 seeking recognition. In determining whether to include a chemical on the list, the
14 department shall consider:

15 (1) Whether the chemical is identified as a candidate chemical pursuant to the
16 regulations adopted pursuant to Section 25252.

17 (2) Whether an existing healthy nail salon program has restricted the use of the
18 chemical.

19 (3) The potential for exposure of nail salon workers and customers to the
20 chemical.

21 (4) The availability of existing, safer alternatives to the chemical in products
22 available to nail salons in California.

23 (b) Specific best practices for minimizing exposure to hazardous chemicals,
24 including:

25 (1) A list of specific personal protective equipment that should be used by
26 personnel in a salon seeking recognition and guidance on when and how to use it.

27 (2) Engineering controls that should be adopted by salons seeking recognition,
28 including specific ventilation practices and equipment.

29 (3) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or
30 toluene.

31 (4) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

32 (5) Prohibiting nail polish removers that contain ethyl or butyl acetate.

33 (c) A list of specific training topics for salon owners and staff, whether on payroll
34 or contract, on safer practices delineated in the HNSR program guidelines.

35 (d) Criteria for the use of outside products brought in by clients.

36 (e) Verification that a salon seeking recognition is in compliance with Chapter 10
37 (commencing with Section 7301) of Division 3 of the Business and Professions
38 Code, and all applicable regulations enforced by the State Board of Barbering and
39 Cosmetology.

1 (f) Any other guidelines or best practices determined by the department to further
2 the goals of an HNSR program.

3 **Comment.** Section 63905 continues former Section 25257.2(b) without substantive change.
4 See Section 60160 (“department”).

5 **63910. Criteria for cities and counties adopting program**

6 63910. (a) The guidelines adopted pursuant to Section 63900 shall include criteria
7 for cities and counties that adopt an HNSR program.

8 (b) The criteria referred to in subdivision (a) may cover, but are not limited to:

9 (1) Coordination with other local HNSR programs to assist businesses in
10 achieving and moving beyond regulatory compliance.

11 (2) Training and certification requirements for the salon owners and staff to
12 ensure thorough knowledge of safe and environmentally friendly procedures.

13 (3) Issuance of an approved seal or certificate to salons that have met certification
14 requirements.

15 (4) The process by which a salon can enroll in an HNSR program and be verified
16 by the local entity.

17 (5) The frequency at which the local entity shall verify continued compliance by
18 a salon that has previously met all specified requirements.

19 **Comment.** Section 63910 continues former Section 25257.2(c) without substantive change.
20 See Section 60095 (“business”).

21 **63915. Consultation with other agencies**

22 63915. In developing guidelines pursuant to Section 63900, the department shall
23 consult with the Division of Occupational Safety and Health, the State Department
24 of Public Health, and the State Board of Barbering and Cosmetology.

25 **Comment.** Section 63915 continues former Section 25257.2(d) without substantive change.
26 See Section 60160 (“department”).

27 **63920. Promotion of guidelines**

28 63920. In collaboration with existing healthy nail salon programs, the department
29 shall promote the HNSR guidelines developed pursuant to Section 63900 by doing
30 all of the following:

31 (a) Developing and implementing a consumer education program.

32 (b) Presenting the HNSR guidelines to local health officers, local environmental
33 health departments, and other local agencies as appropriate.

34 (c) Developing and either distributing or posting on its internet website
35 information for local entities, including, but not limited to the following:

36 (1) Suggestions for successful implementation of HNSR programs.

37 (2) Resource lists that include names and contact information of vendors,
38 consultants, or providers of financial assistance or loans for purchases of ventilation
39 equipment.

1 (d) Developing an internet website or a section on the department’s internet
2 website that links to county HNSR internet websites.

3 **Comment.** Section 63920 restates former Section 25257.2(e) without substantive change.
4 See Section 60610 (“department”).

5 **Staff Note.** Section 25257.2(e)(3) is restated by proposed Section 63920(c) for clarity. The
6 existing provision currently provides:

7 25257. (e) In collaboration with existing healthy nail salon programs, the department shall
8 promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:
9

10 ...

11 (3) Developing and either distributing or posting on its Internet Web site information for local
12 entities, including, but not limited to, suggestions for successful implementation of HNSR
13 programs and resource lists that include names and contact information of vendors, consultants, or
14 providers of financial assistance or loans for purchases of ventilation equipment.

Absent comment, this proposed restatement will be presumed correct.

15 **63925. Outreach**

16 63925. The department may prioritize its outreach to those counties that have the
17 greatest number of nail salons.

18 **Comment.** Section 63925 continues former Section 25257.2(f) without substantive change.
19 See Section 60160 (“department”).

20 **63930. Violation of regulation by salon**

21 63930. (a) The State Board of Barbering and Cosmetology may notify the city,
22 county, or city and county if a recognized salon is found in violation of Article 12
23 (commencing with Section 977) of Division 9 of Title 16 of the California Code of
24 Regulations.

25 (b) A violation shall result in the removal of healthy nail salon recognition from
26 that salon.

27 **Comment.** Section 63930 restates former Section 25257.2(g) without substantive change.

28 **63935. Local rules and ordinances**

29 63935. This article does not prevent the adoption or enforcement of any local rules
30 or ordinances.

31 **Comment.** Section 63935 continues former Section 25257.2(h) without substantive change.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§ 25100-25259), as the law existed on January 1, 2023. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	Corresponding New Provision
25251 (intro)	63500
25251(a)	63505
25251(b).....	63515
25251(c).....	63520
25251(d).....	63525
25251(e).....	63530
25251(f)	63535
25252(a), 1st and 2nd sent.....	63620
25252(a), 3rd sent	63630
25252(b)(1).....	63635
25252(b)(2), (b)(3).....	63640
25252.5(a).....	63715(a)
25252.5(b).....	63720
25252.5(c).....	63725
25252.5(d).....	63730
25252.5(e).....	63715(b)
25252.5(f)	63715(c)
25252.5(g).....	63710
25253(a)(1)	63660
25253(a)(2)	63670
25253(b).....	63680
25253(c).....	63675
25253(d).....	63685
25253(e)(1)	63690(a)
25253(e)(2)	63690(b)
25253(f)	63690(c)
25253.5	63575
25253.6	63570
25253.7(a)(1), 1st sent.....	63800(a)
25253.7(a)(1), 2nd sent.....	63800(b)
25253.7(a)(1), 3rd sent	63805(a)
25253.7(a)(1), 4th sent.....	63800(c)
25253.7(a)(2)(A).....	63805(b)
25253.7(a)(2)(B).....	63805(c)
25253.7(a)(2)(C).....	63810
25253.7(a)(3)	63815
25253.7(a)(4)	63820
25253.7(a)(5)	63825
25253.7(b).....	63830

Existing Provision	Corresponding New Provision
25253.9	63580
25254(a).....	63595(a)
25254(b), 1st sent	63595(b)
25254(b), 2nd sent	63595(c)
25254(c), 1st sent.....	63600(a)
25254(c), 2nd sent	63595(d)
25254(d).....	63600(b)
25255	63605
25256, 1st sent	63750
25256, 2nd sent, 1st part.....	63770
25256, 2nd sent, 2nd part.....	63775
25256.1	63755
25256.2	63760
25256.3	63765
25257(a), 1st sent.....	63850(a)
25257(a), 2nd sent	63850(b)
25257(b).....	63855
25257(c), 1st sent.....	63850(c)
25257(c), 2nd sent	63850(d)
25257(d).....	63860
25257(e).....	63870
25257(f)	63875
25257.1(a).....	63550
25257.1(b).....	63555
25257.1(c).....	63560
25257.2(a).....	63900
25257.2(b).....	63905
25257.2(c).....	63910
25257.2(d).....	63915
25257.2(e).....	63920
25257.2(f)	63925
25257.2(g).....	63930
25257.2(h).....	63935

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 44 reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Corresponding Existing Provision
63500	25251 (intro)
63505	25251(a)
63510	new
63515	25251(b)
63520	25251(c)
63525	25251(d)
63530	25251(e)
63535	25251(f)
63550	25257.1(a)
63555	25257.1(b)
63560	25257.1(c)
63570	25253.6
63575	25253.5
63580	25253.9
63595(a).....	25254(a)
63595(b).....	25254(b), 1st sent
63595(c).....	25254(b), 2nd sent
63595(d).....	25254(c), 2nd sent
63600(a).....	25254(c), 1st sent
63600(b).....	25254(d)
63605	25255
63620	25252(a), 1st and 2nd sent
63630	25252(a), 3rd sent
63635	25252(b)(1)
63640	25252(b)(2), (b)(3)
63660	25253(a)(1)
63670	25253(a)(2)
63675	25253(c)
63680	25253(b)
63685	25253(d)
63690(a).....	25253(e)(1)
63690(b).....	25253(e)(2)
63690(c).....	25253(f)
63710	25252.5(g)
63715(a).....	25252.5(a)
63715(b).....	25252.5(e)
63715(c).....	25252.5(f)
63720	25252.5(b)
63725	25252.5(c)
63730	25252.5(d)
63750	25256, 1st sent
63755	25256.1

Proposed New Provision	Corresponding Existing Provision
63760	25256.2
63765	25256.3
63770	25256, 2nd sent, 1st part
63775	25256, 2nd sent, 2nd part
63800(a).....	25253.7(a)(1), 1st sent
63800(b).....	25253.7(a)(1), 2nd sent
63800(c).....	25253.7(a)(1), 4th sent
63805(a).....	25253.7(a)(1), 3rd sent
63805(b).....	25253.7(a)(2)(A)
63805(c).....	25253.7(a)(2)(B)
63810	25253.7(a)(2)(C)
63815	25253.7(a)(3)
63820	25253.7(a)(4)
63825	25253.7(a)(5)
63830	25253.7(b)
63850(a).....	25257(a), 1st sent
63850(b).....	25257(a), 2nd sent
63850(c).....	25257(c), 1st sent
63850(d).....	25257(c), 2nd sent
63855	25257(b), 2nd sent
63860	25257(d)
63865	25257(b), 1st sent
63870	25257(e)
63875	25257(f)
63900	25257.2(a)
63905	25257.2(b)
63910	25257.2(c)
63915	25257.2(d)
63920	25257.2(e)
63925	25257.2(f)
63930	25257.2(g)
63935	25257.2(h)