

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)

[Notice published February 5, 2021]

NOTICE OF PROPOSED RULEMAKING

The California Governor's Office of Emergency Services (hereafter "Cal OES") proposes to amend sections 2735.3, 2745.7.5, 2762.1, 2762.7, 2762.10, and 2762.13 in Title 19 of the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action. If adopted, these proposed amendments would clarify existing provisions of the CalARP regulations.

PUBLIC HEARING

Cal OES has not scheduled a public hearing on this proposed action. However, Cal OES will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Written requests for a hearing should be submitted to the contact person identified in this notice.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Cal OES. The written comment period closes on **March 22, 2021**.

Due to possible delays caused by the COVID-19 emergency, Cal OES strongly recommends that written comments be submitted electronically, rather than in paper form, to the email listed below.

Written comments can be mailed to:
California Governor's Office of Emergency Services
c/o Meg Wilson, Senior Counsel
3650 Schriever Avenue
Mather, CA 95655
Telephone: (916) 621-8176

Comments may also be submitted by e-mail to regulations@caloes.ca.gov

AUTHORITY

Government Code section 8585(b)(1) and Health and Safety Code section 25534.05.

REFERENCE

Health and Safety Code sections 25501, 25531.2, 25532, 25534, 25535 and 25535.1, and Sections 68.3, 68.65, 68.77, 68.83 and 68.175, Part 68, Title 40, Code of Federal Regulations.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Currently, the California Accidental Release Prevention (CalARP) Program regulates owners and operators of stationary sources concerning the prevention of accidental releases of hazardous substances, including registration requirements and risk management plans. The purpose of the CalARP program is to prevent the accidental releases of substances that can cause serious harm to the public and the environment, to minimize the damage if releases do occur, and to satisfy community right-to-know laws. The CalARP program is implemented at the local government level by Unified Program Agencies (UPAs). The CalARP program is designed so these agencies work directly with the regulated businesses.

The proposed action would amend Cal OES's CalARP regulations in order to make them clearer and more consistent with Health and Safety Code sections 25531 through 25543.3.

Specifically, this rulemaking action clarifies Cal OES's definitions of "major change" at 19 CCR § 2735.3(h) and "employee representative" at § 2735.3 (t), as Cal OES has been informed by regulated facilities in the petroleum industry that these terms are vague and confusing. The changes to the definition of "employee representative" also clarifies that nothing in the regulations is meant to impede on an employee's collective bargaining rights. Cal OES is also deleting the term "highly hazardous material" at § 2735.3 (y) and replacing it with the term "regulated substance" which is already defined in the regulations under 19 CCR §2735.3 (kkk). References to "highly hazardous material" in sections §2735.3(ii), §2735.3(yy), §2735.3(aaa), §2745.7.5(c), §2762.1 (a), and §2762.7(b) will be removed and replaced with "regulated substance". Cal OES is also removing the third sentence in §2762.13(e)(3) as Cal OES believes that this sentence is unnecessary and has also received some complaints from regulated facilities in the petroleum industry that it is vague. Lastly, this rulemaking action is adding § 2762.10(e) to clarify that nothing in that section shall be construed to

alter any legal rights an employee has pursuant to federal law, including rights pursuant to a collective bargaining agreement or status as a collective bargaining agent.

The purpose of these amendments is to clarify the CalARP regulations so that the UPAs can better enforce them and so the regulated facilities can appropriately comply with them. This action has the specific benefit of clarifying, and creating more consistency within, the existing rules, which would benefit the health and safety of workers and the general public. Amendments to these comprehensive set of rules ensures that Cal OES can most efficiently discharge its statutory duties and appropriately prevent and address the accidental releases of hazardous substances.

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

Cal OES has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, Cal OES has concluded that these are the only regulations that concern the CalARP program. There are related regulations promulgated by the California Occupational Health and Safety Standards Board within the California Division of Occupational Safety and Health (Cal OSHA) known as the California Process Safety Management ("CalPSM") regulations. Cal OES has consulted with Cal OSHA and understands and believes that Cal OSHA intends to amend the CalPSM regulations to be consistent with those amended regulations set forth herein.

DISCLOSURES REGARDING THE PROPOSED ACTION

Cal OES has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: No additional costs or savings beyond those imposed by existing law.

Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: No additional costs or savings beyond those imposed by existing law.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or businesses: No additional costs or savings beyond those imposed by existing law. Therefore, Cal OES is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals:

Cal OES has made an initial determination that the proposed action *will not* have a significant statewide adverse economic impact directly affecting businesses or individuals.

Significant effect on housing costs: None.

Small Business Determination: Cal OES anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, Cal OES has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Cal OES anticipates that the adoption of these amended regulations will not impact the creation or elimination of jobs or businesses within the state or the expansion of businesses currently doing business within the state. Because the proposed amendments will provide more clarity and consistency to regulations addressing the accidental release of hazardous material, they benefit the health and welfare of all California residents and the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), Cal OES must determine that no reasonable alternative it considered or that has otherwise been identified and brought to Cal OES's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Cal OES has thus far not become aware of a better alternative and invites interested persons to present alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Meg Wilson, Senior Counsel
Legal Affairs
California Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655
Telephone: (916) 621-8176

Email: regulations@caloes.ca.gov

Backup Contact Person:

Stephanie Ogren, Assistant Chief Counsel

Legal Affairs

California Governor's Office of Emergency Services

3650 Schriever Avenue

Mather, CA 95655

Telephone: (916) 621-9048

Email: regulations@caloes.ca.gov

Please direct requests for copies of the proposed text (express terms) of the regulations, the initial statement of reasons, the modified text of the regulations, a copy of the final statement of reasons once it has been prepared, or other information upon which the rulemaking is based, should other sources be used in the future, to Meg Wilson or Stephanie Ogren at the above address.

ONLINE AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

This notice, along with the initial statement of reasons, and the full text of the proposed regulations, is available online at: <https://www.caloes.ca.gov/cal-oes-divisions/legal-affairs/rulemaking>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, Cal OES may adopt the proposed regulations substantially as described in this notice. If Cal OES makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before Cal OES adopts the regulations as revised. Cal OES will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.