

**TITLE 19. DIVISION 2**  
**CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**  
**Proposed Amendments to the California Governor's Office of Emergency**  
**Services**  
**California Accidental Release Prevention (CalARP) Regulations (Chapter 4.5)**

INITIAL STATEMENT OF REASONS

The California Governor's Office of Emergency Services (Cal OES) hereby provides this initial statement of reasons for amendments to the CalARP regulations in compliance with Government Code section 11346.2(a)(3)(b).

Problem Cal OES Intends to Address with Amendments

The CalARP program is part of the State of California's Unified Program for Hazardous Materials Management, known as the Unified Program, which is overseen by the California Environmental Protection Agency (CalEPA). CalEPA certifies local agencies to implement the Unified Program as Unified Program Agencies (UPAs). California Health & Safety Code section 25534.05 mandates that Cal OES adopt regulations for the CalARP program, in consultation with UPAs, industry, the public, and other interested parties. Cal OES adopted regulations in 2017 and is now proposing to amend these regulations to provide further clarity to the UPAs and the regulated oil refineries for activities addressed under the CalARP program.

Cal OES has been informed by some regulated agencies and refineries in the petroleum industry that certain terms and provisions of the CalARP regulations are too vague and confusing, making it difficult for them to comply. Cal OES is amending these regulations to provide clarity for the regulated industry and enforcement agencies and for consistency with the California Health & Safety Code and Section 112(r) of the federal Clean Air Act.

Specific Purpose

The purpose of these amendments is to ensure that language used in the regulations is consistent with the language used in the Health and Safety Code and throughout the regulations, as well as to provide clarity to the Unified Program Agencies and refineries in the petroleum industry.

Benefits Anticipated from the Regulatory Action

Clarifying the regulations so they are easier to follow will provide increased protection of the public health and safety in California, as well as worker safety at the regulated oil refineries themselves. These amendments will provide more

clarity to the UPAs so that they may properly enforce the regulations and will allow refineries to better understand their compliance obligations.

### Reasons Why Cal OES Believes Amendments to the Regulations is Necessary

Below is a summary of each of the proposed amendments and the reason and necessity of each.

#### **19 CCR § 2735.3 subsection (t) – Definition of Employee Representative**

Section 2735.3 defines various terms used throughout the CalARP regulations. Subsection (t) defines the term “employee representative.” Some petroleum refineries have argued that term “employee representative,” as currently defined, is unclear and seems to provide disparate treatment between union represented and non-union employees. Cal OES disagrees with this interpretation but proposes amending the definition so that it is clear. Thus, Cal OES believes this amendment is necessary to provide clarity that both union and non-union employee representatives must be on-site and qualified.

Cal OES proposes the following amendment:

t) “Employee representative” means ~~a union representative, where a union exists, or an employee designated representative in the absence of a union that~~ is an individual, who is on-site and qualified for the task, designated by an authorized collective bargaining agent or by the employees, in the absence of a collective bargaining agent. ~~The term is to be construed broadly, and may include the local union, the international union, or an individual designated by these parties, such as the safety and health committee representative at the site.~~

#### **19 CCR § 2735.3 subsection (y) – Definition of Highly Hazardous Material**

Section 2735.3 defines various terms used throughout the CalARP regulations. Subsection (y) defines the term “highly hazardous material.” Some petroleum refineries have argued that term “highly hazardous material,” as currently defined, is overbroad. The refineries argue that under the prior definition of “regulated substance” determining whether a substance was “regulated” was clear, straightforward, and easy to understand, but by using the term “highly hazardous material,” the CalARP regulations have significantly expanded the scope of chemicals that trigger the process safety management requirements by replacing the straightforward lists with an entirely new set of standards. Cal OES disagrees that this term is overbroad. However, to provide more clarity and for the purpose of improving compliance, Cal OES is proposing to delete the term “highly hazardous material” entirely from the regulations and revert

back to the term “regulated substance,” which is already defined at Section 2735.3 (kkk). Under that section, “Regulated substance” means any substance, unless otherwise indicated, listed in Section 2770.5 of this chapter. Section 2770.5 provides a list of substances that are regulated as well as the corresponding threshold quantity. Cal OES agrees this list is easy to understand and believes such amendment is necessary to provide clarity to regulated entities.

Cal OES proposes the following amendment:

~~(y) “Highly hazardous material” means a flammable liquid, flammable gas, toxic or reactive substance as those terms are defined: (1) flammable gas, as defined in California Code of Regulation (CCR) Title 8, §5194, Appendix B, (2) flammable liquid, as defined in CCR Title 8, §5194, Appendix B, (3) toxic substances as acute toxicity is defined in CCR Title 8, §5194, Appendix A, and (4) reactive substance as self-reactive chemical, as defined in CCR Title 8, §5194, Appendix B. Highly hazardous material includes all regulated substances listed in Tables 1, 2, and 3 of this Chapter.~~

This amendment, deleting Section 2735.3(y) (the definition of highly hazardous material), will cause Cal OES to renumber the remainder of the sections in Section 2735.3. Cal OES must also amend Sections §2735.3(ii) (which will become section (hh) if the proposed amendments are adopted), §2735.3(yy) (which will become section (xx) if the proposed amendments are adopted), §2735.3(aaa) (which will become section (zz) if the proposed amendments are adopted), §2745.7.5(c), §2762.1(a), and §2762.7(b) to delete the term “highly hazardous material” and replace it with “regulated substances.”

### **19 CCR § 2735.3 subsection (hh) – Definition of Major Change**

Section 2735.3 defines various terms used throughout the CalARP regulations. Subsection (hh), which will become (gg) if the proposed amendments are adopted, defines the term “major change.” Some petroleum refineries have argued that the term “major change,” as currently defined, is overbroad and appears to be triggered by almost any change to equipment at a refinery causing the refineries to conduct a safety review. Cal OES disagrees with this interpretation but proposes amending the definition of “major change” to provide more clarity about when a major change occurs. This amendment is necessary to further clarify what a major change is and when it will trigger a safety review. This amendment clarifies that it is only during the “introduction of” a new process and the introduction of a “process safety hazard” as opposed to any hazard. Cal OES also clarifies that there is a major change when an existing process safety hazard worsens, instead of “increases.”

Cal OES proposes the following amendment:

(hh) "Major change" means: (1) introduction of a new process, or (2) introduction of a new process equipment, or new regulated substance that results in any operational change outside of established safe operating limits; or (3) any alteration in a process, process equipment, or process chemistry that introduces a new process safety hazard or ~~increases-~~ worsens an existing process safety hazard.

**19 CCR § 2745.7.5 subsection (c) – RMP Program 4 Component**

Section 2745.7.5 discusses the information needed from the owner or operator of the refinery. Subsection (c) requires that the names of the hazardous substances be provided. Cal OES proposes deleting the term "highly hazardous materials" in this subsection and replacing it with "regulated substances" as Cal OES is proposing that the term "highly hazardous material" be removed from the regulatory framework altogether. (See Cal OES's proposed amendment above to delete the definition of "Highly Hazardous Material" at 19 CCR § 2735.3 subsection (y).) The replacement of this term in this section is necessary for consistency.

Cal OES proposes the following amendment:

(a) For each Program 4 stationary source the owner or operator shall provide the information indicated in sections (b) through (t). If the same information applies to more than one Program 4 process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The five- or six-digit NAICS code that most closely corresponds to the stationary source.

(c) The name(s) of the ~~highly hazardous materials~~ regulated substances covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or PHA revalidation and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

- (5) Monitoring and detection systems in use; and,
- (6) Changes since the last PHA.
- (f) The date of the most recent review or revision of management of change procedures.
- (g) The date of the most recent pre-startup safety review.
- (h) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.
- (i) The date of the most recent major incident investigation and the expected date of completion of any changes resulting from the investigation.
- (j) The date of the most recent review or revision of employee participation plans.
- (k) The date of the most recent review or revision of hot work permit procedures.
- (l) The date of the most recent review or revision of contractor safety procedures.
- (m) The date of the most recent evaluation of contractor safety performance.
- (n) The date of the most recent Hierarchy of Hazard Control Analysis.
- (o) The date of the most recent Process Safety Culture Assessment.
- (p) The date of the most recent evaluation of the Accidental Release Prevention Program Management policies and procedures.
- (q) The date of the most recent evaluation of the Human Factors Program.
- (r) The date of the most recent Safeguard Protection Analysis.
- (s) The date of completion of the most recent Damage Mechanism Review or update.
- (1) The expected date of completion of any changes resulting from the Damage Mechanism Review,
- (2) Major damage mechanisms identified; and
- (3) Changes since the last Damage Mechanism Review.
- (t) The owner or operator shall submit the following external events analysis information:
  - (1) The types of natural and human caused external events considered in PHA

Section 2762.2;

(2) The magnitude or scope of external events which were considered. If not known, the owner or operator of the stationary source shall work closely with the UPA to determine what is required. If seismic events are applicable, the parameters used in the consideration of the seismic analysis and which edition of the Building Code was used when the process was designed;

(3) For each external event, with a potential to create a release of a regulated substance that will reach an endpoint offsite, apply sections (e)(1) through (e)(6); and,

(4) The date of the most recent field verification that equipment is installed and maintained as designed.

### **19 CCR § 2762.1 subsection (a) – Process Safety Information**

Section 2762.1 discusses written process safety information. Subsection (a) specifies the types of safety information which shall be included before conducting an analysis. Cal OES proposes deleting the term “highly hazardous materials” in this subsection and replacing it with “regulated substances” as Cal OES is proposing that the term “highly hazardous material” be removed from the regulatory framework altogether. (See Cal OES’s proposed amendment above to delete the definition of “Highly Hazardous Material” at 19 CCR § 2735.3 subsection (y).) The replacement of this term in this section is necessary for consistency.

Cal OES proposes the following amendment:

(a) The owner or operator shall develop and maintain a compilation of written process safety information before conducting any PHA, Hierarchy of Hazard Control Analysis, Safeguard Protection Analysis, or Damage Mechanism Review, as required by this Article. The compilation of written process safety information shall be sufficient to enable the owner or operator and the employees involved in operating or maintaining a process to identify and understand the hazards posed by the process. This process safety information shall include information pertaining to (1) the hazards of any ~~highly hazardous materials~~ regulated substances used or produced by the process; (2) the technology of the process; (3) process equipment used in the process; and (4) results of previous Damage Mechanism Reviews. The process safety information shall be made available to all employees and relevant process safety information shall be made available to affected employees of contractors. Information pertaining to the hazards of the process shall be effectively communicated to all affected employees.

## **19 CCR § 2762.7 subsection (b) – Pre-Startup Safety Review**

Section 2762.7 discusses how the owner or operator of an oil refinery conducts a pre-start-up safety review. Subsection (b) specifically discusses what that review shall include. Cal OES proposes deleting the term “highly hazardous materials” in this subsection and replacing it with “regulated substances” as Cal OES is proposing that the term “highly hazardous material” be removed from the regulatory framework altogether. (See Cal OES’s proposed amendment above to delete the definition of “Highly Hazardous Material” at 19 CCR § 2735.3 subsection (y).) The replacement of this term in this section is necessary for consistency.

Cal OES proposes the following amendment:

(a) The owner or operator shall perform a pre-startup safety review (PSSR) for new processes, for modified processes if the modification necessitates a change in the Process Safety Information, and for partial and unplanned shutdowns. The owner or operator shall also conduct a PSSR for all turnaround work performed on a process.

(b) The pre-startup safety review shall confirm, as a verification check, independent of the management of change process, that prior to the introduction of ~~highly hazardous materials~~ regulated substances to a process:

(1) Construction, maintenance, and repair work has been performed in accordance with design specifications;

(2) Process equipment has been maintained and is operable in accordance with design specifications;

(3) Effective safety, operating, maintenance, and emergency procedures are in place;

(4) For new process units, a Process Hazard Analysis, Hierarchy of Hazard Control Analysis, Damage Mechanism Review and Safeguard Protection Analysis have each been performed as applicable pursuant to this Article, and recommendations have been implemented or resolved before start-up. For new or modified processes, all changes have been implemented in accordance with the requirements contained in the Management of Change, section 2762.6; and,

(5) Training of each operating employee and maintenance employee affected by the change has been completed.

(c) An operating employee who currently works in the unit and has expertise and experience in the process being started shall be designated as the employee representative pursuant to section 2762.10.

**19 CCR § 2762.10 subsection (b) and adding subsection (e) – Employee Participation**

Section 2762.10 discusses employee participation in the Accidental Release Prevention program and access to information and documents of the employer to assist with that participation. Subsection (b) specifically discusses how an authorized collective bargaining representative selects employees to participate. Cal OES proposes amending this subsection to remove the term “authorized collective bargaining agent” which is undefined in the regulation and to replace it with the term “employee representative” which is defined, so that there is more clarity. Cal OES likewise proposes to add in section dividers (A, B, etc.) to provide additional clarity. This change is necessary so that the term “employee representative”, which is already defined, is used in the regulation to provide further clarity to the regulated entities.

Cal OES proposes the following amendment:

§ 2762.10(b) An ~~authorized collective bargaining agent~~ may employee representative(s) selects (A) employee(s) to participate in overall Accidental Release Prevention program development and implementation planning and ~~for~~ (B) employee(s) to participate in ~~each~~ Accidental Release Prevention team-based activity pursuant to this Article.

Cal OES also proposes amending Section 2762.10 to add subsection (e) which will clarify that nothing in the CalARP regulations intends to interfere with any employee's collective bargaining rights. Regulated oil refineries have argued that the regulations could be construed to impede on employee's rights to engage in collective bargaining. While Cal OES disagrees with this interpretation, it intends to clarify that these regulations are not intended to interfere with any oil refinery employee's rights to collectively bargain or with their status as a collective bargaining agent.

Cal OES proposes the following amendment:

(e) Nothing in this section shall be construed to alter any legal rights pursuant to federal law, including rights pursuant to a collective bargaining agreement or status as a collective bargaining agent.

**19 CCR § 2762.13 subsection (e)(3) – Hierarchy of Hazard Control Analysis, HCA for all existing processes**

Section 2762.13 discusses how oil refinery operators must conduct a Hazard Control Analysis (HCA) for all existing processes. Subsection(e)(3) specifically identifies the information which the HCA team should review to comply with inherent safety measures and standards, specifically those “that have been: (A) achieved in practice by for the petroleum refining industry and related industrial sectors; or, (B) required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report.”

Some regulated petroleum refineries have argued that the use of the terms “achieved in practice” and “related industry sector” in subsection (e)(3) is vague and hard for oil refineries to determine which safety measures and standards to comply with. Cal OES proposes amending this section by deleting the sentence entirely. The purpose of this sentence was to provide more clarity about the information oil refineries should review, but since Cal OES has received feedback that it has only led to confusion, Cal OES believes it necessary to remove this sentence.

Cal OES proposes the following amendment:

(e) The HCA team shall:

(1) Include all risk-relevant data for each process or recommendation, including incident investigation reports pursuant to section 2762.9;

(2) Identify, characterize and prioritize each process safety hazard.

(3) Identify, analyze, and document all inherent safety measures and safeguards (or where appropriate, combinations of measures and safeguards) in an iterative manner to reduce each hazard to the greatest extent feasible. Identify, analyze, and document relevant, publicly available information on inherent safety measures and safeguards. ~~This information shall include inherent safety measures and safeguards that have been: (A) achieved in practice by for the petroleum refining industry and related industrial sectors; or, (B) required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report.~~

## **ECONOMIC IMPACT ASSESSMENT**

In compliance with Government Code sections 11346.3(b)(1)(A) through (D), the following elements have been assessed:

### **Creation or elimination of jobs within California**

The proposed regulatory action will not significantly impact the creation or elimination of jobs within the State of California because these amendments simply clarify existing regulatory provisions and do not create any new compliance obligations.

### **Creation of new businesses or elimination of existing businesses within California**

This proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California because these amendments simply clarify existing regulatory provisions and do not create any new compliance obligations.

### **Expansion of businesses currently doing business within California**

This proposed regulatory action will not impact the expansion of businesses within the State of California because these amendments simply clarify existing regulatory provisions and do not create any new compliance obligations.

### **Benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the state's environment**

This proposed regulatory action will benefit the welfare of California residents, worker safety and the state's environment by providing clarity and consistency to the regulated entities in the petroleum industry and helping to further prevent hazardous material accidental releases in the state. This proposed regulatory action will also provide clarity for UPAs who enforce these regulations at the local level.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON IN PROPOSING THIS REGULATORY ACTION**

[1] *The Western States Petroleum Association v. Occupational Health and Safety Standards Board, et al.* (Sacramento County Superior Court Case No. 34-2019-00260210) Complaint; and

[2] *The Western States Petroleum Association v. Occupational Health and Safety Standards Board, et al.* (U.S. District Court, Eastern District of California, Case No. 2: 19-cv-01270) Complaint; and

[3] Cal/OSHA Form 9, filed with the Occupational Health & Safety Board on April 9, 2020 regarding a request for new, or change in existing, safety order.

**REASONABLE ALTERNATIVE TO THE REGULATIONS AND THE REASONS FOR REJECTING THOSE ALTERNATIVES**

No reasonable alternatives to the proposed regulations that are less burdensome and equally effective in achieving the purposes of the regulations in a manner that ensures full compliance with the authorizing statute have been proposed.