

MEMORANDUM 2024-36

Recodification of Toxic Substances Statutes: Reactivation of Study

This study is based on a 2018 legislative directive to the Commission¹ to recommend nonsubstantive revision and reorganization of two lengthy and complex chapters of the Health and Safety Code — Chapter 6.5 and now former Chapter 6.8 of Division 20 — along with “related provisions,” to improve the organization and expression of that law.² The Commission was also directed to report on any substantive issues identified in the course of this work, for possible future study.³

The Commission commenced work on the study by first undertaking to recodify Chapter 6.8.⁴ In 2021, the Commission finalized and approved a recommendation proposing recodification of that chapter,⁵ and a separate recommendation⁶ proposing conforming revisions of all California code sections that cross-refer to any provision in the chapter.⁷ Those recommendations were enacted by the Legislature in 2022.⁸

As described further below, the Commission then turned its attention to a recodification of Chapter 6.5, but that work was then placed on hold to address time sensitive legislative assignments. This memorandum reactivates the Commission’s work on Chapter 6.5.⁹

Unless otherwise indicated, all statutory references that follow are to provisions of the existing Health and Safety Code. References to “Chapter 6.8” refer to the former chapter, which has been recodified as recommended by the Commission.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See [2018 Cal. Stat. res. ch. 158](#).

3. *Id.*

4. See [Memorandum 2019-10](#); [Minutes \(Feb. 2019\)](#), p. 3. The Commission decided to start with and prepare a separate recodification of Chapter 6.8, because that chapter contained far fewer and less complex code sections than Chapter 6.5.

5. [Hazardous Substance Account Recodification Act \(Pre-Print\)](#) (Feb. 2021). The recommendation also included a list of substantive issues relating to former Chapter 6.8 that the Commission had identified for possible future study.

6. [Hazardous Substance Account Recodification Act: Conforming Revisions \(Pre-Print\)](#) (Feb. 2021).

7. See [Minutes \(Feb. 2021\)](#), p. 3.

8. See [2022 Cal. Stat. ch. 257](#) (AB 2293), [2022 Cal. Stat. ch. 258](#) (AB 2327).

9. At its meeting on December 21, 2023, the Commission approved reactivation of the study in 2024, when resources permit. See Memorandum 2023-47, at p. 6.

CONTENTS OF CHAPTER 6.5

Chapter 6.5 is entitled “Hazardous Waste Control,” but the substance of Chapter 6.5 is not limited to hazardous waste.¹⁰

Very generally, the substantive provisions in Chapter 6.5 fall into one of two categories: (1) provisions that govern hazardous waste¹¹ and (2) provisions that aim to reduce or eliminate toxics in products.¹²

However, Chapter 6.5 is not organized in a way that clearly separates these two categories of materials. They are intermingled. Consequently, there is no easy way to refer to only the Chapter 6.5 provisions in one of these two categories (e.g., only the hazardous waste provisions).

WORK ON CHAPTER 6.5 TO DATE

Work on Chapter 6.5 has proceeded intermittently to date, due to staff resource issues.

In May 2020, an initial memorandum summarizing the drafting practices the staff proposed to follow in preparing the recodification of Chapter 6.5 — the same practices used in the recodification of Chapter 6.8 — and offering a proposed organization of the recodification, was presented to and approved by the Commission.¹³ Those drafting practices are summarized later in this memorandum. A more complete organizational outline for the recodified law will be presented in a future memorandum.

In April 2021,¹⁴ and thereafter in June 2023,¹⁵ the Commission considered and provisionally approved the first two sets of proposed recodified Chapter 6.5 provisions presented by the staff, for inclusion in a future tentative recommendation.

At the upcoming Commission meeting, Memorandum 2024-37 will present a cumulative draft, showing all the recodified Chapter 6.5 provisions approved for inclusion in a future tentative recommendation through the June 2023 meeting.¹⁶ That memorandum

10. It appears that Chapter 6.5 was originally focused on hazardous waste, and material related to toxics reduction in products was added to the chapter later. See, e.g., [Article 10.02 \(Lighting Toxics Reduction\)](#), added by [2007 Cal. Stat. ch. 534](#), § 3.

While there is a conceptual relationship between these two categories, the placement of the product-focused material in Chapter 6.5 may have been more a matter of convenience (as opposed to reflecting a considered choice that these materials should be located in and amongst hazardous waste law).

11. See, e.g., [Articles 6.5 \(Hazardous Waste Haulers\)](#) and [10.1 \(Management of Hazardous Wastes Removed From Discarded Appliances\)](#).

12. See, e.g., [Articles 10.02 \(Lighting Toxics Reduction\)](#) and [10.4 \(Toxics in Packaging Prevention Act\)](#).

13. See [Memorandum 2020-13, Minutes \(May 2020\)](#), p. 4.

14. See [Memorandum 2021-19, Minutes \(Apr. 2021\)](#), p. 3.

15. See [Memorandum 2023-33, Minutes \(June 2023\)](#), p. 3.

16. This cumulative draft also reflects subsequent legislative changes made to the first set of included provisions, and approved by the Commission in April 2023. See [Memorandum 2023-20, Minutes \(Apr. 2023\)](#), p. 3.

will also note changes to those provisions needed to incorporate subsequent legislative updates affecting provisions in that draft, as well as editorial revisions, for the Commission’s consideration and approval.

In August 2023, the staff presented a third set of recodified provisions for inclusion in a future tentative recommendation.¹⁷

The Commission did not achieve a quorum at that meeting. However, pursuant to established Commission practice,¹⁸ the Commissioners present at the meeting acted as a subcommittee, and recommended to the Commission that the set of recodified provisions presented at the August 2023 meeting be approved for inclusion in a future tentative recommendation.¹⁹

The set of proposed recodified provisions recommended for approval at the August 2023 meeting will be presented at the upcoming Commission meeting in a supplement to this memorandum, to enable the Commission to consider whether to take that action.

GENERAL DRAFTING APPROACH RELATING TO RECODIFICATION

Default Drafting Practices

As with the recodification of Chapter 6.8, the staff will continue to take a fairly conservative approach in drafting the proposed recodification of Chapter 6.5.²⁰ To ensure the recodification is strictly nonsubstantive, the text of most existing provisions is continued verbatim, except to conform to established legislative drafting practices or correct technical errors.²¹

Unless directed otherwise by the Commission, the following routine revisions are also being implemented in recodifying Chapter 6.5:

- Substituting defined terms, where appropriate (e.g., “Department of Toxic Substances Control” would be shortened to “department,” which is defined for Chapter 6.5 in Section 25111).
- Correcting and standardizing federal law citations (e.g., noting “federal” before the name of any federal act; ensuring a consistent citation format for citations to the “federal act,” defined for Chapter 6.5 as the federal Resource Conservation and Recovery Act of 1976 in Section 25115.1).

17. See [Memorandum 2023-39](#).

18. See [Handbook of Commission Practices and Procedures](#) (2023), Section 450(c).

19. See [Memorandum 2023-41](#), pp.1-2.

20. See [Memorandum 2021-19](#), pp. 2-4.

21. Changes to conform to legislative drafting practice include, for example, adding subdivision designations to avoid undesignated paragraphs, eliminating the words “such” and “thereof,” eliminating gendered language, and correcting grammatical errors. Technical corrections include correcting clear typographical errors and erroneous cross-reference formatting.

- Eliminating uses of both singular and plural forms of a word (e.g., “plan or plans,” “person or persons”).²²

In rare instances when statutory language is unduly complex, changes to existing text are proposed to improve readability and clarity. In these instances, a Commission Comment following the proposed recodified section will indicate that the proposed provision would “restate” the existing provision (rather than “continue” it), and the proposed revision to the provision is described in a boxed “Staff Note” following the Comment.

PRESENTATION OF MATERIAL IN FUTURE MEMORANDA

Proposed Recodified Provisions

At subsequent Commission meetings, the staff will continue to present new sets of proposed recodified Chapter 6.5 provisions. Each set of proposed recodified provisions will be attached to an explanatory cover memorandum, which will also identify and discuss any substantive issues noted by the staff that may be appropriately listed in the Commission’s final recommendation as an issue for future study.

Each recodified provision in a set of provisions will be followed by a proposed Commission Comment. The Comment will identify the source of the recodified code section, and indicate very generally how or whether the recodified code section revises the text of prior law.²³

Some recodified provisions are also followed by one or more “Staff Notes.” Staff Notes are intended to flag and request public comment on recodification issues that require special attention or treatment, or clarify some aspect of the recodification.²⁴

Each set of presented recodified provisions will be preceded by a generally applicable Staff Note explaining administrative aspects of the recodification, and followed by disposition and derivation tables correlating recodified existing provisions with the proposed revisions in the set. In addition, each set will list any substantive issues relating to the proposed recodified provisions in the set that the staff has preliminarily identified for possible future study.

22. See [Section 13](#) (“The singular number includes the plural, and the plural the singular.”).

23. Commission Comments are included in final Commission recommendations, and are provided to legal publishers who typically reprint the Comments, with attribution to the Commission, following a code section enacted based on a Commission recommendation.

24. Unlike Commission Comments, these notes generally do not appear in a final recommendation and are not forwarded to publishers, but are often included in a tentative recommendation.

At the Commission meeting at which a set of recodified provisions is presented, the staff will generally not discuss any proposed recodified provision individually, unless the provision is discussed in the cover memorandum. Instead, following an opportunity for any questions or comments from Commissioners and members of the public about any aspect of the presented set of recodified provisions, the staff will seek provisional Commission approval of the entire set of provisions for inclusion in a future tentative recommendation, along with any identified substantive issues warranting consideration for future study.

Cumulative Drafts

In general, at each Commission meeting at which this study is on the meeting agenda, the staff will present a cumulative draft of all recodified provisions the Commission has provisionally approved to date.

These cumulative drafts are primarily intended to serve simply as reference material, allowing Commissioners and other interested persons an opportunity to review the content of the legislative portion of the future tentative recommendation as it evolves.

CONCLUSION

Does the Commission have any questions, concerns, or further direction it wishes to offer the staff, relating to the conducting of the study?

Respectfully submitted,

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