

**Proposed Amendments to the California Accidental Release Prevention
(CalARP) Regulations
Title 19, Division 5, Chapter 2, California Code of Regulations
Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6**

NOTICE OF PROPOSED RULEMAKING

The California Environmental Protection Agency (CalEPA or Agency) proposes to amend the regulations as described below after considering all comments, objectives, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to either:

Elizabeth Brega
1001 I Street, MS: 2D
Sacramento CA, 95814

Jeannie Lee
1001 I Street, MS: 25C
Sacramento CA, 95814

Comments may also be submitted by email to Elizabeth.Brega@calepa.ca.gov or Jeannie.Lee@calepa.ca.gov.

The written comment period closes on April 22, 2025. Agency will consider only timely received comments. When commenting, please indicate the proposed rulemaking action to which your comment refers.

PUBLIC HEARING

Agency did not schedule a public hearing on this proposed action. However, Agency will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15

days before the close of the written comment period. Requests for a public hearing must be received by CalEPA by April 7, 2025.

Requests for a hearing may be submitted by email or in writing to the contact information listed above.

AUTHORITY AND REFERENCE

Authority: Health and Safety Code sections 25531, 25531.2, 25533, and 25534.05. Health and Safety Code, Chapter 6.95, Article 1 and 2.

References: Title 19, Division 5, Chapter 2, Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6.

INFORMATIVE DIGEST

Background and Effect of Proposed Action

Public awareness of the potential danger from accidental releases of hazardous chemicals continues to increase as accidents have occurred around the world. In response to public concern, and recognizing that chemical hazards exist, the United States Environmental Protection Agency (U.S. EPA) initiated a Chemical Emergency Preparedness Program (CEPP) in 1985, as part of U.S. EPA's Air Toxics Strategy. In 1986, Congress adopted many of the elements of CEPP in the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA dealt with incident reporting and chemical inventories and did not directly address accident prevention. Consequently, in 1986, U.S. EPA established a chemical accident prevention program to collect information on chemical accidents, work with other groups to increase knowledge of prevention practices, and encourage industry to improve the safety of chemical facilities. This program resulted in the enactment of a federal law for the prevention of chemical accidents.

Section 112(r) of the amended Clean Air Act (CAA), signed into law on November 15, 1990, mandated the new federal program focusing on the prevention of chemical accidents. The objective of section 112(r) is to prevent serious chemical accidents that have the potential to affect public health and the environment. Under section 112(r), U.S. EPA promulgated a final rule for the prevention of accidental releases of hazardous substances in Title 40 of the Code of Federal Regulations, Part 68, on June 20, 1996. The rule includes a list of regulated substances that, in the event of an accidental release, could

cause death, injury, or serious adverse effects to human health and the environment. The rule requires owners or operators of facilities with more than a threshold quantity of a regulated substance in a process to develop and implement an accident prevention program. The program must include a hazard assessment, prevention program, and an emergency response program. Each regulated business is required to develop and submit a risk management plan (RMP) to the agencies implementing the program. The federal program is also known as the Risk Management Program.

The California State Legislature, recognizing the need for a chemical accident prevention program for California, enacted a new Article 2 for Chapter 6.95 of the Health and Safety Code (HSC) in 1986. HSC section 25531(e) states, "the Legislature finds and declares that the goals of reducing regulated substance accident risks and eliminating duplication of regulatory programs can best be accomplished by implementing the federal risk management program in the state, with certain amendments specific to the state." HSC section 25533 specifies, "[t]he program for prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to subsection (r) of section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)), with the additional provisions specified in this article, is the accidental release prevention program for the state." This program is referred to as the California Accidental Release Prevention, or CalARP, program. The CalARP program reflects the requirements of the federal section 112(r) program and includes additional more stringent, state specific requirements.

The CalARP program is one of several elements of the State of California's broader Unified Program for Hazardous Materials Management, known as the Unified Program, which is overseen by CalEPA. The purpose of the CalARP program is to prevent the accidental releases of regulated substances that can cause serious harm to the public and the environment, and to minimize the damage if releases do occur.

CalEPA broadly oversees the implementation of the Unified Program and certifies local agencies to implement the program as Unified Program Agencies (UPAs). Pursuant to Health and Safety Code section 25533, CalEPA also has direct authority to implement the CalARP element of the Unified Program, including through inspection and enforcement authority. Additionally, pursuant to Health and Safety Code section 25534.05, CalEPA has authority to adopt regulations for the CalARP program that govern certain processes of stationary sources, including petroleum refineries. The California Office of Emergency Services (Cal OES) previously oversaw and implemented the CalARP program, however, program implementation and responsibility was transferred to CalEPA in July of 2021 through Assembly Bill 148 (Chapter 115, Statutes of 2021).

CalARP requires certain facilities (referred to as “stationary sources”) that handle, manufacture, use, or store any regulated substances above threshold quantities to take actions to proactively prevent and prepare for accidental releases. Petroleum refineries in California are subject to CalARP Program 4 regulations, which set forth specific requirements tailored to preventing accidental releases at refineries. “Petroleum refinery” means a stationary source engaged in activities set forth in North American Industry Classification System (NAICS) code 324110.

Following the August 2012 pipe rupture, chemical release and fire at the Chevron, Richmond oil refinery (2012 Chevron Richmond Refinery fire), Governor Brown formed an Interagency Working Group on Refinery Safety (Interagency Working Group) to examine ways to improve public and worker safety through enhanced oversight of refineries, and to strengthen emergency preparedness in anticipation of any future incident. The Interagency Working Group released a final report titled “Improving Public and Worker Safety at Oil Refineries” in February of 2014.¹ That effort eventually led to Cal OES promulgating and adopting the Program 4 regulations to prevent major incidents at petroleum refineries and to protect the health and safety of communities and the environment. These regulations became effective on October 1, 2017. Petroleum refineries are also subject to the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) Process Safety Management (PSM) program under Title 8 of the California Code of Regulations (CCR) section 5189.1. The PSM program for petroleum refineries under 8 CCR section 5189.1 aims to reduce the risk of major incidents and eliminate or minimize process safety hazards to which employees may be exposed.

The CalARP Program 4 regulations, as originally adopted, were designed to function in parallel with the PSM program. The proposed amendments to the CalARP Program 4 regulations will similarly function in parallel with changes to the PSM program that will be proposed by Cal/OSHA in a separate proposed rulemaking.

Petroleum refineries may also be subject to the Industrial Safety Ordinance (ISO) in Contra Costa County, where refineries are located, and an ISO in the City of Richmond.

¹ Edmund G. Brown Jr., Governor. (2014). *Improving Public and Worker Safety at Oil Refineries*, Interagency Working Group on Refinery Safety. Available at <https://www.dir.ca.gov/oshsb/documents/Process-Safety-Management-for-Petroleum-Refineriess-governorreport2014.pdf>

Effect of the Proposed Action

The proposed action would:

- Amend and clarify the definitions of highly hazardous material, process, major change, and employee representative;
- Amend and clarify the requirements pertaining to the Hierarchy of Hazard Control Analysis;
- Amend and clarify, with respect to employee participation in Accidental Release Prevention element activities, how owners and operators will allow for effective participation by employees engaged in such activities; and
- Amend a footnote to address an error in a reference citation.

CalEPA also proposes certain amendments to the regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (e.g., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, renumbering, or relocating regulatory provisions.

Objectives and Anticipated Benefits of the Proposed Regulation

Objectives:

CalEPA proposes certain regulatory amendments to the provisions set forth in Chapter 2 of Division 5 of Title 19 of the California Code of Regulations. CalEPA is conducting this rulemaking pursuant to the court-approved resolution of the following two pending actions:

- *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, California Division of Occupational Safety and Health, and California Environmental Protection Agency*² (Sacramento Super. Ct., Case No. 34-2019-00260210)
- *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, and The California*

² The lawsuit originally named Cal OES as a party to the suit. With the transition of the CalARP program to CalEPA, CalEPA was substituted in as a defendant on October 7, 2021, in place of Cal OES.

CalEPA proposes to amend the Program 4 regulations to provide clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes the changes to address stakeholder concerns about inconsistent application of the regulations.

Petroleum refineries have stated that certain terms and provisions of the CalARP regulations are vague and confusing, making it difficult for them to comply. CalEPA is proposing to amend these regulations to 1) ensure that regulatory requirements are clearly articulated and understood by the regulated petroleum refineries, UPAs, and the public, and 2) to provide clarity and consistency in program implementation. Also, CalEPA is proposing to amend these regulations to retain consistency between CalARP Program 4 and anticipated proposed amendments to the PSM program regulations for petroleum refineries under 8 CCR section 5189. Pursuant to the court-approved resolutions in *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, et al.* (federal court suit) and *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, and The California Environmental Protection Agency, et al.* (state court suit), Cal/OSHA will submit a rulemaking package for the PSM Amendments to California Occupational Safety and Health Standards Board (OSHSB) according to the typical rulemaking process required.

Anticipated Benefits

The proposed amendments would clarify and add greater specificity to existing regulatory provisions. The proposed amendments would benefit the petroleum refineries who implement Program 4 and the UPAs who enforce the program's regulations by allowing for greater efficiency and consistency in implementation and compliance by those entities. These amendments would provide more clarity to the UPAs so that they may better enforce the regulations and would allow petroleum refineries to better understand their compliance obligations. As a result of the proposed clarifications, the proposal would also help ensure protection to public health and safety in California, as well as worker safety at the regulated petroleum refineries themselves.

³ The federal court lawsuit originally named the Governor's Office of Emergency Services (Cal OES) as a party to the suit. With the transition of the CalARP program to CalEPA, CalEPA was substituted in as a defendant on September 23, 2021, in place of Cal OES.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting a search for any other related regulations, Agency has found that these are the only regulations concerning the California Accidental Release Prevention Regulations. Therefore, Agency has determined that the proposed amendments are not inconsistent or incompatible with existing regulations

DISCLOSURES REGARDING THE PROPOSED ACTION

Agency has made the following determinations:

Mandate on local agencies or school districts: These regulations clarify and provide greater specificity to existing regulatory provisions but do not substantively alter or impose new mandates on UPAs charged with enforcing these provisions.

Cost of savings to any state agency: None.

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

Other nondiscretionary costs or savings imposed on local agencies: None.

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

Significant effect on housing costs: None.

Significant statewide adverse economic impact directly affecting business, including ability to compete: None. The proposed changes would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

CalEPA concludes that the proposed regulatory changes would not have a significant effect on jobs and businesses in the state. However, there would be an estimated cost of \$21,260.69 to refineries in the first year after the proposed changes would go into effect.

Effect on Jobs/Businesses in the State

CalEPA has determined that the proposed regulatory changes would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Cost Impacts on a Representative Private Person or Business

CalEPA anticipates that the only costs to refineries would be for those associated with updating written operating procedures and training materials reflecting the proposed regulatory amendments. The total costs to all businesses (i.e., 11 petroleum refineries) would be \$21,260.69 during the first year after the regulation goes into effect. For the purposes of the economic analysis, CalEPA has selected a typical timeframe of 10 years as the lifetime of the proposal. Because the proposed amendments would not require refineries to continually update their operating procedures and training materials every year over the 10-year lifetime, CalEPA estimated that costs to refineries would be incurred only in the first year after the regulation goes into effect.

Small Business Determination

The proposed amendments do not affect small businesses. The proposed amendments will impact petroleum refineries in California. Petroleum refineries are explicitly excluded from the definition of "small business" as defined in Government Code section 11342.610(b)(9).

Benefits from the Regulation

As stated earlier under Anticipated Benefits, the proposed regulations would benefit the health and welfare of California residents, the state's environment, and worker safety by providing greater clarity to petroleum refineries, UPAs, and the public, as well as efficiency and consistency in implementation and compliance by those entities, which ultimately furthers the goals of California's Accidental Release Program.

CONSIDERATION OF ALTERNATIVES

CalEPA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective

in carrying out the purpose for which the action is proposed, 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.

A discussion of alternatives that CalEPA itself considered are described in the Initial Statement of Reasons.

CONTACT PERSONS

Inquiries considering the proposed action may be directed to:

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Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the Initial Statement of Reasons, or other information upon which the rulemaking is based to Elizabeth Brega or Jeannie Lee using the contact information above.

AVAILABILITY OF DOCUMENTS

Availability of Statement of Reasons, Text of Proposed Regulation, and Rulemaking File

Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, the Initial Statement of Reasons, STD 399, STD 400, and the documents relied upon. Copies may be obtained by contacting Elizabeth Brega or Jeannie Lee using the contact information above.

Availability of Changed or Modified Text

After considering all timely and relevant comments received, Agency may adopt the proposed regulation substantially as described in this Notice. If Agency makes modifications which 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 Agency adopts the regulation as revised. Please send requests for copies of any modified text to the attention of Elizabeth Brega or Jeannie Lee using the contact information above. Agency will accept written comments on the modified text for 15 days after the date on which it is made available.

Availability of the Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elizabeth Brega or Jeannie Lee using the contact information above.

Availability of Documents on the Internet

Copies of this Notice, the proposed text of the regulation, and the Initial Statement of Reasons can be accessed on the CalEPA website at <https://calepa.ca.gov>.