



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-2059 Hazardous materials business and area plans: consumer products: recordkeeping. (2021-2022)

SHARE THIS:  

Date Published: 09/14/2022 09:00 PM

Assembly Bill No. 2059

CHAPTER 278

An act to amend Sections 25500, 25501, and 25507 of, and to add Sections 25507.5 and 25508.3 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2059, Carrillo. Hazardous materials business and area plans: consumer products: recordkeeping.

Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program, known as the unified program. Existing law requires every county to apply to the secretary to be certified to implement the unified program, and authorizes a city or local agency that meets specified requirements to apply to the secretary to be certified to implement the unified program, as a certified unified program agency, or CUPA. Existing law authorizes a state or local agency that has a written agreement with a CUPA, and is approved by the secretary, to implement or enforce one or more of the unified program elements as a participating agency. Existing law defines "unified program agency," or UPA, to mean the CUPA or its participating agencies, as provided.

Existing law declares that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. Existing law requires a business to establish and implement a business plan, as defined, for emergency response to a release or threatened release of a hazardous material if the business meets specified conditions at any unified program facility, as defined. Existing law exempts from that requirement certain hazardous materials, including a hazardous material that is contained solely in a consumer product, handled at, and found in, a retail establishment and intended for sale to, and for the use by, the public, except in specified circumstances. Existing law defines "consumer product" as a commodity that is used for personal, family, or household purposes, or that is present in the same form, concentration, and quantity as a product prepackaged for distribution to and for use by the general public. Existing law delegates to the unified program agencies the responsibility and authority to implement and enforce these requirements.

This bill would expand the scope of hazardous materials subject to regulation pursuant to the hazardous waste control laws by narrowing the definition of "consumer product" to require that the commodity be present in the same form, concentration, and quantity as a product prepackaged for distribution to a consumer for personal, family, or household purposes, instead of for use by the general public, and by otherwise narrowing the exemption for consumer products from regulation of hazardous materials, as provided. By making changes to the laws enforced by uniform program agencies and thereby imposing additional duties, the bill would impose a state-mandated local program.

This bill would require a supplier, as defined, that sells or provides a certain amount of hazardous materials meeting certain requirements to a business in the state in certain quantities to maintain records containing certain information concerning the sale or provision of the hazardous materials for a minimum of one year and would require the suppliers to make those records

available to a UPA within 5 days of a request. The bill would, except as provided, require a handler subject to the business plan requirement, if directed by a UPA during an investigation or inspection, to notify the UPA if those hazardous materials in certain quantities are to be removed from the storage or handling location and transferred to another location, and to disclose to the UPA certain information regarding the transfer.

Existing law provides that a person who knowingly violates specified requirements related to hazardous materials business plans, after reasonable notice of the violation, is, upon conviction, guilty of a misdemeanor. Existing law provides that a person who willfully prevents, interferes with, or attempts to impede the enforcement of the requirements related to hazardous materials business plans by any authorized representative of a unified program agency is, upon conviction, guilty of a misdemeanor.

By expanding the scope of hazardous materials subject to regulation pursuant to the hazardous waste control laws and imposing additional requirements related to handlers of hazardous materials, this bill would expand the scope of a crime.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25500 of the Health and Safety Code is amended to read:

25500. (a) The Legislature declares that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. The establishment of a statewide environmental reporting system for these plans is a statewide requirement. Basic information on the location, type, quantity, and health risks of hazardous materials handled, used, stored, or disposed of in the state, which could be accidentally released into the environment, is required to be submitted to firefighters, health officials, planners, public safety officers, health care providers, regulatory agencies, and other interested persons. The information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and environment.

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

SEC. 2. Section 25501 of the Health and Safety Code is amended to read:

25501. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Agricultural handler" means a business operating a farm that is subject to the exemption specified in Section 25507.1.

(b) "Area plan" means a plan established pursuant to Section 25503 by a unified program agency for emergency response to a release or threatened release of a hazardous material within a city or county.

(c) "Business" means all of the following:

(1) An employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, limited liability partnership or company, or other business entity.

(2) A business organized for profit and a nonprofit business.

(3) The federal government, to the extent authorized by law.

(4) An agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(5) An agency, department, office, board, commission, or bureau of a city, county, or district.

(6) A handler that operates or owns a unified program facility.

(d) "Business plan" means a separate plan for each unified program facility, site, or branch of a business that meets the requirements of Section 25505.

(e) (1) "Certified unified program agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified program agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this article and Article 2 (commencing with Section 25531), the UPAs have the responsibility and authority, to the extent provided by this article and Article 2 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.

(4) The UPAs also have the responsibility and authority, to the extent provided by this article and Article 2 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA.

(f) "City" includes any city and county.

(g) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(h) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance by other than its chemical name.

(i) "Compressed gas" means a material, or mixture of materials, that meets either of the following:

(1) The definition of compressed gas or cryogenic fluid found in the California Fire Code.

(2) Compressed gas that is regulated pursuant to Part 1 (commencing with Section 6300) of Division 5 of the Labor Code.

(j) "Consumer product" means a commodity that is used for personal, family, or household purposes, or that is present in the same form, concentration, and quantity as a product prepackaged for distribution to a consumer for personal, family, or household purposes. A product that is not sold for personal, family, or household use is not a "consumer product."

(k) "Emergency response personnel" means a public employee, including, but not limited to, a firefighter or emergency rescue personnel, as defined in Section 245.1 of the Penal Code, or personnel of a local emergency medical services (EMS) agency, as designated pursuant to Section 1797.200, who is responsible for response, mitigation, or recovery activities in a medical, fire, or hazardous material incident, or natural disaster where public health, public safety, or the environment may be impacted.

(l) "Handle" means all of the following:

(1) (A) To use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(B) For purposes of subparagraph (A), "store" does not include the storage of hazardous materials incidental to transportation, as described in Title 49 of the Code of Federal Regulations, with regard to the inventory requirements of Section 25506.

(2) (A) The use or potential use of a quantity of hazardous material by the connection of a marine vessel, tank vehicle, tank car, or container to a system or process for any purpose.

(B) For purposes of subparagraph (A), the use or potential use does not include the immediate transfer to or from an approved atmospheric tank or approved portable tank that is regulated as loading or unloading incidental to transportation by Title 49 of the Code of Federal Regulations.

(m) "Handler" means a business that handles a hazardous material.

(n) (1) "Hazardous material" means a material listed in paragraph (2) that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment, or a material specified in an ordinance adopted pursuant to paragraph (3).

(2) Hazardous materials include all of the following:

(A) A substance or product for which the manufacturer or producer is required to prepare a material safety data sheet pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(B) A substance listed as a radioactive material in Appendix B of Part 30 (commencing with Section 30.1) of Title 10 of the Code of Federal Regulations, as maintained and updated by the United States Nuclear Regulatory Commission.

(C) A substance listed pursuant to Title 49 of the Code of Federal Regulations.

(D) A substance listed in Section 339 of Title 8 of the California Code of Regulations.

(E) A material listed as an extremely hazardous waste, as defined in Section 25115, a hazardous waste, as defined in Section 25117, or a hazardous substance, as defined in Section 25316.

(3) The governing body of a unified program agency may adopt an ordinance that provides that, within the jurisdiction of the unified program agency, a material not listed in paragraph (2) is a hazardous material for purposes of this article if a handler has a reasonable basis for believing that the material would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment, and requests the governing body of the unified program agency to adopt that ordinance, or if the governing body of the unified program agency has a reasonable basis for believing that the material would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. The handler or the unified program agency shall notify the secretary no later than 30 days after the date an ordinance is adopted pursuant to this paragraph.

(o) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, unless permitted or authorized by a regulatory agency.

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

(q) "Secretary" means the Secretary for Environmental Protection.

(r) "Statewide information management system" means the statewide information management system established pursuant to subdivision (e) of Section 25404 that provides for the combination of state and local information management systems for the purposes of managing unified program data.

(s) "Supplier" means a manufacturer, distributor, wholesaler, or retailer in the state that sells or provides hazardous materials to a business in the state.

(t) "Threatened release" means a condition, circumstance, or incident making it necessary to take immediate action to prevent, reduce, or mitigate a release that has the potential to cause damage or harm to persons, property, or the environment.

(u) "Trade secret" means trade secrets as defined in either subdivision (d) of Section 6254.7 of the Government Code or paragraph (1) of subdivision (a) of Section 1061 of the Evidence Code.

(v) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this article, "facility" has the same meaning as unified program facility.

SEC. 3. Section 25507 of the Health and Safety Code is amended to read:

25507. (a) Except as provided in this article, a business shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503 if the business meets any of the following conditions at any unified program facility:

(1) (A) It handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is equal to, or greater than, 55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic

feet for compressed gas. The physical state and quantity present of mixtures shall be determined by the physical state of the mixture as a whole, not individual components, at standard temperature and pressure.

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

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

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

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

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

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

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

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

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

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

(C) Carbon dioxide.

(D) A nonflammable refrigerant gas, as defined in the California Fire Code, that is used in a refrigeration system.

(E) A gas that is used in a closed fire suppression system.

(6) It handles a radioactive material at any one time during the reporting year in quantities for which an emergency plan is required to be considered pursuant to Schedule C (Section 30.72) of Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of Chapter I of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with these federal regulations.

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

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

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

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

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

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

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

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

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

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

(A) Fluid in a hydraulic system.

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

(5) (A) A hazardous material that meets the definition of a consumer product and is handled at, and found in, a retail establishment and intended for direct sale to the end user.

(B) The exemption provided for in subparagraph (A) shall not apply to either of the following:

(i) A consumer product handled at a facility that manufactures that product, or a separate warehouse or distribution center where there are no direct sales to consumers, or where a product is dispensed on the retail premises.

(ii) A consumer product sold at a retail establishment that has a National Fire Protection Association or "NFPA" or Hazardous Materials Identification System or "HMIS" rating of 3 or 4 and is stored, at any time, in quantities equal to, or greater than, 165 gallons for a liquid, 600 cubic feet for a gas, and 1,500 pounds for a solid. If a unified program agency determines that a consumer product stored at a retail establishment is stored at or above a reportable threshold listed in subdivision (a), and poses a significant potential hazard, the unified program agency may require the product to be reported in accordance with this chapter.

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

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

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

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

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

SEC. 4. Section 25507.5 is added to the Health and Safety Code, to read:

25507.5. (a) A supplier of hazardous materials that are listed by the United States Department of Transportation and that are classified in two or more federal hazard categories in the California Environmental Reporting System, not including the "Hazard Not Otherwise Classified" category, shall maintain records for the sale or provision of those hazardous materials to a business in the state in quantities equal to, or greater than, within any 30-day period, 165 gallons of a liquid, 600 cubic feet of a gas at standard temperature and pressure, or 1,500 pounds of a solid. A record shall be maintained by the supplier for a minimum of one year and shall be made available to a unified program agency within five days of a request.

(b) Records required to be maintained pursuant to subdivision (a) shall contain all of the following information about each hazardous material and the business that is purchasing or being provided with the hazardous materials:

- (1) Common name of the hazardous material.
- (2) United Nations number (UN number) of the hazardous material.
- (3) Quantity of the hazardous material.
- (4) Name of business.
- (5) Business address.
- (6) Destination address of where the hazardous material will be handled.
- (7) Date of purchase or provision.
- (8) Name of the individual conducting the transaction on behalf of the business.

SEC. 5. Section 25508.3 is added to the Health and Safety Code, to read:

25508.3. Except for a household hazardous waste collection facility, as defined in Section 25218.1, a handler subject to the requirements of this chapter, if directed by a unified program agency during an investigation or inspection, including a complaint inspection, shall notify the unified program agency if hazardous materials in quantities equal to, or greater than, 165 gallons of a liquid, 600 cubic feet of a gas at standard temperature and pressure, or 1,500 pounds of a solid, are to be removed from the storage or handling location and transferred to another location. The handler shall disclose all of the following information as directed by the unified program agency:

- (a) Common name of the hazardous material.
- (b) United Nations number (UN number) of the hazardous material.
- (c) Quantity of hazardous material.
- (d) Expected date of transfer.
- (e) Actual date of transfer.
- (f) Destination address.
- (g) Method of shipping.
- (h) Shipping documentation.

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