

TITLE 19. PUBLIC SAFETY

DIVISION 2. CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

[Notice published September 20, 2013]

NOTICE OF PROPOSED RULEMAKING

The California Governor's Office of Emergency Services ("Office") proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Office will hold a public hearing starting at 2 p.m. on Monday, November 4, 2013 at the Multipurpose Room, California Governor's Office of Emergency Services, 3650 Schriever Avenue, Mather, California 95655. This room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written, comments relevant to the proposed regulatory action to the Office. Comments may also be submitted by facsimile (FAX) at (916) 845-8734, or by e-mail to jack.harrah@calema.ca.gov (Please entitle the e-mail "CalARP COMMENTS" in capital letters). The written comment period closes at 5:00 p.m. on November 4, 2013. The Office will consider only comments received at that time. Submit comments to:

Hazardous Materials Section, Fire and Rescue Division
California Governor's Office of Emergency Services
ATTN: Jack Harrah
3650 Schriever Avenue
Mather, CA 95655

AUTHORITY AND REFERENCE

Health and Safety Code Section 25534.05 authorizes the Office to adopt these proposed regulations. The proposed regulations implement, interpret and make specific sections 25533 to 25543.3 of the Health and Safety Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Accidental Release Prevention (CalARP) program was created by Senate Bill 1889, effective January 1, 1997, replacing the similar California Risk Management and Prevention Program (RMPP). The CalARP program was intended to implement the Federal Risk Management Plan program, a Clean Air Act program, pursuant to Part 68 of Title 40, Code of Federal Regulations (CFR).

Three tables of chemicals or “regulated substances” are regulated under the CalARP program. Tables 1 and 2, found in section 2770.5 of Title 19, California Code of Regulations (19 CCR), Chapter 4.5 were taken from the tables found in 40 CFR, Part 68, section 68.130. Table 1 is the Federal table of toxic substances, and Table 2 is the Federal table of flammable substances. Table 3 is the “California specific” table of toxic substances. A stationary source that has a regulated substance in a process in a quantity over the threshold indicated in Table 1 must prepare a risk management plan (RMP) both for the CalARP program, and for the Federal RMP program. If the stationary source has a regulated substance in a process in a quantity over the threshold indicated in Table 3, but not Table 1, then a CalARP RMP may be required, but not a Federal RMP.

One of the provisions of SB 1889 was a petition process for any person to propose changes to Table 3, either to raise or lower the threshold amount, or to either add or delete a chemical. A section was reserved in the original CalARP regulations, but, up to now, this petition process was never added. This action corrects that oversight.

The original regulations also took the toxic “endpoint” data from Part 68 of 40 CFR. The “endpoint” is the concentration of the regulated substance in air above which incapacitation and permanent injury may occur. It is used to estimate the extent of an accidental release plume. This means that data is available for the 77 chemicals on Table 1, but not for over 200 chemicals on Table 3, for the purpose of estimating the impact of an accidental release on the surrounding population and the environment. A full set of toxic endpoints for all of Table 3 regulated substances has been provided to the Office by the Office of Environmental Health Hazard Assessment, as provided for in 19 CCR 2750.2, and is incorporated into Appendix A by this action.

Anticipated Benefits of the Proposed Regulation:

The overall objective of the regulation is to ensure the protection of public health, public safety and the environment. An additional benefit is increased worker safety at industrial plants handling hazardous materials.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Office has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Office has concluded that these are the only regulations that concern offsite consequences of industrial processes using listed regulated substances.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Office has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The Office is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action *will* directly affect businesses statewide, including some small businesses, the Office concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, *will not* be significant.

Significant effects on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Office concludes that it is (1) unlikely that the proposed amendment will eliminate any jobs in California, (2) unlikely that the proposed amendment will create any jobs in California, (3) unlikely that the proposed amendment will create any new businesses in California, (4) unlikely that the proposed amendment will eliminate any existing businesses in California, and (5) unlikely that the proposed amendment will cause the expansion of any business in California.

Benefits of the proposed action: The proposed regulations will help to make large-scale chemical operations safer for human health, safety, the environment and property. They will help planners and responders to respond to potential chemical releases.

Small business: It is not anticipated that the proposed regulation amendments will affect small businesses. The reason for this is that the CalARP program mainly affects large-scale industrial processes. Small businesses typically do not handle the regulated chemicals, or, if they do, they typically do not handle a sufficient quantity of the chemicals to reach the threshold for regulation.

CONSIDERATION OF ALTERNATIVES

The two major elements of proposed amended regulations are a direct mandate of the Legislature, as signed by the governor, and chaptered in the Health and Safety Code. However, in accordance with Section 11346.5(a)(13) of the Government Code, the Office must determine that no reasonable alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective in implementing the statutory policy or other provision of law.

The Office invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jack Harrah, Senior Emergency Services Coordinator
Hazardous Materials Section, Fire and Rescue Division
California Governor's Office of Emergency Services
3650 Schriever Ave, Mather, CA 95655
Telephone: (916) 845-8759

The backup contact person for these inquiries is:

Thomas E. Campbell, Deputy Chief for Hazmat
Fire and Rescue Division
California Governor's Office of Emergency Services
3650 Schriever Ave, Mather, CA 95655
Telephone: (916) 845-8751

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Harrah at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED AMENDED REGULATIONS, AND RULEMAKING FILE

The Office 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 regulations, the initial statement of reasons and a draft small business impact study. Copies may be obtained from the Office upon request to Jack Harrah at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Office may adopt the proposed regulations if they remain substantially the same as described in this notice. The Office may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least fifteen (15) days before the Office adopts the regulations as revised. The modified text can be requested from the contact person listed above, or may be accessed on the CalEMA (or Cal OES) Website. The Office will accept written comments on the modified regulations for 15 days after the date on which the text is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Office will prepare a Final Statement of Reasons when all comments have been received and considered, prior to closing the rulemaking record. The statement may be requested from the contact person listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format can be accessed through our website at: <http://www.calema.ca.gov/> or <http://www.caloes.ca.gov> .

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