

Unified Program Regulations

45-day Public Notice and Comment Period

NOTICE IS HEREBY GIVEN that the California Environmental Protection Agency (CalEPA) proposes to amend California Code of Regulations, (CCR), title 27, Division 1, Subdivision 4, Chapter 1, sections 15110 – 15330, and Appendices A – D. These proposed regulations include significant changes that impose new reporting and procedural requirements and details, as well as non-significant amendments that are considered administrative in nature and improve the organizational structure of existing requirements and clarify existing elements of reports and forms.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established beginning March 24, 2023, and closing on May 8, 2023. To be considered relevant to this rulemaking proposal, written comments must be received/postmarked by May 8, 2023. Written comments can be submitted by:

Mail to:

CalEPA Unified Program
P.O. Box 1815
Sacramento, California 95812

E-mail to:

cupa@calepa.ca.gov

Representatives of the CalEPA Unified Program will hold a virtual public hearing regarding the proposed title 27 regulations on May 9, 2023, from 10:00 am to 11:00 am, using the following Zoom meeting platform link:

Join Zoom Meeting

<https://us02web.zoom.us/j/84330351494?pwd=UE5rNnorT3NFeHkybUI2NVI4YXJGZz09>

Meeting ID: 843 3035 1494

Passcode: 010611

Any person may present oral comments relevant to this rulemaking proposal at the hearing. Oral inquiries will only become part of the official rulemaking record if presented at the scheduled public hearing. To be considered by CalEPA before the proposed regulations will be adopted, amended, or repealed, all supporting documents, statements, arguments, or contentions regarding this rulemaking must be submitted in writing no later than May 8, 2023.

Anyone who wishes to speak at the virtual public hearing should register prior to the hearing by sending an email to cupa@calepa.ca.gov indicating they wish to speak during the hearing. Registered persons will be heard in the order of registration.

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Persons who did not register will be given an opportunity to speak once all registered persons have been heard, so long as time allows.

To request additional special accommodations or language needs, please contact Jennifer Rohde, Executive Assistant, Unified Program, CalEPA, at (916) 322-2155 or by e-mail at Jennifer.Rohde@calepa.ca.gov before hearing date.

AUTHORITY AND REFERENCE

The Secretary of CalEPA makes these amendments under the authority granted by Health and Safety Code Section 25404, subdivisions (b), (c), (d), and (e); Section 25404.6, subdivision (c); and Government Code Section 16.5 subdivision (c). These sections require the Secretary to adopt regulations that would implement, interpret, or make specific Health and Safety Code Chapter 6.11 for the Unified Program.

INFORMATIVE DIGEST

Existing Law

Senate Bill 1082 of 1993 (California Health and Safety Code, Chapter 6.11, Section 25404) required California's Secretary for Environmental Protection to establish a "unified hazardous waste and hazardous materials management" regulatory program (Unified Program) by January 1, 1996. 27 CCR provides for the implementation of the Unified Program, which consolidates, coordinates, and makes consistent the administration, permits, inspections and enforcement activities of the following six program elements:

- Hazardous Materials Release Response Plan and Inventory (HMRRP or Business Plan)
- California Accidental Release Prevention (CalARP) Program
- Underground Storage Tank (UST) Program
- Aboveground Petroleum Storage Act (APSA) Program
- Hazardous Waste Generator and Onsite Hazardous Waste Treatment) (Tiered Permitting)
- California Fire Code: Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS).

Policy Statement Overview

To interpret existing Unified Program regulations, specify and coordinate certain aspects of Unified Program element requirements, clarify current practices and procedures, and to align with new and revised statutes and regulations relative to the implementation and enforcement of the Unified Program, revision to the text of 27 CCR is necessary. By ensuring statewide and cross-program clarity and consistency in the interpretation of 27 CCR regulations for implementation and enforcement, the Unified

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Program will be working towards accomplishing the definitive goal of reducing the impact of hazardous materials on public health and the environment.

Proposed Regulations

The proposed revisions to 27 CCR regulation language are briefly summarized as follows:

- I. Non-substantial changes having no effect or impact on regulated businesses, Unified Program Agencies, or state agencies with Unified Program responsibilities, and for the purposes of establishing and maintaining consistency to the existing text are as follows:
 1. Edits to grammar, sentence structure and formatting.
 2. Reorganization of existing requirements.
 3. Updated references to statutes and regulations that have changed.
 4. Removal of duplicative text that exists in referenced statutes and regulations.
 5. Revision, replacement, and utilization of acronyms throughout the text.

- II. Substantial changes that have an effect or impact on regulated businesses, Unified Program Agencies (UPAs), or state agencies with Unified Program responsibilities, and for the purpose of establishing consistency with current requirements, practices and procedures are as follows:
 1. **Section 15100(b)(1)(C)**
Removed Governor's Office of Emergency Services (Cal OES) from the list of Boards, Agencies and Offices that provides guidance in developing the Unified Program. The passage of AB 148 (Chapter 115, statutes of 2021) transferred the responsibility to the California Environmental Protection Agency (CalEPA).

 2. **Section 15100(b)(2)(A)(i)**
Responsibility for the establishment and interpretation of statewide standards for the Hazardous Materials Release Response Plan (HMRRP) and California Accidental Release Prevention (CalARP) programs was transferred from Cal OES to CalEPA with the passage of AB 148.

 3. **Section 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

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regulated business that does not return to compliance. This addition defines Progressive Enforcement.

- 4. Section 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
- 5. Section 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).
- 6. Section 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.
- 7. Section 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.
- 8. Section 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).

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- 9. Section 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).
- 10. Section 15185(e)(1)**
Participating Agencies (PA) are also prohibited from collecting duplicative information. Changing CUPA to UPA now includes PAs from this prohibition.
- 11. Section 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.
- 12. Section 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 UPA’s 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.
- 13. Section 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.
- 14. Section 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.

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- 15. Section 15190(f)(7)(A)**
New section that requires UST permit conditions to meet the requirements of 23 CCR Section 2712.
- 16. Section 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-site inspections, post inspections, and re-inspections.
- 17. Section 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.
- 18. Section 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.
- 19. Section 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.
- 20. Section 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.
- 21. Section 15220(a)(2)**
In addition to developing and implementing a Fee Accountability Program, UPA's 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.

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- 22. Section 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.
- 23. Section 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.
- 24. Section 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.
- 25. Section 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.
- 26. Section 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.
- 27. Section 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.
- 28. Section 15290(a)(3)**
New section that requires CUPAs to submit the Quarterly Transmittal Report to CalEPA even if no surcharge money was collected.

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29. Section 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.

30. 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.

31. 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.

32. 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.

33. Appendix D

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

Consistency/Compatibility Evaluation

The propose Unified Program regulations are consistent and compatible with existing state and federal regulations.

Benefits Anticipated by the Proposed Amendments

CalEPA anticipates that the proposed amendments to the regulations will benefit the protection of public health and safety, worker safety and the environment. Identifying the requirements for issuing a Unified Program Facility Permit will make the process consistent statewide. Requiring annal refresher training allows for more qualified and

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able inspectors and more consistent. Requiring PAs to meet the same education requirements as its parent CUPA ensures a consistent knowledge base.

The proposed amendments improve the overall clarity, consistency and coordination of Unified Program regulations to ensure compliance with implementation and enforcement at the local regulatory level.

California Environmental Quality Act (CEQA) Compliance

CalEPA has found this rulemaking is not subject to CEQA as it is considered ministerial.

Peer Review

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

Business Report

CalEPA has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: CalEPA has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to

Reimbursement: CalEPA has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to Government Code part 7, division 4, section 17500 et seq, or other non-discretionary costs to local agencies.

Cost or Savings to Any State Agency: CalEPA has made a preliminary determination that the proposed regulations will have no impact on state agencies with Unified Program responsibilities.

Cost or Savings to Any Local Agency: CalEPA has made a preliminary determination that the proposed regulations will have no impact on local agencies.

Cost or Savings in Federal Funding to the State: CalEPA has made a preliminary determination that the proposed regulations will have no impact on federal revenue or costs.

Effect on Housing Costs: CalEPA has made an initial determination that there will be no impact on housing costs.

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Cost Impacts on Representative Private Persons or Businesses: CalEPA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: CalEPA has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Economic Impact Analysis Assessment Statement:

(A) *Creation or elimination of jobs within California* – CalEPA has made a preliminary determination that no jobs will be created or eliminated in California because of the proposed regulations.

(B) *Creation of new businesses or the elimination of existing businesses within California* – CalEPA has made a preliminary determination that no businesses will be created or eliminated in California because of the proposed regulations.

(C) *Expansion of businesses currently doing business in California* – CalEPA has made a preliminary determination that no businesses in California will be expanded because of the proposed regulations.

(D) *Anticipated Benefits* – CalEPA anticipates that the proposed amendments to the regulations will benefit the protection of public health and safety, worker safety and the environment. Identifying the requirements for issuing a Unified Program Facility Permit will make the process consistent statewide. Requiring annual refresher training allows for more qualified and able inspectors. Requiring PAs to meet the same education requirements as its parent CUPA ensures a consistent knowledge base. Developing procedures for the Single Fee System and the Fee Accountability Program ensure costs required to implement the Unified Program are kept at a sufficient level to ensure the CUPA has operating funds, while at the same time, ensuring regulated businesses are not paying more than what is fiscally required.

Effect on Small Businesses: CalEPA has determined that provisions of this rulemaking will have no effect on small businesses. The proposed regulations affect state and local agencies who implement the Unified Program only.

CONSIDERATION OF ALTERNATIVES

CalEPA must determine that no reasonable alternative considered by CalEPA or that has been otherwise identified and brought to the attention of CalEPA:

Would be more effective than carrying out the purpose for which the action is proposed;

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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.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of this Public Notice, the Initial Statement of Reasons, and the text of the proposed regulations are posted to CalEPA's website: <https://calepa.ca.gov/cupa/>.

INQUIRIES/COMMENTS REGARDING THE PROPOSED REGULATIONS

Written comments, procedural inquiries, and requests for documents regarding the proposed regulations may be directed to the CalEPA Unified Program by:

Mail to:

CalEPA Unified Program
Attn: Steven Gailey or John Paine
P.O. Box 1815
Sacramento, California 95812

E-mail to:

cupa@calepa.ca.gov

Use "27 CCR Regulation Comment" as the subject line.

Points of Contact:

Steven Gailey
916.318.8157
Steven.Gailey@calepa.ca.gov

or

John Paine
916.327.5092
John.Paine@calepa.ca.gov

To be included on a mailing list regarding this regulation package, and to receive updates of this rulemaking, please send an email to: cupa@calepa.ca.gov and be sure to include:

- Name
- Mailing address
- Email address, if preferred

POST-HEARING CHANGES

After the close of the 45-day comment period, CalEPA may adopt the proposed regulations. If substantial changes are made, the modified text will be made available

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for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written or oral comments on the specific proposed regulations will be sent a copy of the modified text.

CalEPA will prepare a Final Statement of Reasons, which updates the Initial Statement of Reasons, and summarizes how CalEPA addressed comments received. The Final Statement of Reasons also includes other materials, as required by Government Code section 11346.9. A copy of the Final Statement of Reasons may be obtained from the CalEPA website: <https://calepa.ca.gov/cupa/>, or a copy may be obtained by sending an email request to: cupa@calepa.ca.gov.

The date the rulemaking is filed with the Secretary of State and the effective date of the adopted regulations will be posted on the CalEPA website: <https://calepa.ca.gov/cupa/>.