



NOTICE OF PROPOSED MODIFICATION TO  
CALIFORNIA CODE OF REGULATIONS

Title 19: Division 2, Chapter 4.5

New Article 6.5 of the California Accidental Release Prevention (CalARP) Program  
Program 4 for Petroleum Refineries

Pursuant to the requirements of Government Code section 11346.8 (c), and Section 44 of Title 1 of the California Code of Regulations, the Governor's Office of Emergency Services (Cal OES) is providing notice of changes made to proposed Article 6.5 of the CalARP Program. These changes are in response to comments received regarding the proposed regulation published in the California Regulatory Notice Register on July 15, 2016.

On August 31, 2016 Cal OES and the California Environmental Protection Agency (Cal EPA) held a public hearing to consider changes to Title 19 of the California Code of Regulations. Cal OES and Cal EPA received oral and written comments on the initial proposed text. Cal OES and Cal EPA worked collaboratively with the Division of Industrial Relations to consider the comments received and incorporate the attached modifications.

The most significant changes are summarized below:

- Several changes to Section 2735.3 (Definitions) were made, including the following:
  - Added language in subsection (t) specifying that an "Employee representative," where there is no union at the stationary source, must be on-site and qualified for the task.
  - Inserted a definition of "Hierarchy of Hazard Control" as subsection (x) that reads: "'Hierarchy of Hazard Control' means prevention and control measures, in priority order, to eliminate or minimize a hazard. Hazard prevention and control measures ranked from most effective to least effective are: First Order Inherent Safety, Second Order Inherent Safety, and passive, active and procedural protection layers."

- Adjusted the definition of “major change” in subsection (hh) to clarify the three components of the definition and clarify that operational changes outside previously established safe operating limits are included in the definition.
- Made minor clarifying changes to the definition of “major incident” in subsection (ii).
- Made clarifications to the definition of “process” in subsection (yy) to specify that the definition includes processes under partial or unplanned shutdown, but does not include ancillary administrative and support functions, including office buildings, laboratories, warehouses, maintenance shops, and change rooms.
- Clarified the definitions of “process equipment” and “process safety culture” in subsections (zz) and (bbb) to emphasize that the regulations focus only on the safety of the process and not on general equipment or safety.
- Specified that the definitions of “qualified operator” in subsection (ggg) and “RAGAGEP” in subsection (jjj) apply only to Article 6.5.
- Revised the definition of “temporary pipe or equipment repair” in subsection (sss) to remove unnecessary specificity and to ensure that the definition focuses on repairs on a process or that could affect a process.
- Made revisions to Section 2745.7.5 to focus the information required and to conform to other components of the regulation.
- Section 2762.0.1, was revised to clarify that although all processes in the refinery are covered by Program 4 requirements, all portions of the refinery may not be covered by the requirements.
- In response to concerns about the potential difficulty and inadvisability of actively communicating all information to contract employees, Section 2762.1(a) now states: “The process safety information shall be made available to all employees and relevant process safety information shall be made available to affected employees of contractors.” Conforming changes were also made in several other places in the regulation.

- In Section 2762.1(d) and in Section 2762.5(b) and (c) where RAGAGEP is referenced, internal “practices” (rather than standards) are allowed to be used, provided that these practices are more protective (not just equally protective) and ensure safe operation.
- In Section 2762.2(c)(2), the provision was narrowed in response to concerns of infeasibility to include only “publicly documented” incidents.
- Section 2762.2(f) and Section 2762.13(b) were amended in response to comments from labor and NGOs to ensure that the Hierarchy of Hazard Control analysis be done “in a timely manner” after completion of the PHA. Implementation of the PHA recommendations also remains subject to the timelines specified in Section 2762.16.
- In response to concerns that “Revalidation” is defined for other CalARP Programs and that the definition is not the same as the requirements in Program 4, this language was changed in several places to read: “...shall be updated in accordance with this section at least once every five (5) years consistent with the requirements of this section.” (See e.g., Section 2762.5(e)(2)), Section 2762.13(c)).
- In Section 2762.5(e)(3), minor edits were made in response to comments that the requirement to conduct a Damage Mechanism Review (DMR) should be conducted if a major change has the potential to introduce a damage mechanism.
- In Section 2762.6(f) several changes were made to clarify the training requirements for employees and contractors prior to implementing a major change.
- Added language to Section 2762.6(b) to clarify that management of change must be conducted for new and revised operating procedures and new and revised maintenance procedures.
- In 2762.6(j) a threshold level of 15% was included to further define “substantively increasing employee responsibilities” for the purposes of triggering the management of organizational change requirement.
- The requirement that a stationary source manager or his or her designee certify the accuracy and completeness of the MOOC in Section 2762.6(k)(5) requiring certification by the stationary source manager or his or her designee was changed to make the

certification based on “information and belief formed after reasonable inquiry.” This revision is reflected in the renumbered Section 2762.6(k)(4)

- In Section 2762.7(a), language was added to clarify that a Pre-Startup Safety Review is also required after partial or unplanned shutdowns.
- In Section 2762.7(b)(5), the language was narrowed to clarify that only those employees affected by the change must be trained.
- In Section 2762.8(c), the language requiring the compliance audit report to provide “answers” was deleted for clarity. The section was also changed to require that the owner or operator document only written comments from employees and employee representatives.
- The incident investigation report required in Section 2762.9(i)(3) now includes an explicit requirement to include all the data required under 2750.9(b).
- Language was added to 2762.9(k) to clarify that incident investigation reports only must be provided upon request to employee representatives and contract employees.
- The sentence in Section 2762.9(n) was removed.
- In Section 2762.10(a)(1), the language “from the earliest possible point” was deleted and replaced by “throughout all phases,” in response to a comment from labor stakeholders.
- In Section 2762.10(b), language mentioning a collective bargaining agreement was deleted and the word “representative” was changed to “employee(s).”
- Section 2762.12(c) was changed slightly in several places to better align the language in CalARP with that in the PSM regulation.
- The language in Section 2762.13(e)(3) was clarified to better specify the HCA team’s obligations with regard to publically available information on inherent safety measures.
- In Section 2762.14(b), the following language was added: “If the owner or operator has conducted and documented a PSCA up to eighteen (18) months prior to the effective date of this section, and that PSCA includes the elements identified in this subsection, that

PSCA may be used to satisfy the employer's obligation to complete an initial PSCA under this subsection.”

- The language in 2762.14(f) was also changed to require that the owner or operator, rather than the PSCA team, implement changes to ensure effectiveness of corrective actions in a timely manner not to exceed six months.
- In 2762.14(h), the timeline for communicating the report and action plan to employees was changed from thirty to sixty days.
- Language in Section 2762.15(d) was amended slightly to clarify that the owner or operator shall include an assessment of human factors in both new and revised operating and maintenance procedures.
- In Section 2762.16(a), the language “The stationary source manager shall be responsible for compliance with this Article” was deleted, and replaced with: “The owner or operator shall designate the stationary source manager as the person with authority and responsibility for compliance with this section.”
- Section 2762.16(e)(4) was changed slightly to read: “Each recommendation that is changed or rejected by the owner or operator shall be communicated to onsite team members for comment and made available to offsite team members for comment.” Conforming changes were also made in (e)(6).
- Section 2762.16(e)(5) was changed to specify that only written comments from team members must be documented.
- Section 2762.16(e)(12) was amended to include parallel language to that already found in (e)(11) “...unless the employer demonstrates in writing that it is infeasible to do so.”
- Section 2762.16(f)(2) was changed to delete the word “reports of” and include the word “correct” in the following: “The owner or operator shall prioritize and promptly respond to and correct hazards.”
- Section 2775.7 on Unified Program Agency Training was deleted.

A copy of the full text of the regulation, with modifications clearly indicated, is attached for your reference. If you have any comments regarding the proposed changes, **Cal OES will accept written comments between February 14, 2017 and March 3, 2017 at 5:00pm.** All written comments must be submitted to Cal OES **no later than 5:00pm on March 3, 2017.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to: [Hazmatreporting@caloes.ca.gov](mailto:Hazmatreporting@caloes.ca.gov). Comments submitted in paper form may be mailed or delivered in person to:

CalOES  
Attn: Stephanie Ogren  
3560 Schriver Ave  
Mather, CA 95655

All written comments received by March 3, 2017 pertaining to the indicated changes will be reviewed and responded to by the Cal OES staff as part of the compilation of the rulemaking file. **Please limit your comments to the modifications to the proposed regulatory language.** There is no need for commenters to incorporate by reference their earlier comments on the regulation as Cal OES will respond to all relevant comments in the Final Statement of Reasons for the regulation.

**Inquiries concerning the proposed changes may be directed to Cal OES attorney, Stephanie Ogren at (916) 845-8322 or Senior Emergency Services Coordinator, Jack Harrah at (916) 845-8759.**