

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

New Section 12900

**Use of Specified Methods of Detection and Analysis for Listed
Chemicals for Voluntary Compliance Testing**

- (a) For purposes of both Section 25249.5 and 25249.6 of the Act, no knowing and intentional discharge release or exposure occurs if a person in the course of doing business, otherwise responsible for an alleged discharge, release or exposure can show that he or she has properly and in good faith conducted a test for the listed chemical 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 a listed chemical, in the same medium in which the discharge, release or exposure is alleged to have occurred or to be occurring, using a method of detection and analysis for that chemical in that medium described in the following subsection, and that the results of each and every such test conducted at any time during that year show that no detectable level of the chemical in question was present.
- (b) For purposes of this section, “method of detection and analysis” means a specific analytical procedure applied to a particular chemical in a particular medium such as air, water, soil or food, for the purpose of detecting and measuring the chemical’s presence and concentration. 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 U.S. 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 and departments; an Air District, a Regional Water Quality Control Board, a Certified Unified Program Agency, or other local enforcement agency in California with jurisdiction over the product or activity that is the cause of the discharge, release or exposure. Such method of detection and analysis may be required or sanctioned by an agency through its issuance of a permit, regulation, guideline or other official action of the agency that specifies or requires the use of a particular method of detection and analysis for a particular chemical in a particular medium.

- (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 test result pursuant to subsection (a), must use the most sensitive method of detection and analysis available that meets all the criteria in 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 in all instances every protocol and procedure, specified by the agency that requires or sanctions it for the particular method of detection and analysis applied, have been followed.
- (e) Except as provided in subsection (a) of this section, nothing in this section restricts the right of a plaintiff to prove an alleged discharge, release or exposure by any admissible evidence or the ability of a defendant to prove 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 medium 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) This section shall be applicable to any enforcement action pending at the time of this regulation's adoption.

AUTHORITY:

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