CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION **108850**-108855

108850. The Legislature finds and declares all of the following:

(a) The program maintained by the United States Food and Drug Administration to regulate the amount of lead and cadmium released from ceramic, metal, and other dishware and tableware is inadequate to protect Californians from the importation and sale of unsafe tableware in this state.

(b) Recent inspection and sampling conducted by local and state health departments in California has demonstrated that significant amounts of unsafe tableware are in fact being imported and sold in California.

(c) The standards established by the federal government for acceptable lead and cadmium release are likely inadequate to fully protect public health and may be inconsistent with requirements that already exist in California law governing exposure to lead and cadmium.

(d) It is the intent of the Legislature that the department, first, establish its own program to protect the public from unsafe tableware and, second, develop standards for lead and cadmium release from tableware that are consistent with existing state law.

108855. For purposes of this chapter the following definitions shall apply:

(a) "Director" means the Director of Health Services.

(b) "Department" means the State Department of Health Services.

(c) "Distributor" means any person who brings tableware into California from another state for sale.

(d) "Importer" means any person who brings tableware into California from another country for sale.

(e) "Manufacturer" means any person who makes tableware sold in California.

(f) "Small business" means any manufacturer, importer, or distributor whose gross annual revenue for the sale of tableware is thirty thousand dollars ($30,000) or less.

(g) "Tableware" means any glazed ceramic, enamel metalware, or pewter article, container, or utensil that may be used in the preparation, serving, or storage of food or drink.

CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION **108860**-108870

108860. It is unlawful to manufacture, process, import, sell, deliver, hold for sale, supply, or offer for sale in this state any tableware that releases a level of lead or cadmium in violation of the standards contained in the Compliance Policy Guides 7117.06 and 7117.07 as described in 54 Federal Register 23485 or any subsequent, more stringent standards adopted by the United States Food and Drug Administration, as determined by the director.

108870. (a) Except as provided in subdivisions (c) and (d), each piece of tableware sold, or offered for sale, in this state shall be permanently and indelibly marked with the name of the manufacturer or importer responsible for the sale of the tableware in California.

(b) For the purposes of this section, permanently and indelibly marked means fired or manufactured into the glazed tableware.

(c) This section shall not apply to any tableware that is manufactured without lead or cadmium as an intentionally added ingredient or as an unintentional contaminant.

(d) This section shall not apply to any tableware product that is of a peculiar structure or too small to accommodate the name of the manufacturer or importer in accordance with subdivision (a), provided that the product either (1) is permanently and indelibly marked with a registered trademark that is on file with the department, or is described and depicted in a certificate of registration that is on file with the department, or (2) is part of a tableware set or pattern, one or more pieces that are marked in accordance with subdivision (a).

CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION 108875-108915

108875. The department is responsible for the administration and enforcement of this chapter. The department, upon request, shall report to the Legislature concerning the number and findings of inspections performed and samples taken to determine compliance with this chapter.

108880. (a) For fiscal years 1991-92 and 1992-93, the department shall levy a fee of five hundred dollars ($500) for each manufacturer, importer, and distributor of tableware sold in this state to be used for the implementation of this chapter, except that the department shall levy a fee of one hundred fifty dollars ($150) for small businesses. A penalty of 10 percent per month shall be added to any fee that is not paid when due. The fee shall not exceed the costs of administering and enforcing this chapter for the 1991-92 and 1992-93 fiscal years.

No later than July 1993, the department shall establish and implement a fee schedule that assesses an annual fee upon manufacturers, importers, and distributors of tableware sold in California. The fees shall be based on the reasonable anticipated costs that will be incurred by the department, and by local health officers if an agreement is executed pursuant to Section 108885, to implement and enforce this chapter. In calculating the necessary fees, the department shall include any civil penalties generated pursuant to Section 100425. Commencing in fiscal year 1993-94, the fee established pursuant to this subdivision shall be adjusted pursuant to Section 100425 and shall further be adjusted annually by reducing the fee by an amount equal to the total amount of civil penalties collected pursuant to Section **108900** during the previous calendar year, divided by the total number of manufacturers, importers, and distributors having paid fees during the previous calendar year. The fee collected pursuant to subdivision (a) shall terminate upon implementation of the fee schedule developed pursuant to this subdivision. The fee schedule shall provide for the recovery of all costs of implementing this chapter, including the cost of establishing the fee schedule as prescribed in this section. In the event that the department's reasonable costs in any one fiscal year exceed the available fees for that year, the department shall, as necessary, delay any activities in administering this chapter that will incur costs exceeding available fees until the following year. All moneys collected as fees pursuant to this section shall be expended in carrying out this chapter.

108885. The department and a health officer, as defined in Section 111015, may enter into an agreement designating the local health department of a city, county, city and county, or local health district as the department's authorized agent for the purposes of enforcing this chapter. If an agreement is executed pursuant to this section, the department shall make fee revenues available to the health officer for performing duties relating to enforcing this chapter.

108890. (a) For the purposes of enforcing this chapter, any authorized agent of the department may, upon presenting credentials showing that he or she is an authorized agent of the department and at a reasonable time, do any of the following:

(1) Enter any factory, warehouse, or establishment in which any

tableware is manufactured, held, distributed, used, or sold.
(2) Enter any vehicle that is being used to transport or hold tableware.
(3) Enter any place where any tableware is suspected of being held or sold in violation of this chapter.
(4) Inspect any factory, warehouse, establishment, vehicle, or place in which any tableware is manufactured, held, transported, distributed, used, or sold, and all equipment, raw materials, finished and unfinished materials, containers, and tableware therein. The inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the tableware complies with this chapter.
(5) Secure any sample or specimen of any tableware or of any release of lead or cadmium from tableware. If the agent obtains any samples prior to leaving the premises, he or she shall leave a receipt describing any sample obtained. The department shall secure only the quantity of tableware that is reasonably necessary to conduct the tests to determine the release of lead or cadmium as determined appropriate by the department.
(6) Have access to all records of carriers in commerce relating to the movement in commerce of any tableware, or the holding for sale of the tableware, and the quantity, shipper, and consignee.
(b) It is unlawful for any person to refuse to permit entry or inspection, the taking of samples or other evidence, including photographs, or access to copying of any record as authorized by this chapter, or to conceal the samples or evidence, or withhold evidence concerning them.

108895. The department may publish or publicly distribute any information regarding tableware, including results of tests and investigations, after assuring the accuracy of those tests and investigations, as the department considers necessary for the protection of public health and **safety** of the consumer or for the protection of the consumer from fraud.

108900. (a) The department may impose a civil penalty payable to the department upon any person who violates this chapter or any regulation adopted pursuant to this chapter in the amount of not more than five thousand dollars ($5,000) per day. Each day a violation continues shall be considered a separate violation.
(b) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.
(c) Any person served with a complaint pursuant to subdivision (c) may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in that case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.
(d) Any hearing required under this section shall be conducted

pursuant to Section 100171, except to the extent that the procedures specified in Section 100171 are inconsistent with this section.

(e) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(f) Within 30 days after service of a copy of a decision issued by the director after a hearing, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the **Code** of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(g) The remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

(h) If the violation is committed after a previous imposition of a penalty under this section that has become final, if the violation is committed with intent to mislead or defraud, or if the violation concerns tableware primarily used by children or marketed for children, the person shall be subject to imprisonment for not more than one year in the county jail or imprisonment in state prison, by a fine of not more than ten thousand dollars ($10,000), or by both the imprisonment and fine.

108905. (a) Whenever an authorized agent of the department finds, or has probable cause to believe, that any tableware has the potential to release amounts of lead or cadmium in violation of this chapter, he or she shall affix to the tableware a detention tag, embargo tag, or other similar marking, as determined appropriate by the authorized agent. The tag or other marking shall give notice that the tableware is suspected of releasing amounts of lead or cadmium in violation of this chapter and that no person shall remove or dispose of the tableware by sale or otherwise until permission for removal or disposal is given by an authorized agent of the department or the court.

(b) For the purposes of this section, an authorized agent has probable cause to believe that tableware has the potential to release amounts of lead or cadmium in violation of this chapter when, but not limited to instances when, the tableware tests positive for lead or cadmium release using the field test described in the document published by the United States Food and Drug Administration entitled Analytical Letters Vol. 21, 1988, pages 2145 to 2154, inclusive, or any other test for lead release subsequently approved for field use by the United States Food and Drug Administration and determined by the department to be at least as effective a test for lead or cadmium release as the test described in this subdivision.

(c) If a field test conducted pursuant to subdivision (b) tests positive for lead release, the department shall use the Association of Official Analytical Chemists/American Society for Testing and Material 24-hour test method, or any other test subsequently approved by the federal Food and Drug Administration determined by the department to be at least as effective a test for lead or cadmium release as the test described in this subdivision. The department shall conduct or obtain those tests within a reasonable time after embargoing affected tableware, and shall release any tableware found not to violate the standards of this chapter within a reasonable time

after the laboratory test has been completed. For any food establishment, as defined in Section 113780, the department shall conduct or obtain those tests within a reasonable time, not to exceed 10 days, after embargoing affected tableware, and shall release any tableware found not to violate the standards of this chapter within 96 hours after the laboratory test has been conducted.

(d) If an item of tableware is found to violate this chapter, the manufacturer, importer, retailer, and distributor shall, at the option of the holder of the tableware, either provide the holder of the tableware with comparable replacement tableware acceptable to the holder or be liable to the holder of the tableware for the cost of purchasing comparable replacement tableware.

(e) No person shall remove, sell, or dispose of detained or embargoed tableware without permission of an authorized agent of the department or a court.

108910. Any tableware that violates this chapter shall also be governed by the procedures set forth in Sections 111875, 111880, 111885, 111895, 111900, 111910, and 111915. Except for use of the procedures set forth in those sections, nothing in this section shall be interpreted as making this chapter part of Part 5 (commencing with Section 109875).

108915. This chapter shall become operative on July 1, 1991.