

Memorandum 2018-69

**Recodification of Toxic Substance Statutes
(Organizational Issues)**

In this study, the Commission¹ is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.²

This memorandum addresses a foundational question: Where should the recodified provisions be located in the code?

Except as otherwise indicated, all statutory references in this memorandum are to the Health and Safety Code.

CURRENT LOCATION IN CODE

The Commission's study encompasses two chapters within Division 20 of the Health and Safety Code. Division 20 is entitled "Miscellaneous Health and Safety Provisions." As the name indicates, the provisions of Division 20 cover a wide range of various health and safety topics, including, for instance, human cloning (Chapter 1.4), bunk beds (Chapter 4.8), aboveground storage of petroleum (Chapter 6.67), and wild or domestic animals in traveling circuses and carnivals (Chapter 13.6). A complete list of the chapters contained in Division 20 is provided as an attachment.

Below the division level, Division 20 contains only two heading levels: chapter and article.

Chapter 6.5 is the first of a series of substantively-related chapters (which includes Chapter 6.8) that pertain to hazardous or toxic substances and waste. In

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.

some cases, the provisions within the different chapters have strong relationships with one another.³

LOCATION FOR RECODIFIED LAW

The Commission will need to decide where the recodified law should be located in the Health & Safety Code. The law could either be recodified in place (i.e., remain in the current location) or moved to a different location in the Health & Safety Code.

The staff's initial assessment is that there are many potential benefits that could be gained by moving the law to a new location, as described below, but the staff only sees one benefit to leaving the law in its current location.

Potential Benefits of New Location

As indicated above, Division 20 spans a wide variety of issues under the very broad "health and safety" umbrella. While a miscellaneous division is a good home for a short law that pertains to a specific, narrow topic, Chapters 6.5 and 6.8 (and, perhaps, other proximate, related chapters) comprise a significant body of law on a particular substantive topic. For a substantial body of substantively-related laws, a miscellaneous division seems like a suboptimal location. Instead, the recodified law could be placed in a substantively-focused division that could include related bodies of law.

Division 20 only contains chapter- and article-level headings. Thus, within the chapters at issue in this study, article is the only level of heading available to organize the material. Having only a single heading level within each chapter will pose practical challenges, as it will be difficult to group the material into articles that are both reasonably-sized and substantively-distinct from one another. In other divisions of the Health and Safety Code, three levels of headings are used: part, chapter, and article.⁴ The recodified law could be placed in a new location that includes more heading levels, which would provide a better structure to organize the existing law and promote orderly development of this area of law.

3. See, e.g., Chapter 6.11. Chapter 6.11 pertains to "certified unified program agencies" ("CUPAs"). The CUPAs are certified local government agencies that are largely responsible for implementing the state's "Unified Program," which involves five state agencies with roles in environmental and emergency management programs. See generally <https://calepa.ca.gov/cupa/about/>. Section 25404(c) indicates that the Unified Program includes requirements in Chapters 6.5, 6.67, 6.7, and 6.95, as well as requirements in the California Fire Code.

4. See, e.g., Divisions 1, 12, 26.

In the current location, the section numbering of these chapters is both dense and tightly constrained on both ends.⁵ For instance, Chapter 6.8 is bounded on both ends by section numbers that differ by less than one digit from the sections within the chapter.⁶ Chapter 6.5 contains numerous sections with multiple decimal points in the section number.⁷ The recodified law could be placed in a new location that provides more room for section numbering. In this way, the recodified law can leave gaps between section numbers to accommodate future development of the law, without requiring three- or four- digit decimal points in the section numbers.

Benefit of Current Location

In the staff's view, the primary benefit of recodifying Chapters 6.5 and 6.8 in place involves the proximity of other, related chapters. As indicated above, Chapters 6.5 and 6.8 are part of a series of chapters within Division 20 that all relate to the same, general substantive issue (hazardous/toxic materials and waste).

Although maintaining a cohesive body of law together in the codes is a worthwhile objective, this project will preserve any existing cross-reference relationships between provisions, regardless of where the recodified body of law is located. Any needed cross-reference updates will be included in the Commission's recommendation as conforming revisions. Due to the renumbering that will occur regardless of the location of the recodified law, recodifying in place will likely have little effect on the amount and scope of the conforming revisions.⁸

5. In fact, the range of section numbers used in Chapter 6.6 (commencing with Section 25249.5) falls in between the ranges of section numbers used in Articles 12.5 (commencing with Section 25249.1) and 13 (commencing with Section 25250) of Chapter 6.5. Thus, several articles in Chapter 6.5 have section numbers that come after the section numbers in Chapter 6.6. See Articles 13 (commencing with Section 25250), 13.5 (commencing with Section 25250.50), 14 (commencing with Section 25251), 16 (commencing with Section 25258), and 17 (commencing with Section 25259) of Chapter 6.5.

6. The final section of Chapter 6.77, which precedes Chapter 6.8 (commencing with 25300), is Section 25299.206. The final section of Chapter 6.8, Section 25395.45, is followed by Chapter 6.82 (commencing with 25395.60).

7. See, e.g., Sections 25110.10.1, 25186.2.5, 25214.4.3, 25244.17.2. It is worth noting, however, that the staff has not yet identified a section with more than two numbers between the first and second decimal. It may be possible to create space by use of a three or four digit decimal section numbering convention.

8. If Chapters 6.5 and 6.8 are recodified in place and retain their chapter numbers, any cross-references to the chapters themselves would not require updates (assuming that the commencing section number does not change). The staff anticipates that nearly all (if not all) of the cross-

While strong relationships with surrounding law may be an argument for leaving Chapters 6.5 and 6.8 in place, moving Chapters 6.5 and 6.8 does not preclude moving the other, related chapters, as well. If the Commission recodifies Chapters 6.5 and 6.8 in a location that provides benefits for the development of the law on hazardous materials and waste, the Legislature could decide that the other, related chapters should be moved to the new location as well.

ALTERNATIVE LOCATIONS FOR RECODIFIED LAW

To determine whether any alternative locations would provide the potential benefits identified above, the staff considered alternative locations for the recodified law within the Health & Safety Code. The staff identified two general options:

- Place the recodified law in an existing, related division.
- Create a new division to house the recodified law.

Each of these possibilities is discussed, in turn, below.

Place Recodified Law in Existing, Related Division

The recodified law could be placed in an appropriate, existing division. In the staff's view, an appropriate, existing division would be one that has a related substantive focus and does not suffer from the same numbering and heading constraints as the existing location.

The staff identified two divisions that initially appeared to be candidates: Division 37 (Regulation of Environmental Protection) and Division 104 (Environmental Health). However, on a closer look, neither of these divisions appears to be a suitable fit for this body of law.⁹ Neither of these divisions appears to be a strong substantive fit. And, both divisions would have significant section numbering constraints, given the size of Chapter 6.5 and 6.8.

references to articles or sections within the affected chapters will need to be updated due to renumbering.

9. Division 37 currently contains only 15 sections and no headings below the division level, so it does not provide an organizational structure to accommodate this body of law.

Division 104 contains three levels of headings below the division level, which would accommodate a better organization of this law. However, the substance of this division does not feel like a good fit for this body of law. While it does contain some waste-related provisions, the division seems to be primarily consumer-focused (regulating product safety; food, drugs, and cosmetics; and drinking water). See Parts 13, 14 of Division 104 (waste related); Parts 3, 4, 5, 7, 10, 12 of Division 104 (consumer focused).

Create a New Division for the Recodified Law

Another option would be to create a new division to house this body of law. Presumably, a new division could use the three heading levels (Part, Chapter, Article) that have been used in other divisions of the code. The staff would discuss the use of these three heading levels with the Office of Legislative Counsel before proceeding, if the Commission chooses to create a new division.

If a new division were to be proposed, the Commission would need to decide where that new division should be placed. The staff has identified two possible locations for a new division to house the recodified law:

- Between existing Divisions 39 and Division 101 (Administration of Public Health).
- At the end of the Health & Safety Code (after existing Division 120 (Sexual Health Education Accountability Act)).

Each of these possible locations is discussed, in turn, below.

New Division Located Between Existing Divisions 39 and 101

The Health and Safety Code has a sizeable gap in division numbering between Division 39 and Division 101 (Administration of Public Health).¹⁰ The recodified law could be placed in a new division located between these existing divisions. This location has some appeal because, under the uncodified, but legally effective Governor's Reorganization Plan No. 1 of 1991, Division 38 was home for the authorizing statute for Department of Toxic Substances Control ("DTSC").¹¹ In addition, several environmental-related divisions are included amongst the divisions preceding the gap in division numbering.¹²

10. Division 38 and 39 were part of the Governor's Reorganization Plan No. 1 of 1991. To the staff's knowledge, this reorganization plan has not been codified. However, the staff understands that the reorganization plan has become effective, according to Government Code Section 12080.5.

As proposed in the Governor's reorganization plan, Division 38 contains the authorizing law for the Department of Toxic Substances Control, while Division 39 contains the authorizing law for the Office of Environmental Health Hazard Assessment. See https://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf (Division 38 from Section 146 of Governor's Reorganization Plan No. 1 of 1991); <https://oehha.ca.gov/media/downloads/public-information/background/grp1-hscdiv39.pdf> (Division 39 from Governor's Reorganization Plan No. 1 of 1991).

11. See *supra* note 10.

12. See, e.g., Divisions 25.5 (California Global Warming Solutions Act of 2006), 26 (Air Resources), 27 (California Pollution Control Financing Authority Act), 37 (Regulation of Environmental Protection).

New Division Placed at the End of Health & Safety Code

The recodified law could be placed in a new division at the end of the Health & Safety Code (after existing Division 120). This location is less desirable because Divisions 101-120 seem to share a substantive focus (public health). While toxic and hazardous material regulation is important for public health, the majority of these public health divisions address health care, medical conditions, pharmaceuticals, and related issues.¹³ Placing this material in a new division just after the existing public health related divisions could place organizational constraints on the development of public health law. The new division could be numbered to leave room for the development of public health law (e.g., as Division 200), but then the new division would then essentially stand alone at the end of the Health and Safety Code.

STAFF'S INITIAL RECOMMENDATION FOR LOCATION FOR RECODIFIED LAW

After considering all of the issues discussed above, the staff's initial recommendation is that the recodified law be placed in a new division within the Health & Safety Code. The staff recommends that the new division be located between existing Divisions 39 and 101 and that three heading levels (Part, Chapter, and Article) be used in the new division.

The staff recognizes that there may be options that the staff may not have identified or possible pros and cons of the proposed options that the staff did not consider. The staff welcomes input on the location of the recodified law.

Does the Commission accept the staff's initial recommendation on the location for the proposed recodified law? The Commission could reconsider this issue if any significant concerns arise about the location.

NEXT STEPS

As a next step, the staff will propose an organizational structure for the recodified law. After that, the staff will work on building the recodified law, starting with general provisions.

13. One notable exception is Division 104 (Environmental Health), which was discussed previously as a possible existing division where the recodified law could be placed.

EFFECTS OF PROPOSED RECODIFICATION

In the prior memorandum, the staff noted that the proposed recodification will affect implementing regulations, as those regulations will need to be updated to reflect the renumbering of the statutory provisions.¹⁴ Since the preparation of that memorandum, the staff has become aware of another set of materials that could be affected by the renumbering: materials relating to state authorization under the federal Resource Conservation and Recovery Act (“RCRA”).

State authorization is the process by which the U.S. Environmental Protection Agency (“EPA”) “delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA.”¹⁵ To receive state authorization, a state must submit an application to the EPA, the EPA must review the application to determine whether the program satisfies the requirements, and the EPA must formally grant authorization.¹⁶ California has received an initial authorization, as well as two authorization updates.¹⁷ The staff understands that a future authorization application is on the horizon.

The staff has had an initial conversation with staff at DTSC and EPA about federal authorization of the state’s RCRA program. We are still working on understanding what effects the recodification project might have on the grants of authorization (or any near-term authorization application) and whether the Commission could do anything to ameliorate those effects. The staff will continue looking at this issue as the study proceeds and will bring any issues or concerns to the Commission.

STAKEHOLDER PARTICIPATION

The staff has not yet completed the stakeholder outreach for this study. Given that, this memorandum includes a brief description, below, of material related to participation in the Commission’s meetings for the benefit of any new stakeholders.¹⁸

14. Memorandum 2018-52, pp. 6-7.

15. See <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra>.

16. See 57 Fed. Reg. 32726 (Jul. 23, 1992).

17. 57 Fed. Reg. 32726 (Jul. 23, 1992), 66 Fed. Reg. 49118 (Sept. 26, 2001), 76 Fed. Reg. 62303 (Oct. 7, 2011).

18. For a more complete description of the Commission’s process, see Memorandum 2018-52, pp. 7-9.

The Commission's longstanding practice is to welcome participation by *any* interested individual or organization in its study process. All Commission meetings are open to the public and members of the public are given opportunities to participate in the discussion. Written comments can be submitted at any time, by mail, email, or other method of delivery.

Comments relating to this study should be directed to Kristin Burford, as follows:

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Comments received shortly before a Commission meeting may not be analyzed and considered as thoroughly as comments received well in advance.

Comments are especially encouraged and solicited during the comment period on a tentative recommendation. Persons or organizations with limited resources may want to focus on providing comments at this stage of the Commission's study.

Respectfully submitted,

Kristin Burford
Staff Counsel

EXISTING CHAPTERS WITHIN DIVISION 20 OF HEALTH & SAFETY CODE

Division 20. Miscellaneous Health and Safety Provisions

- Chapter 1 Enforcement Actions
- Chapter 1.1 Employer Duties
- Chapter 1.3 Human Experimentation
- Chapter 1.4 Human Cloning
- Chapter 2.5 Asbestos Safety
- Chapter 4.7 Infant Safety
- Chapter 4.8 Bunk Beds
- Chapter 5 Product Sales to Minors
- Chapter 6.5 Hazardous Waste Control
- Chapter 6.6 Safe Drinking Water and Toxic Enforcement Act of 1986
- Chapter 6.65 Unified Agency Review of Hazardous Materials Release Sites
- Chapter 6.66 Oversight Costs
- Chapter 6.67 Aboveground Storage of Petroleum
- Chapter 6.7 Underground Storage of Hazardous Substances
- Chapter 6.75 Petroleum Underground Storage Tank Cleanup
- Chapter 6.76 Loans for Replacing, Removing, or Upgrading Underground Storage Tanks (Repealed January 1, 2022)
- Chapter 6.77 Grants for Installing Underground Storage Tanks
- Chapter 6.8 Hazardous Substance Account
- Chapter 6.82 California Land Reuse and Revitalization Act of 2004 (Repealed January 1, 2027)
- Chapter 6.83 Land Use and Revitalization
- Chapter 6.86 Expedited Remediation
- Chapter 6.9 Liability for Abatement of Hazards
- Chapter 6.9.1 Methamphetamine Contaminated Property Cleanup Act of 2005
- Chapter 6.10 Hazardous Material Release Cleanup
- Chapter 6.11 Unified Hazardous Waste and Hazardous Materials Management Regulatory Program
- Chapter 6.91 Hazardous Materials Data
- Chapter 6.92 Landfill Gas
- Chapter 6.95 Hazardous Materials Release Response Plans and Inventory
- Chapter 6.96 Hazardous Materials Liability of Lenders and Fiduciaries
- Chapter 6.97 Hazardous Materials Information and Consulting Services
- Chapter 10.3 Spraying of Asbestos
- Chapter 10.35 Asbestos and Hazardous Substance Removal Contracts
- Chapter 10.4 Asbestos Notification
- Chapter 10.6 Asbestos Abatement and Control
- Chapter 12.5 Water Heaters

Chapter 12.8 Condom Manufacturers
Chapter 13.4 Force Fed Birds
Chapter 13.5 Horses and Other Equine Animals
Chapter 13.6 Wild or Domestic Animals in Traveling Circuses and Carnivals
Chapter 13.8 Farm Animal Cruelty
Chapter 14 Shelled Eggs
Chapter 15 Safety Glazing Materials
Chapter 17 Air Duct Systems
Chapter 18 Toxic Mold
Chapter 19 Fungal Contamination Review Panel and Research Program
Chapter 20 Certified Code Enforcement Officers
Chapter 21 Prohibition on Financially Interested Individuals in Local Inspections
[Effective January 1, 2019]