



Yana Garcia

Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806



Gavin Newsom

Governor

5-DAY PUBLIC NOTICE AND COMMENT PERIOD

EMERGENCY ADOPTION

Conditional Exemption for Undeployed Airbags

Department of Toxic Substances Control Reference Number: R-2023-21E

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt emergency regulations to amend the California Code of Regulations, title 22, division 4.5, sections 66260.10 and 66261.4. These changes are intended to facilitate the expedited removal and proper management of defective Takata airbags from vehicles and prevent their long-term storage to reduce the safety risk posed by the recalled airbag inflators.

COMMENT PERIOD

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), DTSC provides a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action. After submission of the proposed emergency to OAL, OAL must allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

DTSC intends to submit this proposed emergency action to OAL on March 4, 2024. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's website at: https://oal.ca.gov/emergency_regulations/Emergency_Regulations_Under_Review/.

Comments must be submitted in writing directly to OAL:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
Fax Number: (916) 323-6826
staff@oal.ca.gov

A copy of the comment must also be submitted in writing to the Office of Legislation and Regulatory Review at:

Office of Legislation and Regulatory Review
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Fax Number: (916) 324-1808
regs@dtsc.ca.gov

FINDING OF EMERGENCY

DTSC has identified an immediate risk of serious injury or death to the public posed by the delayed removal and extended accumulation of defective Takata airbags constituting an emergency. These developments, along with several recent findings and occurrences, led DTSC to conclude that the current regulatory system, coupled with the growing volume of removed, accumulated airbags and the large volume of airbags remaining to be removed, has created an unforeseen emergency necessitating immediate action to avoid serious and imminent harm to the public peace, health, safety, and general welfare. DTSC is acting by seeking the emergency adoption of the U.S. Environmental Protection Agency (U.S. EPA) Interim Final Rule: Safe Management of Recalled Airbags (Interim Final Rule) in order to avoid serious and imminent harm to the public peace, health, safety and general welfare.

As part of the evaluation of the Interim Final Rule, DTSC contacted the National Highway Traffic Safety Administration (NHTSA) in June 2023 to access the status and statistics of the recalled Takata airbags. At that time, the NHTSA informed DTSC that 7,600,000 recalled airbags remain in vehicles throughout the United States, of which 800,000 can be found in Californian's vehicles. Additionally, the NHTSA has identified California as a high-risk or "Zone A" state, meaning California's hot and humid environment increases the risk of a violent explosion of recalled inflators, as chemicals in the airbags become more unstable over time due to prolonged exposure to elevated temperatures and humidity. Undeployed airbags are deteriorating and pose a risk of potential explosion with each passing day, which increases the risk of harm to personnel at auto facilities that stockpile these dangerous airbags. Since 2009, there have been 27 fatalities and over 400 injuries in the U.S. alleged to have been caused by recalled Takata airbag inflators, with U.S. EPA informing DTSC of the most recent fatality on December 6, 2023. Of the 27 fatalities, three fatalities occurred in California. U.S. EPA further related that the defective propellant becomes less stable over time, emphasizing the continued urgency of the emergency posed by the defective airbag inflators. DTSC concluded that recalled undeployed airbags pose an immediate risk of serious injury or death to the public based on the following facts:

- Nationwide deaths and serious injuries caused by recalled airbags;
- Instability of chemicals used in recalled airbags;
- California's hot and humid climate accelerating the degradation of the chemicals in airbags;
- Quantity of recalled airbags still remaining in vehicles in California; and
- Accumulated stockpiles of recalled airbags at handlers' facilities.

The NHTSA mandated a recall of Takata airbag inflators in 2015. The U.S. Department of Transportation (DOT) and the NHTSA issued a Preservation Order which initially required Takata to finance the recall, so that Takata would bear the cost of transporting and storing the recalled airbags that had been removed from the vehicles. However, Takata's 2018 bankruptcy and the DOT's resultant amendment to the Preservation Order resulted in the sudden application of hazardous waste management requirements as well as unforeseen costs and significant financial burdens on entities responsible for removing and replacing defective airbags. In response, the U.S. EPA issued the Interim Final Rule on November 30, 2018, with the intent of providing safe and environmentally sound disposal by exempting the collection of any hazardous waste airbag inflator or airbag module (airbag waste) from hazardous waste requirements so long as certain conditions were met.

Failure to take swift action to prevent imminent harm to public safety due to the large quantity of remaining recalled airbags in California will result in continued risks of serious injury or death to Californians. That failure likewise would leave entities that are responsible for the removal and replacement of these defective airbags in a situation where they bear the unexpected burden of hazardous waste management standards that are not typically applied to recalls, resulting in a significant financial burden which poses a significant threat of delaying or otherwise undermining the effort to remove these recalled airbags from California vehicles. DTSC is statutorily mandated to regulate the management of hazardous waste to protect against risks to public health and the environment. Immediate adoption of the proposed emergency rulemaking is the only option to provide an expeditious and streamlined pathway for entities which remove recalled airbags to transport them to destination facilities for proper management. This will address and mitigate the risks of serious injury or death posed by recalled airbags that have been removed and will encourage the removal of recalled airbags, which otherwise would continue to pose a substantial risk of serious injury or death while those recalled airbags remain installed in vehicles. Furthermore, U.S. EPA has encouraged states to adopt the Interim Final Rule to address risks posed by defective airbags to public health and the environment.

AUTHORITY & REFERENCE

These regulations are being adopted under the following authorities: Health and Safety Code section 25150 and 25159. This regulation implements, interprets, or makes specific the following statutes: Health and Safety Code section 25150 and 25159.

INFORMATIVE DIGEST

Policy Statement Overview

The proposed regulation adds flexibility for entities responsible for removing and replacing defective airbags (generators) that remove airbag waste from vehicles. This is achieved by moving the point of hazardous waste generation of airbag waste from the airbag waste handler to the designated facility. The exemption relaxes the hazardous waste requirements for the generation and accumulation of airbag waste at the airbag waste handler location and during transport, as long as the conditions of the exemption are met. Airbag waste would be managed as hazardous waste once it is received at a designated facility for proper management. To avoid confusion by entities removing airbags and

increase efficiency, the scope of this rule would apply to all airbag waste and not just the recalled Takata airbag inflators. Under this regulation, airbag waste would not require a hazardous waste manifest or transportation by a registered hauler when being transported offsite, reducing the cost of transportation to a designated facility.

Takata Airbag Recall

The Takata airbag inflator recall constituted the largest automotive recall in U.S. history, with 19 vehicle manufacturers affected and approximately 65-70 million airbag inflators recalled. DOT announced the national recall of airbags inflators manufactured by Takata due to a defect in their phase-stabilized ammonium nitrate (PSAN) propellant. This defect causes the airbag inflator to over-pressurize and explode violently when deployed. As of December 2023, the recalled inflators have resulted in at least 400 injuries and 27 deaths. On May 25, 2015, the NHSTA issued the Preservation Order requiring Takata to finance the recall and preserve recalled airbag inflators that are subject of an ongoing investigation by the NHTSA and which may be subject to private litigation. The recalled airbag inflators being stored by Takata under the Preservation Order were not considered discarded and, therefore, not subject to any waste management requirements, including hazardous waste requirements. Takata filed for bankruptcy, which was finalized on February 21, 2018, and went into effect in April 2018. Thereafter, the DOT amended the Preservation Order on April 12, 2018. As a result of Takata's bankruptcy and the amendment to the Preservation Order, vehicle manufacturers are no longer required to send recalled inflators to Takata for long-term storage but may now send them directly to a designated facility for disposal. Recalled inflators sent directly to disposal facilities are regulated as hazardous waste as they are no longer covered by the Preservation Order. Vehicle manufacturers and other entities may still send inflators to Takata under the Preservation Order, though they will have to pay for this service as Takata is no longer required to finance the recall.

Background and Effect of the Regulatory Action

In 1992, DTSC became authorized to implement the federal hazardous waste program on behalf of U.S. EPA. As the federal hazardous waste program expanded and U.S. EPA amended regulatory requirements, U.S. EPA set expectations that authorized states, including California, would continue to adopt parallel regulatory requirements and seek authorization for these new regulatory requirements in order to maintain equivalency with the federal program. In the summer of 2018, the U.S. Office of Inspector General published a report that identified significant backlogs of required rules in authorized states, including California. As a result of this report, in November 2019, U.S. EPA, Region 9 set an expected schedule for California to adopt federal regulations that are required to maintain California's federally equivalent hazardous waste program. At that time, DTSC focused its limited staff resources on meeting U.S. EPA's expectation of evaluating and adopting those 37 mandatory federal regulations. As a result of this approach, DTSC was not able to address federal rules that EPA identified as optional rules, those rules that are not required to maintain authorization, such as the Interim Final Rule.

Resource Constraints

California was unable to meet U.S. EPA's expectations owing to constraints in resource allocation. In 2021, DTSC sought and was granted additional resources to address this mandate. After filling the new positions and training those staff, DTSC had capacity to begin meeting U.S. EPA's schedule for adopting those required federal regulations. As noted above, in addition to working on adopting the mandatory federal provisions, DTSC was then able to evaluate federal regulations that were considered by U.S. EPA to be optional and not required to maintain authorization. This included the evaluation by DTSC of the Interim Final Rule, which was the first optional rule DTSC chose to adopt given the local agency and public inquiries requesting DTSC to adopt the rule. This decision was also based on information gained from the NHTSA about the increasing volatility of recalled airbags removed from vehicles and stored in California's "Zone A" environment, the extended accumulation of airbag waste stockpiling at auto dealerships, and the substantial number of recalled airbags remaining in vehicles in California. DTSC is proposing these emergency regulations to protect the public from the potential harm caused by recalled airbags.

Interim Final Rule: Safe Management of Recalled Airbags

The changes resulting from the amendment to the Preservation Order and the Takata bankruptcy meant airbag waste handlers that choose to send airbags directly to a designated facility would now be subject to hazardous waste management requirements. As a result, airbag waste handlers would incur a new financial burden due to being subject to hazardous waste generator standards and hazardous waste transportation requirements. As the risk created by the recalled inflators increased with elapsing time, U.S. EPA adopted the Interim Final Rule on November 30, 2018, to facilitate the expedited removal and proper management of defective Takata airbag inflators from vehicles. These proposed regulations mirror the Interim Final Rule by exempting the airbag waste from hazardous waste accumulation and transportation requirements if the airbag waste handler meets certain conditions. This is known as a conditional exemption.

For airbag waste handlers to be conditionally exempt from hazardous waste requirements, they must:

- Accumulate no more than 250 airbag modules and airbag inflators (combined) at one time,
- Accumulate their airbag waste for no longer than 180 days,
- Package their airbag waste in a container designated to address the risk posed by the airbag waste,
- Label their airbag waste "Airbag Waste-Do Not Reuse,"
- Send their airbag waste directly to either:
 - An airbag collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the NHTSA, or
 - A designated facility as defined in California Code of Regulations, title 22, chapter 10, section 66260.10,

- Ensure their airbag waste shipments comply with all applicable U.S. DOT regulations in title 49 Code of Federal Regulations (CFR) part 171 through 180 for airbag waste during transit, and
- Maintain records for no less than three years of all offsite shipments of airbag waste and all confirmations of receipt from the receiving facility at the airbag waste handler facility.

The conditions for the exemption adopted by this regulation replicates how recalled airbag modules and airbag inflators have been managed under the Preservation Order, except that instead of going to long-term storage, the collected airbag waste will be sent for safe disposal at a facility authorized under RCRA to receive this type of hazardous waste. Exempting the collection of airbag waste from hazardous waste requirements will result in increased protection of public health by expediting the transport of removed recalled airbags from the airbag waste handler to appropriate disposal facilities.

Regulatory Status of Airbag Waste

An airbag contains an inflator that houses explosive propellant and an initiator, posing a potential safety risk when managed. Undeployed, discarded airbags exhibit the hazardous waste characteristics of ignitability and/or reactivity due to the propellants used within them and can have harmful impacts on human health and the environment if mismanaged. Deployment of an airbag consumes the propellants within the airbag inflator, which removes the hazardous waste characteristic(s). Therefore, a deployed airbag is not a hazardous waste. Currently, generators of undeployed airbag waste in California are required to follow all hazardous waste requirements when they are being managed. The safety risk is further increased with the Takata airbag inflators as they are susceptible to violent explosions when deployed. Proper management of recalled airbags that have been removed is critical as the propellant in the recalled inflators degrades after long-term exposure to high temperatures and humidity. This degradation can cause the propellant to burn too quickly, resulting in too much pressure building in the inflator and causing the inflator to explode.

Benefits of the Proposed Regulatory Action

The main benefits of the proposed emergency regulation are the reduction of risk to public safety, health, and welfare resulting from the expedited removal and proper management of the defective Takata airbags from vehicles, and prevention of long-term storage. The proposed regulation addresses the increased safety risk posed by the recalled airbag inflators as they age, by providing an exemption for airbag waste to remove a regulatory impediment, expediting removal and decreasing storage time. This action helps protect public safety, health and welfare while also increasing worker safety. Under the proposed emergency regulations, the proposed exemption will facilitate the process for airbag waste handlers to transport airbag waste offsite to a designated facility. The conditional exemption being proposed in this emergency regulation conditionally moves the point of generation of airbag waste from airbag waste handler to the designated facility. The exemption removes certain regulatory and financial burdens, which helps expedite the safe removal and management of the recalled airbags, making it safer for airbag waste handlers, such as automobile dealerships, to transport the recalled airbags offsite for proper end of life management.

Related State Laws and Regulations

DTSC has evaluated whether the proposed regulations are inconsistent or incompatible with existing state laws and regulations. In its evaluation, DTSC has determined that the proposed regulation is not inconsistent or incompatible with related state laws and regulations. DTSC is the only state agency that regulates and governs hazardous waste management in California.

Existing State Laws and Regulations

California's hazardous waste management requirements are set forth in the Hazardous Waste Control Law ("HWCL") (Health & Saf. Code, §§ 25100 et seq.) and its implementing regulations (Cal. Code Regs., tit. 22, div. 4.5). Management of airbag waste is subject to regulation under the HWCL. Within the HWCL, Health and Safety Code section 25150 grants DTSC the authority to adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to public health, domestic livestock, wildlife, or the environment. The proposed amendments to California Code of Regulations, title 22, sections 66260.10 and 66261.4 protect against hazards to public health, safety, and the environment from the danger posed by recalled airbags.

Existing law in section 66261.4 provides the current State exclusions from classification as waste and/or hazardous waste, consistent with the HWCL and its implementing regulations. These exclusions and exemptions are subject to various conditions. The proposed emergency regulations amend section 66261.4 by adding a new subsection (j), creating an exemption for airbag waste from regulation as a hazardous waste for the purposes of accumulation and transportation, provided certain conditions are met.

Under current state law, Public Resource Code (PRC) section 42175 states that "materials that require special handling" (MRSH) shall be removed from major appliances and vehicles prior to crushing for transport or transferring to a baler or shredding for recycling. PRC section 42167 defines MRSH and includes sodium azide canisters in unspent airbags that are determined to be hazardous. The proposed regulation impacts how airbag waste is managed once removed from vehicles; therefore, it is consistent with existing state requirements.

The proposed amendments to sections 66260.10 and 66261.4 represent additions to the current State regulations for hazardous waste management. The proposed amendments would strengthen protection of public health and the environment and create uniform standards for treatment, recordkeeping, transportation, and disposal of airbag waste by designated facilities. Therefore, the proposed emergency regulations will not be inconsistent or incompatible with existing State regulations.

Comparable Federal Regulation or Statute

U.S. EPA adopted the Interim Final Rule on November 30, 2018, which provides an exemption for airbag waste under 40 CFR 261.4(j) as long as the airbag waste handlers meet the conditions listed in the exemption. U.S. EPA determined the conditional exemption would apply to the collection of all airbag waste for the purpose of disposal, provided the conditions of the exemption are met. Under the

exemption, the point of generation of airbag waste would move from the airbag waste handler to the designated facility or airbag waste collection facility. The conditions limit the quantity and accumulation times that airbag waste handlers can store airbag waste onsite, which reduces the potential hazards posed by airbag waste. Additionally, the airbag waste must be transported in compliance with DOT regulations and packaged in containers that address the risks posed by the waste. To meet the exemption, airbag waste handlers must maintain certain records at the facility that document offsite shipments of airbag waste for a period of three years and make them available upon inspection. The recordkeeping requirement may be fulfilled by ordinary business records, such as bills of lading, including electronic records. Reuse of a recalled airbag is prohibited because it would place another person in imminent danger of death or serious injury and is considered “sham recycling” by U.S. EPA.

DOCUMENTS RELIED ON

This regulation proposal relied upon the following documents:

- National Highway Traffic Safety Administration, “Coordinated Remedy Order,” November 3, 2015, Docket No. NHTSA-2015-0055.
- National Highway Traffic Safety Administration, Amendment to the February 25, 2015 “Preservation Order and Testing Order Control Plan,” April 12, 2018, EA15-001 (formerly PE14-016).
- The Independent Monitor of Takata and the Coordinator Remedy Program, “The State of the Takata Airbag Recalls,” November 15, 2017.
- U.S. Environmental Protection Agency, “Safe Management of Recalled Airbags,” November 30, 2018 (83 Fed. Reg. 61552).
- U.S. Environmental Protection Agency, Memorandum, “Regulatory Status of Automotive Airbag Inflators and Fully Assembled Airbag Modules,” July 19, 2018.
- U.S. Environmental Protection Agency, Office of Inspector General, “Incomplete Oversight of State Hazardous Waste Rule Authorization Creates Regulatory Gaps and Human Health and Environmental Risks,” July 31, 2018.
- U.S. Environmental Protection Agency, “Resource Conservation and Recovery Act (RCRA) State Authorization Performance Measures,” September 26, 2019.
- California StATS Data, March 31, 2020.
- National Highway Traffic Safety Administration, “Takata Recall Spotlight,” <https://www.nhtsa.gov/equipment/takata-recall-spotlight> (accessed on March 16, 2023).
- Communications with National Highway Traffic Safety Administration, June 27, 2023.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

California Environmental Quality Act (CEQA) Compliance

Pursuant to California Code of Regulations, title 14, section 15187(a), DTSC is required, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment,

establishing a performance standard, or establishing a treatment requirement, to perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

The proposed regulation will not result in a change in significance of any of the physical conditions within the environmental factors that are analyzed under CEQA. DTSC intends to prepare Notice of Exemption as the appropriate CEQA document for the adoption of a rule or regulation pursuant to the CEQA Guidelines [Cal. Code Regs., tit. 14, § 15164(b)] because none of the conditions described in the CEQA Guidelines [Cal. Code Regs., tit. 14, §15162] apply.

Peer Review Compliance

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulation does not establish a regulatory level, standard, or other requirement subject to scientific peer review.

LOCAL MANDATE

DTSC has made a determination that adoption of these regulations will not impose a local mandate or result in costs subject to state reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

FISCAL IMPACT STATEMENT

Local Agencies and School Districts

Certified Unified Program Agencies (CUPAs) have the authority to require permits, inspect facilities, issue violations, and perform enforcement actions for regulated businesses that generate hazardous waste. DTSC surveyed CUPAs to determine if the regulation changes would impact any of the fees that they collect from hazardous waste generators. Those who responded indicated that because the facilities that generate airbag waste are already captured as hazardous waste generators inspected by CUPAs, there should be no increase or decrease to the fees collected as a result of these regulations.

Costs or Savings to Any State Agency

The exemption being added by the regulation will impact generators of airbag waste. The generation and handling (“G & H”) fee is the fee generators must pay based on the amount of hazardous wastes they generated in a calendar year once they have generated beyond a certain threshold. The G & H fee requires generators of hazardous waste to pay \$49.25 per ton or fraction of a ton of hazardous waste if they generate five or more tons of hazardous waste per year. DTSC utilized the Hazardous Waste Tracking System to estimate the number of generators of airbag waste by using UN code 3268 (safety devices, electronically initiated) that identified 104 unique generators within the last five years. Of those generators, only 32 generated airbag waste in the years 2021 and 2022, and only 22 of those generators reached or exceeded five tons of total hazardous waste generated in a calendar year. The data indicates that airbag waste is generated sporadically, with the average amount generated being 0.14 tons per generator per year. Assuming all 22 generators that reached or

exceeded five tons were to have their G & H fee impacted by the fraction of a ton of airbag waste generation, the total G & H fee revenues would decrease by \$1,084 per year at the most. In reviewing hazardous waste generation data since 2018, there was only one instance where the G & H fee would decrease due to the regulations.

Federal Funding to the State

No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND OTHER RULEMAKING DOCUMENTS

Copies of the Notice of Proposed Action, Finding of Emergency, and the express terms of the proposed regulations (also known as the proposed regulatory text) are posted to DTSC’s Internet website at <https://dtsc.ca.gov/dtsc-emergency-regulations/>.

ALL OTHER QUESTIONS/COMMENTS/INQUIRIES/UPDATES

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to the Office of Legislation and Regulatory Review, as specified above. To be included in this regulation package’s mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable e-list or e-mail: regs@dtsc.ca.gov.

REGULATORY TEXT

Note: Proposed additions are indicated in underlining to show where the new text is being added. Proposed text for deletion (repeal) is shown in strikethrough. The symbol “***” means that intervening text not proposed for amendment is not shown.

Amend Title 22, division 4.5, chapter 10, article 2, section 66260.10 to read:

§ 66260.10. Definitions.

When used in this division, the following terms have the meanings given below:

For the purposes of chapters 14 and 15, “air stripping operation” is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid.

“Airbag waste” means any hazardous waste airbag modules or hazardous waste airbag inflators.

“Airbag waste collection facility” means any facility that receives airbag waste from airbag handlers subject to regulation under section 66261.4(j) of this division and accumulates the waste for more than ten days.

“Airbag waste handler” means any person, by site who generates airbag waste that is subject to regulation under this division.

“Ancillary equipment” means any device including, but not limited to, such devices as piping, fittings, flanges, valves and pumps, that is used to distribute, meter or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal offsite.

Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25200.21, 25245, 25259, 25316, 25355.5, 25356.9, 25358.9, 58004 and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.1, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25200.21, 25229, 25245, 25259, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529 and 58012, Health and Safety Code; Section 42493(a), Public Resources Code; and 40 Code of Federal Regulations; Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

Amend Title 22, division 4.5, Chapter 11, article 1, section 66261.4 to read:

§ 66261.4. Exclusions

(a) Materials which are not wastes. The following materials are not wastes for the purpose of this chapter:

(j) Airbag waste.

(1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under chapters 12 through 16, 18, and 20 through 22 of this division, and is not subject to the notification requirements of Health and Safety Code section 25153.6 provided that:

(A) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(B) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled “Airbag Waste-Do Not Reuse”;

(C) The airbag waste is sent directly to either:

(1) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(2) A designated facility as defined in section 66260.10 of this division;

(D) The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR parts 171 through 180 during transit;

(E) The airbag waste handler maintains at the handler facility for no less than three years records of all offsite shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records shall, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt shall include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt shall be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(2) Once airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving the airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and shall comply with the requirements of chapter 12 of this division.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is prohibited.

Note: Authority cited: Sections 25140, 25141, 25141.5, 25143.2.5, 25150, 25159, 25159.5, 25214.9, 58004, and 58012, Health and Safety Code. Reference: Sections 25117, 25212, 25124, 25140, 25141, 25141.5, 25143, 25143.1, 25143.2, 25143.2.5, 25143.4(a), 25143.11, 25159, 25159.5, and 25214.9, Health and Safety Code; and 40 Code of Federal Regulations; Section 261.4.