

UPDATED INFORMATIVE DIGEST
22 CALIFORNIA CODE OF REGULATIONS

SECTION 12901. METHODS OF DETECTION

Section 12901 was originally adopted to clarify and make more specific what is meant by “any detectable amount” as that term is used in the definition of “significant amount” in Health and Safety Code section 25249.11(c). In recent years, litigants and courts have had difficulty interpreting and applying Section 12901, particularly in the context of consumer products exposures. OEHHA determined that amendments to the regulation were necessary to provide a level of certainty for persons subject to the provisions of the Act. OEHHA staff informally solicited input from representatives of the plaintiff and defense bar, the Office of the Attorney General and various members of the public, reviewed decisions and pleadings from various cases decided and pending that address the application of this regulation and developed proposed amendments to the regulation for public comment and discussion. As stated in the June 4, 2004 Notice of Proposed Rulemaking, OEHHA would also consider alternatives to the proposed amendments including repeal of some or all of the section.

After review of all the public comments received during the 45-day public comment period and the public hearing, OEHHA determined that the proposed amendments to the regulation that were included with the June 4, 2004 notice do not adequately address the legal and technical concerns that prompted the regulatory action and may in fact exacerbate the problems that have been experienced by the regulated community, courts and litigants in interpreting the regulation. Based upon the comments received from the public, there appeared to be a stronger argument for repeal of the regulation. A Notice of Intent to Repeal was issued on September 17, 2004 initiating a 15-day public comment period. Comments were received and are responded to in the Final Statement of Reasons. Essentially, OEHHA has determined that the appropriate action at this time is to proceed with repeal of the regulation as proposed in the September 17 notice. In addition, OEHHA intends to propose a new, more narrowly focused regulation at the same time that the existing regulation is repealed.