

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

ADDENDUM TO FINDING OF EMERGENCY

The California Governor's Office of Emergency Services (Cal OES) provides this addendum to the Finding of Emergency in Office of Administrative Law file number 2020-0616-02E.

Renumbering sections numbers

The proposed emergency regulations have been renumbered to align with existing divisions within the California Code of Regulations. The proposed emergency regulations, rather than adding a new Division 4.5, will be added to existing Division 2, as new Chapter 1.5. Community Isolation Outages. The sections previously proposed as numbers 5001, 5002, and 5003, have been renumbered to sections 2480.1, 2480.2, and 2480.3, respectively.

Authority and reference

All reference sections have been revised to cite Government Code section 53122 instead of Stats. 2019, c. 412 (SB 670).

Additional explanation of terms and phrases

Section 2480.1, subdivision (c) defines outage to mean a "significant degradation in the ability of an end user to establish and maintain a channel of communications to make 911 calls or receive emergency notifications as a result of failure or degradation in the performance of a communications provider's network."

The phrase "significant degradation" is a well known phrase that exists in other regulations governing outages. In particular, it mirrors an existing definition in federal regulations relating to reporting major outages, located at Code of Federal Regulations, title 47, section 4.5, subdivision: (a): "Outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network."

The qualifying term "significant" clarifies that not every instance of degradation results in a degree of impairment sufficient enough to constitute an outage. The usual meaning of "degradation" could cover degradation of a minimal degree. For example, minimal static on a phone line might be a nuisance, but may not actually prevent a user from accessing 9-1-1 services or receiving emergency notifications. The modifier "significant" clarifies that an outage does not occur

only because degradation of any degree, however minimal, may be present, but only when the degradation affects the end user to such an extent that it causes an impairment or inability to establish and maintain a channel of communication.

The term “end user” as used in the regulations is a well understood industry term that refers to actual users of a provider’s service. The term appears in the definition of outage, described above, and in the reportable thresholds in proposed section 2480.2, subdivision (a), paragraphs (1) – (3). The regulations refer to end users because the purpose of Government Code section 53122 is to identify those circumstances where individual people are unable to access emergency services. The number of end users a provider has is depends on the information available to and known to the provider. For example, a college student in Southern California who uses a wireline phone is the end user of the service, even if the account is paid for by the student’s parent in Northern California. If the service to the student in Southern California experienced an outage, that student would be counted among potentially impacted users, not the person paying the bill from a separate location. Similarly, if a provider has four separate residential phone lines at a single household address, a provider would reasonably conclude at least four end users would be potentially affected by an outage at the address, and would count that address as including up to four potentially impacted end users, even if, unbeknownst the provider, the household actually consists of ten members who use the service.

The outage thresholds in proposed section 2480.2, subdivision (a), paragraphs (1) – (3), include the phrase “potentially affects” in reference to determining when an outage constitutes a reportable threshold. The term “potentially affects” is a commonly understood concept in the regulated industry, taking into account the practical reality that telecommunications service providers may initially review evidence of a certain type of failure or other event causing an outage in a given area, but have yet to possess actual knowledge of the true extent of the outage. (For an example of federal regulations using this same phrase, see 47 C.F.R. § 4.5, subd. (e).)

Government Code section 53122 recognizes the public health and safety harms caused when communities are unable to access 9-1-1 or receive emergency notifications, and requires providers to notify Cal OES within an established timeframe from discovery of the outage. The qualifying term “potentially” is necessary to prevent delays to reporting caused by waiting for providers to obtain exact knowledge of the extent of an outage, which would frustrate the purpose of Government Code section 53122. For example, if a wireline provider

detects significant degradation in a given area, and knows it has exactly 100 separate residential accounts associated within a ZIP Code impacted by the outage, the wireline provider knows the outage potentially affects at least 100 end users. The regulations would require this outage to be reported, even if at the time of submitting the report the provider did not know, for example, who within the affected area might be residing at some place other than their service address at the time of the outage. If the regulations required reporting only when the provider was certain that at least 100 end users were actually impacted by the outage, notice requirements may be delayed for so long that Cal OES would not learn of the outage until well after provider fully investigated and fixed the outage.

Non-substantive clarification of outage threshold

The reportable threshold described in proposed section 2480.3, subdivision (a), paragraph (4), was modified to clarify that Cal OES will apply the same thresholds defined elsewhere in the regulations when providing a determination to a provider. That section previously defined the threshold as applying “whenever the office determines that a community isolation outage exists within an identifiable zip code or zip codes and provides notice of its determination and identification of the affected zip code or zip codes to a telecommunications service provider.” The proposed threshold was revised to clarify and confirm that Cal OES, in providing its notice to a provider, will base its determination on the same threshold criteria applicable to providers. The revised threshold now reads:

(4) For any telecommunications service, whenever the office determines an outage meeting any of the criteria specified in paragraphs (1) – (3) exists within an identifiable ZIP Code or ZIP Codes, and provides notice of its determination and identification of the ZIP Code or ZIP Codes to a telecommunications service provider. For purposes of this paragraph, every telecommunications service provider subject to these regulations shall provide the office at least one designated point of contact or similar means to receive and respond to such notices.