

NOTE: Clear copy of second set of amendments for ease of readability.

AMENDED PROPOSED REGULATORY TEXT

**TITLE 22. SOCIAL SECURITY
DIVISION 2. DEPARTMENT OF SOCIAL SERVICES--DEPARTMENT OF
HEALTH SERVICES
PART 2. HEALTH AND WELFARE AGENCY--DEPARTMENT OF HEALTH
SERVICES REGULATIONS
SUBDIVISION 1. HEALTH AND WELFARE AGENCY
CHAPTER 3. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT
OF 1986**

ARTICLE 9. MISCELLANEOUS, 22 CCR 12900

Section 12900

**Use of Specified Methods of Detection and Analysis as an Affirmative
Defense to an Enforcement Action**

- (a) For purposes of Section 25249.5 of the Act, no knowing discharge or release, and for purposes of Section 25249.6 no knowing and intentional exposure occurs if a person in the course of doing business, otherwise responsible for an alleged release, discharge or exposure can show all of the following:
1. That he or she has properly applied a method of detection and analysis as defined in subsection (g) below for the chemical in question at any time within the year prior to the service or filing of a notice or complaint concerning an alleged discharge, release or exposure to the chemical in question;
 2. That such method of detection and analysis was applied to the same matrix as defined in subsection (g) below, in which the discharge, release or exposure is alleged to have occurred or to be occurring;
 3. That the method of detection and analysis was conducted by a laboratory certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization to perform the particular method of detection and analysis in question; and
 4. That all the reported results show that the chemical in question was not detected.
- (b) The methods of detection and analysis that may be relied on for purposes of subsection (a) are those that are required or sanctioned by the federal Food and Drug Administration, the U.S. Environmental Protection Agency, the federal Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health the California Department of Health Services, the California Environmental Protection Agency and its constituent boards, departments or office; an Air District, a Regional Water Quality Control Board, a

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Certified Unified Program Agency, or other local enforcement agency in California with jurisdiction over the product or activity that is the cause of the alleged discharge, release or exposure.

- (c) Where more than one method of detection and analysis exists that meets the criteria specified in subsection (b), the person in the course of doing business who seeks to rely on the reported results of that method of detection and analysis pursuant to subsection (a), must either use a method of detection and analysis required by permit to be used for detecting or measuring the chemical in question in the relevant matrix; or the person must use the most sensitive method of detection and analysis that meets the requirements of subsection (b).
- (d) In any enforcement action for an alleged violation of Section 25249.5 or 25249.6 of the Act, the person asserting this section as an affirmative defense shall have the burden of proof as to all the facts that establish such defense including the burden of proving that all material protocols and procedures specified by the agency that requires or sanctions the method of detection and analysis applied, have been followed.
- (e) Except as provided in subsection (a) of this section, nothing in this section restricts a plaintiff from proving an alleged discharge, release or exposure by any admissible evidence or a defendant from proving the absence of an alleged discharge, release or exposure by any admissible evidence, except that an alleged discharge, release, or exposure may not be established solely by applying a scientific inference that a listed chemical is present in a particular matrix at one half the limit of detection for the applicable method of detection and analysis.
- (f) Nothing in this section requires any person in the course of doing business to conduct routine tests for discharges, releases or exposures to listed chemicals that may be subject to the provisions of the Act.
- (g) For purposes of this section, the following definitions apply:
 - 1. "Method of detection and analysis" means a specific analytical testing procedure appropriate for detecting a particular chemical in a particular matrix such as air, water, soil or food that is applied for the purpose of detecting the chemical or measuring its concentration.
 - 2. "Matrix" means the component or substrate that contains the chemical in question.
 - 3. The phrase "required or sanctioned" means that an agency listed in subsection (b) has identified the method of detection and analysis in a permit (as defined below), regulation, guideline or other official action of the agency that specifies or requires the use of that method of detection and analysis for purposes of detecting or measuring the concentration of the chemical in question in the relevant matrix.
 - 4. "Permit" means a document, license, registration, certificate, or other written means of authorization necessary for a business activity.

AUTHORITY:

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.11, Health and Safety Code.