

## Initial Statement of Reasons

### BACKGROUND:

In 1993, the legislature created Health and Safety Code Chapter 6.11, requiring California’s Secretary for Environmental Protection (CalEPA) to establish a “unified hazardous waste and hazardous materials management” regulatory program (Unified Program).

The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring equivalence throughout the state regarding the consolidated adherence of established regulatory standards for coordinated and consistent implementation and enforcement of environmental and emergency management program elements. The following state agencies collaborate with CalEPA in the implementation of the Unified Program and are responsible for setting the standards for each of the Unified Program elements as indicated:

<b>State Agency with Unified Program Responsibilities</b>	<b>Unified Program Element</b>
California Environmental Protection Agency (CALEPA)	<ul style="list-style-type: none"> <li>• Hazardous Materials Release Response Plan (HMRRP or Business Plan)</li> <li>• California Accidental Release Prevention (CalARP) Program</li> </ul>
Department of Toxic Substances Control (DTSC)	<ul style="list-style-type: none"> <li>• Hazardous Waste Generator and Onsite Hazardous Waste Treatment (Tiered Permitting)</li> </ul>
CAL FIRE- Office of the State Fire Marshal (OSFM)	<ul style="list-style-type: none"> <li>• California Fire Code:               <ul style="list-style-type: none"> <li>○ Hazardous Materials Management Plans (HMMP)</li> <li>○ Hazardous Materials Inventory Statements (HMIS)</li> </ul> </li> <li>• Aboveground Petroleum Storage Act (APSA) Program</li> </ul>
State Water Resources Control Board (Water Boards)	<ul style="list-style-type: none"> <li>• Underground Storage Tank (UST) Program</li> </ul>

Under the oversight of CalEPA, enforcement of the standards for each Unified Program element are carried out by local agencies, which are generally city or county environmental health departments or fire departments. These local agencies are certified by CalEPA and are known as Certified Unified Program Agencies (CUPAs). 81 CUPAs are responsible for implementing the Unified Program at the local level. Within its local jurisdiction, each CUPA may have a formal agreement with a state or local agency to carry out the implementation of one or more Unified Program elements. Such an agency is called a Participating Agency (PA). Collectively, CUPAs and PAs are known as Unified Program Agencies (UPAs).

As a vital aspect of the Unified Program, Health and Safety Code section 25404(e)(2) requires the development and utilization of a statewide information management system for regulated businesses and CUPAs to report required Unified Program data electronically. CalEPA developed the California Environmental Reporting System (CERS) as the required statewide information management system. CERS is a statewide web-based database used by UPAs and regulated businesses to meet the mandatory Unified Program reporting requirements electronically. CERS has replaced the use of paper forms and documentation.

Some CUPAs have developed local reporting portals for regulated businesses to use, in lieu of CERS, to meet the electronic reporting requirements of the Unified Program. CUPA local reporting portals may have additional features or services used by UPAs and regulated businesses that are not available in CERS. CUPAs cannot require regulated businesses to use a local reporting portal to report required Unified Program information. Electronically reporting required Unified Program data to both CERS and a CUPA local reporting portal is prohibited. Whether CERS or a CUPA local reporting portal is used by UPAs or regulated businesses to report required Unified Program information electronically, data is automatically exchanged between CERS and the local reporting portal, making it available to all relevant agencies without duplication.

#### **PURPOSE and NECESSITY:**

Title 27 of the California Code of Regulations (27 CCR) was last revised in 2018. It is necessary to revise, reorganize, and update 27 CCR to administer and accomplish the Unified Program's objectives of coordination, consolidation, and consistency in the protection of human health, safety, and the environment. The following proposed amendments to 27 CCR are intended to better specify and clarify existing Unified Program requirements and align language and legal citations with revised statutes and regulations. Updating the language of 27 CCR will advance statewide and cross-program coordination, enhance the clarity of and further foster the consistency of implementation of the Unified Program. By providing clear and consistent regulatory language, regulated businesses, UPAs, and Unified Program state agency partners will be accomplishing the definitive goal of CalEPA in the administration and implementation of the Unified Program to reduce the impact of hazardous materials on public health and safety and the environment.

Most of the proposed amendments to 27 CCR are non-substantive, as there is no regulatory effect or impact on regulated businesses, UPAs, or state agencies having Unified Program responsibilities. Proposed non-substantive amendments to 27 CCR are generally for the purpose of establishing and maintaining consistency to the existing text as follows:

- Edits to grammar, sentence structure and formatting
- Reorganization of existing requirements
- Updated references to statutes or regulations that have changed
- Removal of duplicative text that exists in referenced statutes and regulations
- Revision, replacement, and utilization of acronyms throughout the text

The proposed amendments to 27 CCR that are considered substantive because they have an effect or impact on regulated businesses, UPAs, or state agencies having Unified Program responsibilities for the purpose of establishing consistency with current requirements, practices and procedures are provided in conjunction with each section below.

- **§15100(b)(1)(C)**  
Removed Governor’s Office of Emergency Services (Cal OES) from the list of Boards, Agencies, and Offices that provide guidance in developing the Unified Program. The passage of AB 148 (Chapter 115, statutes of 2021) transferred this responsibility to the California Environmental Protection Agency (CalEPA).
- **§15100 (b)(2)(A)(i)**  
27 CCR, Section 15100(b)(2)(A)(i) identifies Cal OES as the agency responsible for the establishment and interpretation of statewide standards for the Hazardous Material Release Response Plan (HMRRP) and California Accidental Reporting Prevention (CALARP) Programs. The passage of AB 148 transferred this responsibility to CALEPA.
- **§15110(k)**  
27 CCR, Section 15200(a)(9) requires UPAs to describe the series of enforcement actions the UPA shall initiate based on the severity of the violation. Progressive Enforcement, a term that replaces Graduated Series of Enforcement, is adopted to further identify the procedures for a regulated business that does not return to compliance. This addition defines Progressive Enforcement.
- **§15110(m)** HSC Section 25404(a)(4) defines Secretary as the Secretary for Environmental Protection. This new subsection further defines, for the purposes of this Chapter, that the definition of Secretary also includes the Assistant Secretary for Local Programs and Emergency Response, or another designee.
- **§15110(q)(1)**  
Adds Chapter 6 of the Data Dictionary for Regulated Activities (Data Dictionary), found in 27 CCR, Division 3, Subdivision 1, to the information required to be submitted by regulated businesses. Chapter 6 describes the reporting requirements for the Aboveground Petroleum Storage Act (APSA).
- **§15160(b)(1)**  
The Secretary reviews all CUPA applications that have been determined to be complete. To determine whether an applicant agency should be certified, the Secretary considers comments from Director of the Department of Toxic Substances Control, the CalEPA Assistant Secretary for Local Program Coordination and Emergency Response, State Fire Marshall, and the Executive Director of the State Water Board. The CalEPA Assistant Secretary for Local Program Coordination and Emergency Response replaced Cal OES with the adoption of AB 148.

- **§15160(d)(1)(A)**  
Section 15160(d)(1) currently identifies the Secretary’s responsibilities when issuing a Notice of Intent (NOI) to not approve the application. The addition of subparagraph (A) requires the Secretary to issue a NOI to approve an application.
- **§15160(d)(2)**  
27 CCR, Article 4 is titled Certification Process and Responsibilities. This article concerns the process to determine whether an applicant agency meets the requirements to become a CUPA. Reference to any periodic review of established CUPAs have been removed from this section and moved to Article 8 Performance Evaluations Section 15330(d).
- **§15180(e)(7)**  
Currently, there are no procedures required for issuing a Unified Program Facility Permit (UPFP). This section requires procedures to be developed in accordance with Section 15190(b).
- **§15185(e)(1)**  
Participating Agencies (PA) are also prohibited from collecting duplicative information. Changing CUPA to UPA now includes PAs from this prohibition.
- **§15186(d)**  
With changes to statute or other regulations, information currently not required may become required. To collect this information in CERS, the state agency responsible for the information may create a form to collect the information, as the regulation is currently written. Changing the word “may” to “shall” now makes the creation of a form mandatory in order that the new information may be uploaded to CERS until such time the new required information can be added to the Data Dictionary.
- **§15187(d)(1)**  
HSC Section 25507 contains the reporting requirements for hazardous materials stored onsite that meet certain thresholds, such as 55 gallons for a liquid, 500 pounds for a solid, or 200 cubic feet for a compressed gas. Some UPAs have reporting requirements that are lower than the standards in HSC Section 25507. Because of this, UPAs are required to upload the local ordinance that requires the lower threshold reporting requirements into CERS.
- **§15190(b)**  
Currently, there are no procedures required to issue a UPFP. Addition of this subsection establishes the requirements to develop procedures for issuing a UPFP. Some of these procedural requirements include review of application procedures, tracking of UPFP applications and permits, provisions for review, approval, denial, suspension or revocation of permits, and timelines for the appeal process.
- **§15190(f)(6)**  
Adds the requirement that the new UPFP operating conditions must also be in accordance with 23 CCR Section 2712(c) if the UPFP is for a UST.

- **§15190(f)(7)(A)**  
New section that requires UST permit conditions to meet the requirements of 23 CCR Section 2712
- **§15200(a)(1)**  
Currently, the regulation requires provisions to administer all program elements. The new language identifies what provisions must be identified for a complete inspection process, including pre-inspection, on and off-site inspections, post inspections, and re-inspections.
- **§15200(a)(3)**  
Added the requirement to consolidate Unified Program inspections when appropriate. For example, a regulated business that is subject to Hazardous Material Business Plan and Hazardous Waste Generator requirements would not receive two inspections over two days but would have all inspections conducted on the same day.
- **§15210(b)**  
While there is a requirement to implement a Single Fee System, the procedures were not written in a cohesive manner. This subsection requires the CUPA to establish specific procedures to create a viable Single Fee System.
- **§15210(b)(5)**  
Currently, CUPAs are conducting a periodic review of the Single Fee System. This new section will now make it an annual requirement, rather than a periodic one.
- **§15220(a)**  
CUPAs must implement a Fee Accountability Program, and while there are requirements that must be considered in the regulation, how these requirements will be addressed is not specified. Requiring the CUPA to develop procedures to implement a Fee Accountability Program ensures the requirements will be met.
- **§15220(a)(2)**  
In addition to developing and implementing a Fee Accountability Program, UPAs are required to perform an annual Review to determine whether the costs to implement the Unified Program have changed. This new paragraph requires the UPA to develop and implement an annual review procedure for the Fee Accountability Program.
- **§15220(a)(3)**  
The Fee Accountability Program annual review will be used to determine whether the single fee established by the UPA in accordance with Section 15210, is adequate to cover the necessary and reasonable costs to implement the Unified Program.
- **§15260**  
Currently, PAs are only required to meet the same training requirements as CUPAs. With the repeal of Section 15270, PAs were added to this section and will now be required to meet the same education and training requirements as a CUPA.

- **§15260(b)**  
Current staff and supervisors who are implementing the Unified Program who do not meet the new minimum educational requirements, are considered to meet the qualifications if they have been employed by a UPA or state agency implementing the Unified Program prior to the adoption of the new 27 CCR regulations.
- **§15260(e)**  
Currently, staff and supervisors are only required to attend 100 hours of training on the topics identified in the regulation. This subsection now requires all staff and supervisors to attend refresher training on these topics at least once every three years.
- **§15260(g)**  
Currently, contractors who are performing duties of an UPA are not required to meet the education and training requirements UPA staff and supervisors are required to meet. Adding this regulation now requires contractors to meet the education and training requirements as well
- **§15270**  
Currently, Participating Agencies (PAs) are only required to meet the training requirements of Section 15260. Section 15270 is repealed, and PAs shall meet all the education and training requirements of Section 15260.
- **§15290(a)(3)**  
New section that requires CUPAs to submit the Quarterly Transmittal Report to CalEPA even if no surcharge money was collected.
- **§15330(d)**  
The Secretary has the option to place a CUPA on a Performance Improvement Agreement (PIA) when the CUPA fails to meet minimum requirements. Additionally, it provides the Secretary with the ability to remove a CUPA if they are unable to comply with the PIA.
- **Appendix A**  
The current Appendix A is repealed because the CUPA Applicant Certification and the CUPA Application Cover Sheets contained old and incorrect information. New Appendix A is adopted with up to date CUPA Applicant Certification and CUPA Application Cover Sheet.
- **Appendix B**  
The current Appendix B is repealed because Table 1. Enumeration/Demographics Information, Table 2. Summary of Program Activities, Table 3. Time Allocation of Staff, and Table 4. Training and Expertise contained old and incorrect information. New Appendix B is adopted with up-to-date Table 1. Enumeration/Demographics Information, Table 2. Summary of Program Activities, Table 3. Time Allocation of Staff, and Table 4. Training and Expertise.

- **Appendix C**

The current Appendix C is repealed because the Quarterly Transmittal Report and the Annual Single Fee Report were old and outdated. Additionally, the Trade Secret Disclosure Form is not used for reporting moneys collected and should not have been a part of this Appendix. New Appendix C is adopted which contains up-to-date Quarterly Transmittal Report and Annual Single Fee Report.

- **Appendix D**

New Appendix D is adopted which has the Trade Secret Disclosure form previously located in Appendix C.

## **PROPOSED AMENDMENTS and DETAILED STATEMENT OF REASONS:**

The proposed amendments to 27 CCR and the necessity and purpose detailing the reason and rationale for each of the recommended changes are listed in the attached Excel spreadsheet. The regulatory effects of each proposed amendment are also noted in the Excel spreadsheet. Each sheet of the spreadsheet identifies the changes associated with each Article, broken down by Section.

## **STAKEHOLDER INVOLVEMENT**

Commencing in April 2021, CalEPA sponsored and chaired a 27 CCR Rulemaking Workgroup to review proposed changes to 27 CCR regulations and identify any further revisions necessary to the requirements for implementation and enforcement of the Unified Program. The 27 CCR Rulemaking Workgroup consisted of representatives from each of the state agencies with Unified Program responsibilities and representatives from the CUPA Forum Board. The CUPA Forum Board is comprised of UPAs throughout California and leads the statewide association of Unified Program agencies formed to implement the Unified Program effectively and efficiently by consolidating the administration, permits, inspections and enforcement activities of local, state and federal environmental and emergency management programs. Significant aspects of the existing 27 CCR regulations identified by CalEPA as needing language development and revision included:

- Transfer responsibility for the implementation of the HMRRP (HMBP) and CalARP Unified Program elements from Cal OES to CalEPA (§15100)
- Define Progressive Enforcement (§15110).
- Clarification that PAs are also restricted from collecting duplicative information from regulated businesses (§15185).
- Identify provisions that must be met to develop and implement a complete Inspection and Enforcement Plan (§15200)
- Clarification of the requirement to develop and implement the Single Fee System (§15210)
- Clarification of the requirement to develop and implement the Fee Accountability Program (§15220)
- Clarification of the requirement to conduct an annual review of the Single Fee System to determine if the single fee is sufficient to cover the necessary and reasonable costs identified by the Fee Accountability Program (§15220)

- Require PAs to meet the same education requirements as CUPAs (§15260)
- Revise the training program to require refresher training for all regulatory training, rather than only requiring 100 hours training (§15260).
- Clarify that Quarterly Transmittal Reports are required to be submitted even if no money was collected for the applicable quarter (§15290).
- Add the procedures and requirements for the Secretary to enter into a Program Improvement Agreement (PIA) with CUPAs identified as not complying or meeting the Unified Program standards (§15330).
- Repeal of Appendices A, B, and C and adoption of new Appendices A, B, C, and D.

The 27 CCR Rulemaking Workgroup continued to draft proposed language through June 2022.

In March and April 2022, CalEPA facilitated five informal 27 CCR workshops via Zoom Webinars to provide a means for stakeholders to comment and ask questions regarding the proposed 27 CCR amendments. In hopes of reaching out to the public to obtain as much comment as possible, each of the informal workshops were publicly advertised by way of:

- Announcement emails sent by the Unified Program listserv (a self-subscribing e-mail list managed by Unified Program staff),
- Articles posted on the Unified Program Laws and Regulations internet page (<http://www.calepa.ca.gov/cupa/lawsregs/>).

Comments were also welcomed by email to [CUPA@calepa.ca.gov](mailto:CUPA@calepa.ca.gov).

The workshops were scheduled and held as follows:

Workshop #	Date and Time	Location	Attendees
1	Monday, March 14, 2022, 9:00 AM – 11:00 AM	Zoom Webinar	All Stakeholders
2	Wednesday, March 16, 2022, 1:00 PM – 3:00 PM	Zoom Webinar	All Stakeholders
3	Tuesday, April 5, 2022, 1:00 PM – 3:00 PM	Zoom Webinar	All Stakeholders
4	Wednesday, April 6, 2022, 9:00 AM – 11:00 AM	Zoom Webinar	All Stakeholders
5	Tuesday, April 19, 2022, 1:00 PM – 2:00 PM	Zoom Webinar	PAs and CUPAs with PAs

### **EFFORT TO AVOID DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The Unified Program is unique to California; therefore, 27 CCR regulations are not in conflict with federal regulations, as there is no comparable federal program. In every effort, 27 CCR regulations include citation references to existing state and federal regulations specific to each Unified Program element rather than including the specific text or duplicating the language of those references. Under the authority of Health and Safety Code section 25404(d), it is the statutory obligation of the Secretary to consolidate, coordinate, and make consistent, to the maximum extent feasible, the requirements of the Unified Program with other requirements imposed by federal, state, regional, or local agencies upon facilities regulated by the Unified



Program. Therefore, the proposed revisions to 27 CCR Unified Program regulations are not in conflict with any other existing regulations or requirements of Unified Program regulated facilities.

## **DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS**

The proposed regulations are not inconsistent or incompatible with existing state or federal regulations as they specifically relate to the existing implementation and enforcement requirements of the Unified Program.

## **ECONOMIC IMPACTS**

Based on review of the proposed regulation changes, there are six sections that may have an economic impact on local government. These six sections include:

§15190 Permitting

§15200 Inspection and enforcement

§15210 Single Fee System

§15220 Fee Accountability Program

§15260 UPA Education and Training

§15290 CUPA to State Reporting

## **ECONOMIC IMPACT ON LOCAL GOVERNMENT**

To assist in determining the economic impact on local government 10% of all Unified Program Agencies (UPAs) were surveyed to determine what the impact would be on them both financially and in the number of hours required to effect and implement the changes.

Based on the mid-range salary for a Senior Environmental Scientist (Supervisor) \$11,250/month or \$64/hour, the cost to implement the economically impacted changes per UPA are shown below:

Source: [https://www.calhr.ca.gov/Pay%20Scales%20Library/PS\\_Sec\\_15.pdf](https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf)

§15190 27 hours \* \$64 = \$1,728

§15200 17 hours \* \$64 = \$1,088

§15210 48 hours \* \$64 = \$3,072

§15220 67 hours \* \$64 = \$4,288

§15260 27 hours \* \$64 = \$1,728

§15290 03 hours \* \$64 = \$192

The total economic impact on UPAs to effect the changes proposed in this regulation are:

189 hours and \$12,096 per UPA which equates to a minimal economic impact on local government.

## **Other Proposed Amendments**

For some proposed amendments to 27 CCR, there are no feasible alternatives to consider, as the revisions are essential due to the necessity of implementation and enforcement of various existing state regulations and requirements for Unified Program elements.

The remainder of the proposed regulations improve the clarity and consistency of 27 CCR and the implementation of the Unified Program and thus no other alternative was considered for these changes. Such consistency and clarity will allow for more effective protection of the public health and safety and the environment by the CUPAs and the Unified Program state agencies.

It is the opinion of CalEPA and the state agencies with Unified Program responsibilities that no other reasonable alternatives will:

- be more effective in carrying out the purpose of clarifying and making consistent the existing language
- be as effective and less burdensome to affected regulated businesses and regulators
- be more cost-effective for regulated businesses and regulators and equally effective in implementing the statutory requirements of the Unified Program.

## **DOCUMENTS AND STUDIES RELIED ON**

### **§15260 UPA- Education and Training**

- Education Code Sections 66010, 66014.8, 94301, 94813, 94814
- California Department of Consumer Affairs: Bureau for Private Postsecondary Education

### **§15330 Evaluation of CUPAs and PAs**

- California Department of Human Resources, State Personnel Board Salary Schedule: Environmental Scientist
  - State of California Appointment Calendar (OSP 101) State Pay Period Calendar for 2022