

**INITIAL STATEMENT OF REASONS
22 CALIFORNIA CODE OF REGULATIONS**

TITLE 22, CALIFORNIA CODE OF REGULATIONS

**AMENDMENT TO PREAMBLE TO DIVISION 2, CHAPTER 3, ARTICLE 1 AND
SECTIONS 12102 – 12302, 12304 – 12504,
12601, 12701, 12705, 12709, 12711, 12721 - 14000
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986**

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as “Proposition 65” or “the Act”), was enacted as a voters’ initiative on November 4, 1986. Mandates of the statute include the prohibition on contaminating sources of drinking water with chemicals known to the state to cause cancer or reproductive harm (Health and Safety Code Section 25249.5); the requirement upon businesses to provide warnings before exposing individuals to chemicals known to the state to cause cancer or reproductive harm (Health and Safety Code Section 25249.6); and the requirement upon the Governor to at least annually update the list of chemicals known to the state to cause cancer or reproductive harm (Health and Safety Code Section 25249.8.) During the late 1980s and early 1990s, implementing regulations were adopted in Title 22, California Code of Regulations, commencing with Section 12000 to interpret and make specific the statutory mandates.

The existing regulations established the basic foundation for the implementation of the Act. It has been several years since amendments or additions have been made to the existing regulations. In an effort to provide useful guidance to the regulated community, OEHHA plans to review the existing regulations and propose amendments to those sections that would benefit from additional regulatory clarification. This process will be proposed in phases. This notice represents the first phase in a series that OEHHA anticipates undertaking. OEHHA begins with minor changes of a less complex nature. The proposed changes include: changes to outdated terminology, consistency of references, consolidation and alphabetization of definitions into one section coupled with the repeal of other definition sections, relocation and renumbering of sections for regulatory continuity, and grammatical corrections.

Preamble

On July 17, 1991, by Executive Order (W-15-91) the Governor designated the Office of Environmental Health Hazard Assessment as the lead agency for the implementation of Proposition 65. Accordingly, in the Preamble, the reference to the “Health and Welfare Agency” is deleted and replaced with the “Office of Environmental Health Hazard Assessment.” The second reference to the Safe Drinking Water and Toxic Enforcement Act of 1986 is truncated to “the Act” because the complete title of the Act is considered unnecessary in this context. The words “the lead” is inserted before “agency” to clarify which agency performs the functions referred to in the Preamble.

Section 12102

Definition of terms of general application used throughout the Proposition 65 regulations are consolidated into this one “Definitions” section. Accordingly, the term “article” is replaced with “chapter” to denote that the definitions are applicable for the entire chapter of regulations. Existing terms and definitions from Sections 12201 and 12301 are relocated and alphabetized within this section. In addition, grammatical corrections are made as explained. Because the term, “Act” is defined to mean the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 et seq.), for consistency of references, all subsequent references to Health and Safety Code Section 25249.5 et seq. are amended to refer to the “Act”.

Subsection (b) is relocated from subsection 12301(a). In paragraph (b)(1), the phrase “hereinafter referred to as the ‘Carcinogen Committee’” is deleted because it is considered to be unnecessary wording. In addition to rendering an opinion on whether specific chemicals have been clearly shown to cause cancer or reproductive toxicity, the Carcinogen Identification Committee and the Developmental and Reproductive Toxicant Identification Committee respectively, perform numerous other functions as identified in Section 12305, Powers and Duties. Accordingly, paragraphs (b)(1) and (b)(2) are amended to refer to the other Committee functions.

Subsection (c) is relocated from subsection 12301(d) in its entirety.

Subsection (d) is relocated from subsection 12201(e)(3). Existing paragraph (e)(4) is a continuation of existing paragraph (e)(3) and is combined within paragraph (d) for improved readability. The citation to “paragraphs (5) and (6)” is amended to “paragraphs (1) and (2)” due to the renumbering of the paragraphs. Sections 66714 and 66719 of the Government Code as cited within paragraph (d)(1) were recodified into Sections 40121 and 40191 of the Public Resources Code, respectively. Accordingly, the paragraph was amended to reflect that recodification.

Subsection (e) is relocated from subsection 12201(c) in its entirety.

Subsection (f) is relocated from subsection 12201(f) in its entirety with the exception of the deletion of the title of the subsection and the words, “or workplace” because they are considered to be redundant wording.

Subsection (g) is relocated from subsection 12201(i) in its entirety.

Subsection (h) is relocated from subsection 12201(b). The “personal use” exception is pulled out of subsection (h) and made into a new paragraph, (h)(3) to clarify the conditions of the exception.

Subsection (i) is renumbered from existing subsection (d) as a result of the relocation and consolidation of definitions.

Subsection (j) is renumbered from existing subsection (b) as a result of the relocation and consolidation of definitions.

Subsection (k) is relocated from subsection 12201(d) in its entirety.

Subsection (l) is renumbered from existing subsection (c). As mentioned previously, on July 17, 1991, by Executive Order (W-15-91) the Governor designated the Office of Environmental Health Hazard Assessment as the lead agency for the implementation of Proposition 65. Accordingly, for the definition of “lead agency,” the reference to the “Health and Welfare Agency” is deleted and replaced with the “Office of Environmental Health Hazard Assessment.” In addition, the relevant Executive Order number and the execution date of the order are amended.

Subsection (m) is relocated from subsection 12201(k). The introductory phrase, “For purposes of this chapter,” is deleted because it is redundant.

Subsection (n) is relocated from paragraph 12201(e)(2) in its entirety with the exception of the replacement of the words, “refers to” with “means” to follow the format structure of the rest of this section.

Subsection (o) is renumbered from subsection(c) in its entirety with the exception of the replacement of the word, “is” with “means” to follow the format structure of the rest of this section.

Subsection (p) is newly added. A definition for “State’s qualified experts” is adopted to clarify that as the term is used in the statute, it includes the Carcinogen Identification Committee and the Developmental and Reproductive Toxicant Identification Committee.

Subsection (q) is relocated from subsection 12201(h) in its entirety with the exception of deletion of the title of the subsection and the words, “The term” because they are considered to be unnecessary wording.

Subsection (r) is relocated from subsection 12201(g) in its entirety with the exception of deletion of the title of the subsection because it is considered to be unnecessary wording.

Subsection (s) is relocated from paragraph 12201(e)(1) in its entirety with the exception of the deletion of the words, “The term” because they are considered to be unnecessary wording.

Section 12103

Section is repealed and relocated in its entirety to Section 12203 with the exception of deletion of the phrases, “panel of qualified experts referred to in Health and Safety Code Section 25249.8”, “panel of qualified experts”, and “the panel” in subsection (b) because they are considered to be unnecessary wording.

Section 12104

Section is repealed and relocated in its entirety to Section 12204. For consistency of reference, the phrase “of the Act” is inserted following references to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12201

Section is repealed and relocated to Section 12102. The definitions are consolidated and alphabetized within the existing Section 12102.

Section 12203

Section 12203 is renumbered from Section 12103 in its entirety. In subsection (b), the term “panel of qualified experts referred to in Health and Safety Code Section 25249.8” is replaced with the term “appropriate Committee” to reflect the present and correct terminology reference for the “panel of experts.”

Section 12204

Section 12204 is renumbered from Section 12104 in its entirety. For consistency of reference, the phrase “of the Act” is inserted following references to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subparagraph (c)(7)(B), the statutory citation, “Government Code Section 6250 et seq.,” is inserted for completeness of the reference for the Public Records Act.

In existing subsections (f), (i), and (j), the title of the California Register is incomplete. The complete and proper title is the “California Regulatory Notice Register.” The subsections are amended accordingly.

Section 12301

Section 12301 is repealed and relocated to Section 12102. The definitions are consolidated and alphabetized within the existing Section 12102.

Section 12302

In subsection (a), the “Office of Environmental Health Hazard Assessment” is changed to “lead agency,” the complete names of the two Committees of the Science Advisory Board are added, and the “Health and Safety Code Section 25249.8” is changed to “Section 25249.8 of the Act” for consistency of references. The phrase, “subsection (a) of Section 12301 of this Article” is changed to “subsection (b) of Section 12102” to reflect the repeal and relocation of Section 12301.

In paragraphs (b)(1) and (b)(2) the phrases, “members of the” and “members of the Developmental and Reproductive Toxicant” are deleted because they are considered to be unnecessary wording.

In existing paragraph (b)(3), staggered terms of office were established for the initial members of the Carcinogen Identification Committee and Developmental and Reproductive Toxicant Identification Committee. The staggered terms of office were established to eliminate vacancies in toto on either Committee. The Committees have been fully functioning for several years and

staggered terms of office are no longer needed. As vacancies arise, the Governor makes new appointments. Thus, establishment of the staggered terms of office is deleted.

In paragraph (d)(2), the statutory citation, “Government Code Section 6250 et seq.,” is inserted for completeness of the reference for the Public Records Act.

In paragraph (e), the words, “either of” and “two” are deleted because they are considered to be unnecessary wording.

In paragraph (f), the words, “any” and “either” are also deleted and are replaced with the words, “the” and “a”, respectively to improve readability.

Section 12304

Sections 81000 through 91015 of the Government Code is the regulatory citation for the Political Reform Act of 1974. For clarity and ease of understanding, the name of the statute, the Political Reform Act of 1974, replaces the Section numbers citation.

Section 12305

This section delineates what activities the Committees may undertake, not merely what functions the Committees performs. Thus, the title of this section is amended to include “Powers and” Duties to more appropriately reflect the intent and scope of this section. For consistency of reference throughout this section, the word “Act” is inserted following references to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In paragraph (a)(2), the term “carcinogens” is replaced with the phrase “chemicals as causing cancer” to more appropriately parallel the usage of the terminology in the Act.

In subsection (b), the complete and proper title of the Committee is the DART “Identification” Committee. The subsection is amended accordingly.

In paragraph (a)(2), the term “reproductive toxicants” is replaced with the phrase “chemicals as causing reproductive toxicity” to more appropriately parallel the usage of the terminology in the Act.

Section 12306

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (a), grammatical changes are made to improve the readability of this subsection.

In subsection (b), the reference to “subsection (c), paragraph (1)” is deleted and replaced with “subsection (d).” This typographical error referring to (c)(1) was carried over from the original adoption of this subsection. In addition, the titles of the Committees are amended throughout the section to reflect the complete and proper titles. The phrase, “has been identified as having expertise in the identification of chemicals causing cancer”, is inserted following the term “Carcinogen Identification Committee” to clarify the area of identification of that Committee.

Section 12401

Section 4010.1 of the Health and Safety Code has been recodified to Section 116275. Accordingly, that change is reflected in amended paragraph (a)(1).

In subsections (b), (c), and (d), reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection” and “paragraph” is amended to “subsection.”

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12403

For consistency of reference, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (a), “Government Section 66714.1” has been recodified in the Public Resources Code Sections 40121 and 40191. Accordingly, this subsection is amended to reflect that recodification.

Section 12405

In the title of this section and elsewhere throughout the section, the term, “economic poison” is replaced with the term “pesticide” as that term is defined in the Food and Agricultural Code. For clarity, the parenthetical phrase, “commencing with Section 13141” is moved to follow the reference citation to Article 15. For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.” The phrase, “as amended” is inserted following the reference to the Food and Agricultural Code and Pesticide Contamination Prevention Act of 1985 to reflect the intent to refer to the most recent version of each statutory reference. In addition, the section is amended to replace the “State Department of Food and Agriculture” with “Department of Pesticide Regulation”, its successor department for the functions and terms referred to in this section.

Section 12501

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (a), the term, “contact” is replaced with the term “exposure” to more clearly describe the situation(s) in which warning provisions of the Act would apply.

In paragraph (a)(4), the phrase, “Title 21” is moved to follow the proper format for a regulatory citation reference.

Section 12502

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 4010.1 of the Health and Safety Code has been recodified to Section 116275. Accordingly, that change is reflected in amended paragraph (a)(1).

In subsection (b), reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection.”

Section 12503

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12504

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12601

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Throughout this section, reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection,” “paragraph” is amended to “subparagraph,” and in some instances, “subsection” is amended to “subparagraph.”

In subparagraph (c)(1)(C), to clarify that the intent is to refer to the most recent version of a regulatory or statutory reference, all references to specific dates versions are removed.

In paragraph (d)(1), alternative methods of transmitting an environmental exposure warning are described. In existing subparagraph (d)(1)(A), two related, but slightly different, alternative methods are described. To reflect the differences better, the methods are separated and renumbered as subparagraphs (d)(1)(A) and (d)(1)(B) resulting in the renumbering of the subsequent subparagraphs. Existing subparagraphs (d)(1)(B) and (d)(1)(C) are renumbered to subparagraphs (d)(1)(C) and (d)(1)(D), respectively.

Section 12701

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12705

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In paragraph (b)(1), the term, “(b)” preceding the “Chemical Name” table heading is deleted because it is considered unnecessary.

In 1994, the Scientific Advisory Panel was restructured to consist of two Committees. One Committee consists of experts in the identification of cancer, appropriately named the Carcinogen Identification Committee. The other Committee consists of experts in the identification of reproductive toxicity and was appropriately named the Developmental and Reproductive Toxicant Identification Committee. Accordingly, in paragraph (b)(2), references to the “Scientific Advisory Panel” are replaced with references to the “Carcinogen Identification Committee” to reflect the proper and current analogous reference to “experts” looked upon to review the proposed no significant risk levels for listed cancer-causing chemicals.

Section 12709

In subsection (a), the term “subsection” is inserted to clarify the proper regulatory reference to (b).

Section 12711

In subsection (a), reference to Section 12713 is deleted because that section was repealed in 1993.

Section 12721

In the title of the section and elsewhere in this section, the term “carcinogens” is replaced with the phrase “chemicals causing cancer” or “chemical listed as causing cancer” to more appropriately parallel the usage of the terminology in the Act.

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12801

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (d), the term “reproductive toxicants” is replaced with the “chemical as causing reproductive toxicity” to more appropriately parallel the usage of the terminology in the Act.

Section 12803

In subsection (a), the word “has” is replaced with the words “will have” to reflect the predictive nature of the quantitative assessment to be performed in accordance with this section.

Section 12805

In the title of the section, the term “reproductive toxicants” is replaced with the phrase “chemicals causing reproductive toxicity” to more appropriately parallel the usage of the terminology in the Act.

In subsection (c), reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection.” The word “daily” is deleted because it is considered to be unnecessary wording.

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Section 12821

In the title of the section and elsewhere in this section, the term “reproductive toxicants” is replaced with the phrase “chemicals causing reproductive toxicity” or “chemical as causing reproductive toxicity” to more appropriately parallel the usage of the terminology in the Act.

For consistency of reference, the word “Act” is inserted following the reference to a section within the Health and Safety Code that refers to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In paragraph (c)(1), reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection.”

Section 12901

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (b), reference to the “Department of Food and Agriculture” is amended to “Department of Pesticide Regulation”, its successor department for the functions and terms referred to in this section.

In subsections (c) and (d), reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “subdivision” is amended to “subsection.”

Section 12902

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

Paragraph (b)(1) is deleted because the definition of “lead agency” is already included in the existing Section 12102. Accordingly, the subsequent paragraphs are renumbered. Paragraph (b)(2) is renumbered to paragraph (b)(1), (b)(3) is renumbered (b)(2), (b)(4) is renumbered (b)(3), (b)(5) is renumbered (b)(4), and (b)(6) is renumbered (b)(5).

Section 12903

For consistency of reference throughout this section, the word “Act” is inserted following the reference to sections within the Health and Safety Code that refer to the “Safe Drinking Water and Toxic Enforcement Act of 1986.”

In subsection (a) and paragraph (b)(1), the phrase, “or “sixty-day notice” or “sixty-day” is deleted because it is considered to be unnecessary wording. In addition, in paragraph (b)(1), OEHHA’s address is changed to reflect the current address.

Throughout this section, reference terminology is amended to reflect the proper regulatory hierarchical identification terms. For example, “section” is amended to “subsection,” “subsection” is amended to “subparagraph” and “title” is amended to “chapter.”

APPENDIX A to Section 12903

In the “WHAT DOES PROPOSITION 65 REQUIRE?” section of the Appendix, the number of chemical listings is updated to reflect the current number as of November 16, 2001.

Section 14000

In subsection (a), the word, “Section” is inserted to provide the proper and complete format for a statutory citation.

In subsection (b) and throughout this section, reference to the “United States Environmental Protection Agency” is changed to conform to a single reference format of “U.S. EPA.”