CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION **25214.11-25214**.21

25214.11. (a) The Legislature finds and declares all of the following:
(1) The management of solid waste can pose a wide range of hazards to public health and **safety** and to the environment.
(2) Packaging comprises a significant percentage of the overall solid waste stream.
(3) The presence of heavy metals in packaging is a part of the total concern regarding the disposal of hazardous constituents in the solid waste stream, in light of the presence of heavy metals in emissions or ash when packaging is incinerated, or in leachate when packaging is disposed of in a solid waste landfill.
(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.
(5) It is desirable, as a first step in reducing the toxicity of packaging waste, and reducing the hazardous materials that may be disposed of in solid waste landfills, to eliminate the addition of these heavy metals to packaging.
(6) The intent of this article is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(b) This article shall be known, and may be cited, as the "Toxics in Packaging Prevention Act."

25214.12. For purposes of this article, the following terms have the following meanings:
(a) "ASTM" means the American Society for Testing and Materials.
(b) "Distribution" means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(c) (1) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.
(2) "Intentional introduction" does not include either of the following:
(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section **25214**.13.
(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section **25214**.13.
(d) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.
(e) "Manufacturer" means any person, firm, association, partnership, or corporation producing a package or packaging component.
(f) "Manufacturing" means the physical or chemical modification of a material to produce packaging or a packaging component.

(g) "Package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D996. "Package" also includes unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(h) "Packaging component" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A591, A653, A879, and A924 shall be treated in the same manner as tin-plated steel.

(i) "Purchaser" means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(j) "Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(k) "Regulated metal" means lead, mercury, cadmium, or hexavalent chromium.

(l) (1) "Supplier" means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) "Supplier" does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(m) "Toxics in Packaging Clearinghouse" means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

25214.13. (a) Except as provided in Section **25214**.14, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section **25214**.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section **25214**.14, on and after January

1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component may not exceed 100 parts per million by weight.

25214.14. A package or a packaging component is exempt from the requirements of Section **25214**.13, and shall be deemed in compliance with this article, if the manufacturer or supplier complies with the applicable documentation requirements specified in Section **25214**.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a **code** indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or **safety** requirements of a federal or state law.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section **25214**.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, "a use for which there is no feasible alternative" means a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section **25214**.13, and all of the following apply:

(A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or **safety** requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section **25214**.13.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter **11** (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California **Code** of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

25214.15. (a) A package or packaging component qualifies for an

exemption pursuant to Section **25214**.14 only if the manufacturer or supplier prepares, retains and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section **25214**.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section **25214**.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) If an exemption is being claimed under subdivision (a) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section **25214**.13.

(c) If an exemption is being claimed under subdivision (b) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) If an exemption is being claimed under subdivision (c) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) If an exemption is being claimed under subdivision (d) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) If an exemption is being claimed under subdivision (e) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or **safety** law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) If an exemption is being claimed under subdivision (f) of Section **25214**.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section **25214**.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) If an exemption is being claimed under subdivision (g) of Section **25214**.14, the manufacturer or supplier shall prepare, retain,

and biennially update the following documentation for the package or packaging component to which the exemption applies:
(1) Applicable test data.
(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.
(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:
(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:
(A) Submit the required documentation to the department.
(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.
(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:
(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.
(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section **25214**.13, in accordance with a schedule approved in writing by the department.
(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.
(k) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to Section **25214**.14, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, even when the purchaser is also a supplier, stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section **25214**.14, the package is exempt from the requirements of Section **25214**.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.
(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.
(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section **25214**.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or

packaging component.
(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

25214.17. (a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government **Code**), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.
(b) (1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as proprietary in nature, including trade secrets, as defined in Section 25173.
(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information which the manufacturer or supplier believes is proprietary in nature. The department shall make available to the public any information not identified by the manufacturer or supplier as proprietary in nature.

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (k) of Section **25214**.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

25214.19. This article does not do the following:
(a) Affect a duty or other requirement imposed under federal or state law.
(b) Alter or diminish a legal obligation otherwise required in common law or by statute or regulation.
(c) Create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or regulation.

25214.20. (a) The provisions of this article are severable, and if a court holds that a phrase, clause, sentence, or provision of this article is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the article and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this article shall be liberally construed to give effect to the purposes of this article.

25214.21. The department may enforce the requirements of this article pursuant to its authority to enforce this chapter under all applicable provisions of law.