

References to proposed sections refer to the proposed sections in the attached draft. Unless otherwise indicated, all of the statutory citations are to sections in the Health and Safety Code.

UPDATES

2020 Legislative Changes

For the provisions of Chapter 6.8, there were no legislative changes in 2020.

Timeline for Implementing Legislation

The staff does not plan to seek implementing legislation for this proposal in 2021. For this reason, the staff made a technical update to the uncodified, operative date provision to reflect that we anticipate seeking implementing legislation in 2022.

Before seeking implementing legislation, the staff will update the provisions contained in this draft to reflect any legislative changes to Chapter 6.8 that are made in 2021.

Section Numbering Adjustment

The section numbers in the recommendation have all been increased by 10,000. This change was made to provide more numbering flexibility for later stages of this study.

Inclusion of Conforming Revisions in “Hazardous Substance Account Recodification Act”

After the proposed legislation for the recodification was prepared, the staff prepared proposed legislation to update cross-references to Chapter 6.8.⁵

The conforming revisions are sufficiently voluminous that it seems sensible to address those updates in separate legislation from the recodification.

It is, however, important to ensure that certain proposed rules of construction apply to both the proposed recodification and the conforming revisions.⁶ By their terms, those rules of construction apply to the Hazardous Substance Account Recodification Act (which is defined in the proposed law).

In the attached draft, the definition of “Hazardous Substance Account Recodification Act” was expanded to include the legislation implementing the

5. See Conforming Revisions TR, *supra* note 2.

6. See *id.* at 2.

conforming revisions.⁷ That should be sufficient to ensure that the rules of construction apply to the conforming revisions, as well as the recodification.

Minor Editorial Corrections

In preparing the attached draft, the staff made a few minor editorial corrections to improve consistency in the document.

FINAL MATTERS

Proposed Sections 78555 and 78565. Recovery of Incremental Costs & Consideration of Cost-Effectiveness

Existing law requires the Department of Toxic Substances Control (“DTSC” or “department”) to maintain a list of sites selected for response action.⁸ In the past, the list of sites was divided into three categories, which were prescribed in paragraphs (1) through (3) of subdivision (b) of Section 25356.⁹ Existing law no longer divides the list in that way.

Two sections in Chapter 6.8 contain obsolete references to sites on the former list. Specifically, the rules in Sections 25368.6 and 26368.8 specify that they apply to listed sites in two of the three former categories (i.e., sites listed pursuant to Section 25356(b)(2), (3)).

A Note in the tentative recommendation requested comment on how those obsolete cross-references should be updated.

DTSC Staff Comment

DTSC staff suggest that these references be updated to refer to all listed sites.

Staff Recommendation

The staff reviewed the law to determine the effect of making such a change. It appears that updating the cross-references in this manner would not change the operation of the law in practice.

For these reasons, the staff recommends that the cross-references be revised to refer to all listed sites, as proposed by DTSC staff.

7. See proposed Section 78000(b).

8. See Section 25356(b) (proposed Section 78760).

9. See former Section 25356(b), as amended by 1988 Cal. Stat. ch. 1387, § 6.

Proposed Article 2 of Chapter 5 (Sections 78870-78885): Exigent Actions

In the tentative recommendation, proposed Article 2 (commencing with Section 78870) of Chapter 5 is entitled “Exigent Actions.” The term “exigent actions” is also used in leadlines for sections pertaining to the provisions contained in this article.

DTSC staff requested that this article name be changed because the term “exigent” is not used in the statutes.

In light of DTSC staff’s concern, the staff recommends renaming the article “Rules for Specified Circumstances.” Similar changes would be made in section leadlines so that they refer to “specified actions” as opposed to “exigent actions.”

SPECIFIC MATTERS FOR FUTURE WORK IDENTIFIED BY INDEPENDENT REVIEW PANEL

The Commission’s work on this topic was prompted by the work of the legislatively-established Independent Review Panel (“IRP”).

Brief Description of IRP and its Work

The IRP was created in 2015.¹⁰ Until 2018,¹¹ the IRP reviewed and made recommendations “regarding improvements to [DTSC’s] permitting, enforcement, public outreach, and fiscal management.”¹² The IRP was directed to prepare progress reports every 90 days, as well as annual reports providing recommendations to the Governor and the Legislature.¹³

During the IRP’s tenure, the Panel held several meetings a year, received public comment, and prepared a number of reports.¹⁴ During that time, the IRP made two recommendations that certain law reform work be assigned to the Commission.¹⁵

10. See 2015 Cal. Stat. ch. 24 (SB 83 (Committee on Budget and Fiscal Review)).

11. The IRP was authorized only until January 1, 2018, and ceased to exist on that date. See former Section 57014(i), as enacted by 2015 Cal. Stat. ch. 24; see also IRP, DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(h), Executive Summary (Jan. 8, 2018) (hereafter, “IRP Final Report”).

12. Former Section 57014(a), as enacted by 2015 Cal. Stat. ch. 24.

13. See former Section 57014(f), (h), as enacted by 2015 Cal. Stat. ch. 24.

14. See generally materials available on IRP Website, <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Independent-Review-Panel.cfm>.

15. See IRP Final Report, *supra* note 11, at 30-31, 37.

Inclusion of IRP's Specific Statutory Concerns in Commission's Recommendation

The Commission was directed to include a list of issues for possible future work in its recommendation.¹⁶ The Commission previously decided that the list should include any specific, substantive statutory concerns identified by the IRP.¹⁷

The staff reviewed the IRP's reports to identify any such concerns that are related to Chapter 6.8. The staff found one:

Consider amendments to [Health & Safety Code] Section 25358.7 et seq. to address [Community Advisory Group] transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise.¹⁸

The staff recommends that this issue be included on the list of issues for possible future study, as per the Commission's prior decision.¹⁹

Specifically, in line with the format of the listed items in the recommendation, the staff proposes the following item be added to the list of issues for possible future study:

Should proposed Article 5 (commencing with Section 78950) of Chapter 5 be amended to address community advisory group transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise (see DTSC Independent Review Panel Fourth Report to the Governor and Legislature Pursuant to Health & Safety Code Section 57014(f), pp. 6-7 (Oct. 2016))?

APPROVAL OF RECOMMENDATION

Does the Commission approve the attached draft as a final recommendation, either with or without changes, for publication and submission to the Governor and Legislature?

Respectfully submitted,

Kristin Burford
Staff Counsel

16. See 2020 Cal. Stat. res. ch. 46.

17. Minutes (Oct. 2018), pp. 3-4.

18. See IRP Final Report, *supra* note 11, at 30-31, 37.

19. See *supra* note 17.