

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
PROPOSED AMENDMENTS TO THE ENVIRONMENTAL ENFORCEMENT AND
TRAINING GRANT PROGRAM REGULATIONS

NOTICE OF MODIFICATION OF TEXT OF PROPOSED REGULATION TITLE 27, CALIFORNIA CODE OF
REGULATIONS
PROPOSED AMENDMENTS TO DIVISION 1, SUBDIVISION 0.5, CHAPTER 2, ARTICLE 1

May 11, 2023

As required by Government Code section 11346.8(c), and Title 1, section 44 of the California Code of Regulations, the California Environmental Protection Agency (CalEPA) is providing notice of changes to the proposed regulatory action to amend California Code of Regulations, Title 27, Division 1, Subdivision 0.5, Chapter 2, Article 1. This notice initiates a public comment period beginning May 11, 2023, that will close on May 31, 2023. Details on how to comment are given below. The Notice of Proposed Rulemaking was published on March 11, 2022, in the California Regulatory Notice Register (Register No. Z2022-0301-03). This initiated a 45-day public comment period, which closed on April 26, 2022. No public hearing was requested and one was not held. No comments were received during the comment period. The final rulemaking package was submitted to and received by the Office of Administrative Law (OAL) on February 1, 2023. OAL issued a Notice of Disapproval of Regulatory Action on March 16, 2023 on the grounds of clarity and incorrect procedure, and a Disapproval Decision on March 23, 2023. CalEPA proposes to modify the text of the proposed regulation to address the issues raised by OAL in its Disapproval Decision.

Summary of Modifications to Proposed Rulemaking

The Secretary of the California Environmental Protection Agency (CalEPA) administers the Environmental Enforcement and Training Program. The Legislature adopted some changes to the Program’s authorizing statute in 2021, through Senate Bill (SB) 157. The proposed rulemaking would update the existing regulations to reflect changes to the Program made by SB 157. In addition, the proposed rulemaking will remove outdated technology references, such as references to fax, add more clear criteria to the application, reporting, and auditing provisions, and re–organize the provisions to add clarity and make the regulation easier to follow. Finally, the proposed rulemaking will also add a severability provision.

The modifications now being made to the proposed regulation address the issues raised by OAL in its Disapproval Decision.

- Proposed subsection (a)(4)(C)(2) of section 10015: The term “overburdened communities” is being replaced with “populations disproportionately burdened by pollution” as referenced in Penal Code sections 14300 and 14301, to avoid using a term that may not have a meaning generally familiar to those “directly affected.” (Cal. Code Regs., tit. 1, sec. 16, sub. (a)(3).)
- Proposed subsection (a)(7) of section 10015 included as an element of a grant application “Any other information requested by the Secretary to evaluate the application.” OAL observed that

as written, the inclusion of the proposed subsection (a)(7) left a grant applicant no way of knowing information required to be included in an application. Proposed subsection (a)(7) is being stricken to that there is no ambiguity regarding the information to be included in an application.

- Proposed subsection (c)(2) of section 10016 addresses one of the criteria to be used by the Secretary in awarding grants. Previously proposed language included the phrase “various applications.” OAL observed this phrase could reasonably and logically be interpreted to have more than one meaning. The phrase “when comparing the narrative/work plan descriptions under section 10015(a)(4) of this Article of the various applications” is being stricken to address this concern.
- Proposed subsection (d)(1) of Section 10016 describes the grant application review and selection process. Previously proposed language included the word “compare.” OAL observed this language was unclear as to how applications will be compared or how the comparison will result in selection of grant awardees. The word “compare” is being stricken to address this concern.
- Proposed subsection (d)(3) of section 10016: Previously proposed language provided that the Secretary “may select projects for funding from the applications received.” OAL observed that the word “may” made it unclear when the Secretary will and will not select grant projects for funding. The word “may” is being replaced with “will” to address this concern.
- Proposed subsection (d)(3) of section 10016: OAL observed that previously proposed language made it unclear when grant applicants will or will not be required to provide additional information to complete the award process. The previously proposed language is being stricken and the language is reverting to the existing regulatory text.
- Proposed subsection (d) of section 10017: Previously proposed language authorized an entity contributing funds to designate its contribution for one or more of the purposes set forth in Penal Code section 14306 through 14309. OAL observed that the language could be interpreted to allow an entity to designate contributions for specific program elements set forth in the Penal Code or to designate contributions for a specific grant project intended to implement Penal Code purposes, which would run afoul of subdivision (b) of Penal Code section 14303. To address this concern, the word “purposes” is being replaced with “program elements.”
- Proposed subsection (a) of section 10018 addresses reporting requirements for grant recipients. OAL observed that the proposed language did not distinguish between the required contents of quarterly and final reports but the Initial Statement of Reasons stated that the final report was to cover the entire life of the project. The proposed regulatory text has been modified to conform to the intent stated in the Initial Statement of Reasons.
- Proposed subsection (a)(3) of section 10018 required reports to contain “Any other information requested by the Secretary.” OAL observed that the previously proposed language was vague

and not readily understandable by directly affected persons. This language is being stricken to address this concern.

- Proposed subsection (b) of section 10018: Previously proposed language authorized the Secretary to review, use, and disseminate grant recipients' reports as appropriate. OAL observed that the language did not give regulated entities a clear understanding of how the Secretary will exercise their discretion. The previously proposed language is being stricken and the language is reverting to the existing regulatory text.
- Proposed subsection (c) of section 10018: Previously proposed language provided "Any failure to submit a required report may result in termination of the grant." OAL observed, among other things, that this language did not give regulated entities a clear understanding of what criteria the Secretary would use in considering whether to terminate a grant. The previously proposed language is being stricken to address this concern.
- Proposed section 10019 contained severability language. The previously proposed language is being modified to reflect the agency's intent, and not to project a court's determination.
- Other non-substantive modifications are being made to ensure consistency of terminology and appropriate formatting.

Accessing the Modified Regulatory Text

The full regulatory text, with all the modified language provided in double underline and double strikeout format, is available on the CalEPA website at www.oehha.ca.gov or on request from Jessica Aresca at Jessica.aresca@calepa.ca.gov

How to Provide Public Comments

In accordance with the Administrative Procedure Act, interested members of the public may present comments in writing by postal mail or by electronic submittal. The public comment period for this regulatory action will begin on May 11, 2023. Written comments must be submitted on or after May 11, 2023, and received no later than May 31, 2023. Comments submitted outside that comment period are considered untimely. CalEPA may, but is not required to, respond to untimely comments, including those raising significant environmental issues.

Comments submitted must be addressed to one of the following:

Postal mail:

California Environmental Protection Agency
Jessica Aresca
1001 I Street, 25th Floor
Sacramento, CA 95814

Electronic submittal:

eetagrants@calepa.ca.gov

Please note that under the California Public Records Act (Gov. Code, §§ 6250 et seq.), your comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, CalEPA requests, but does not require, that persons who submit written comments on this item reference the title of the proposal in their comments, to facilitate review.