

NOTICE OF PROPOSED ACTION

**CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS –
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
GENERAL INDUSTRY STANDARDS, SECTION 5189.1**

PROCESS SAFETY MANAGEMENT FOR PETROLEUM REFINERIES

NOTICE IS HEREBY GIVEN that the California Department Industrial Relations – Occupational Safety and Health Standards Board (Board) proposes to amend regulations governing process safety management for petroleum refineries, which is established in Title 8 of the California Code of Regulations, section 5189.1. If approved, the proposed regulations would amend and clarify: the definitions of employee representative, highly hazardous material, and major change; the requirements pertaining to the Hierarchy of Hazard Control Analysis; and with respect to employee participation in PSM activities, how employers will allow for effective participation by employees engaged in such activities.

PUBLIC HEARING

A public hearing has been scheduled at which time any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will continue until all oral comments are received, and will be held as follows:

Date: January 15, 2026

Location: Office of Tax Appeals – Board Room
400 R Street
Sacramento, CA 95811

OR

Join via ZOOM

<https://tkoworks.zoom.us/j/87501250331> (Webinar ID: 875 0125 0331)

Call-in Number: (669) 444-9171

Conference ID: 875 0125 0331

Time: 10:00 AM

Pre-hearing registration will be conducted prior to the hearing. Those registered will be heard in order of their registration. Anyone else wishing to speak at the hearing will be afforded an opportunity after those registered have presented their oral comments. The time allowed for each person to present oral comments may be limited if a substantial number of people wish to speak.

Individuals presenting oral comments are requested, but not required, to submit a written copy of their statements. The hearing will be adjourned immediately following the completion

of the oral comments.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or their authorized representative, may submit written comments relevant to this proposed regulatory action. All written comments must be received by the Board no later than 5:00 PM on January 15, 2026, in order to be considered. Written comments may be submitted by mail or email, as follows:

By mail to: Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, STE. 350
Sacramento, CA 95833

ATTN: PSM Section 5189.1 – Ruth Ibarra, SSM I

By email to: oshsbrulemaking@dir.ca.gov

PERMANENT ADOPTION OF REGULATIONS

Following the public comment period, the Board may adopt the proposals, as described below, or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of minor technical or grammatical changes, the text of any modified proposal will be available for at least 15 days prior to its adoption from the contact person(s) designated in this notice and will be mailed to those persons who have submitted written or oral testimony related to this proposal or who have requested notification of any changes to the proposal. The Board will accept written comments on the modified regulations during the 15-day period.

AUTHORITY AND REFERENCE

Labor Code section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards. The proposed regulations implement, interpret, and make specific Labor Code sections 7855, 7856, 7857, 7858, 7859, 7860, 7861, 7862, 7863, 7864, 7865, 7866, 7867, and 7868, which require the establishment of process safety management standards to eliminate, to a substantial degree, the risks to which workers are exposed in refineries, chemical plants, and other related manufacturing facilities.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking amends the language of the Title 8 process safety management at petroleum refineries regulation (section 5189.1) in response to a lawsuit brought by the Western States Petroleum Association (WSPA). The proposed changes clarify the language of section 5189.1 and will streamline business compliance and regulators' work.

SUMMARY OF EXISTING LAW AND EXISTING REGULATIONS

The federal Clean Air Act Amendments of 1990 [42 U.S.C. Section 7412(r)] directed the federal Occupational Safety and Health Administration (OSHA) and the United States

Environmental Protection Agency (EPA) to develop regulations to prevent accidental chemical releases. These became known as the Process Safety Management (PSM) and Risk Management Plan (RMP) regulations, respectively. On February 24, 1992, OSHA published a Final Rule for Process Safety Management of Highly Hazardous Chemicals (57, Fed. Reg., 6356, February 24, 1992), codified as 29 CFR Section 1910.119.

The Department of Industrial Relations (DIR) subsequently adopted a PSM standard (CCR Title 8, Section 5189) pursuant to its mandate to adopt standards that are at least as effective as federal standards. (29 Code Fed. Regs. § 667(c)(2).) Section 5189 is substantially the same as the federal counterpart, in that it addresses the prevention of catastrophic releases of toxic, reactive, flammable, and explosive chemicals and applies to employers who use a process involving a particular chemical (or chemicals) at or above certain threshold quantities (listed in Appendix A) or a flammable liquid or gas as defined in subsection (c) of the regulation.

Since 1992, California's PSM standard has covered approximately 1,500 facilities in the state that handle or process certain hazardous chemicals including its 11 oil refineries, which process approximately two million barrels of crude oil per day into gasoline, diesel fuel, jet fuel, and chemical feedstocks.

Following a chemical release and fire at the Chevron refinery in Richmond, CA, on August 6, 2012, the Governor's Interagency Working Group on Refinery Safety prepared a report raising concerns and recommendations about the safety of California's oil refineries. The report recommended the establishment of an Interagency Refinery Task Force to: (1) coordinate revisions to the state's PSM regulations and California Accidental Release Prevention Program (Cal/ARP) regulations; (2) strengthen regulatory enforcement; and (3) improve emergency preparedness and response procedures.

In accordance with the recommendations of the report, the Division of Occupational Safety and Health (known as Cal/OSHA), a division of DIR, promulgated a new PSM regulatory proposal for oil refineries, Section 5189.1 of Title 8 of the California Code of Regulations, which the Board adopted in 2017. Section 5189.1 implements the recommendations of the report and other PSM elements that safety experts learned over the preceding two decades are essential to the safe operation of a refinery. These beneficial elements include applying a hierarchy of controls to implement first- and second-order inherent safety measures; conducting damage mechanism reviews; applying rigorous safeguard protection analyses; integrating human factors and safety culture assessments into safety planning; involving front-line employees in decision-making; conducting root-cause analysis following significant incidents; and performing comprehensive process hazard analyses.

The refineries operating in California have come into compliance with the requirements of GISO Section 5189.1, with significant improvements in safety performance; however, the industry continues to experience an elevated rate of disruptions to normal operations that have resulted in excess emissions, fires, and/or workplace injuries.

In 2019, a petroleum refinery advocacy group (the Western States Petroleum Association, or WSPA) filed two lawsuits regarding Section 5189.1. In a complaint filed in Sacramento Superior Court, WSPA alleged in pertinent part that Section 5189.1 was invalid and unenforceable because it was inconsistent, and in conflict, with governing statutes, and was

neither reasonably necessary nor sufficiently clear. In a complaint filed in the Eastern District of California, WSPA alleged that Section 5189.1 was preempted by the National Labor Relations Act.

As part of a settlement to resolve these lawsuits, the Board and the Division agreed to engage in rulemaking to amend Section 5189.1 to address the stakeholders' concerns.

SUMMARY OF THE EFFECT OF PROPOSED REGULATORY ACTION

The rulemaking will clarify the definitions of employee representative, highly hazardous materials, and major change; add details to the hierarchy of hazard control analysis (HCA) requiring the HCA team to take additional steps in conducting the HCA; and explain an additional means of compliance to the section pertaining to employee participation. A synopsis of the proposed changes is as follows:

Section 5189.1. PROCESS SAFETY MANAGEMENT FOR PETROLEUM REFINERIES

Amend Subsection (c) Definitions.

- Changes to the definition of "Employee Representative" to provide that an employee must be located on-site and qualified to perform the task for which they have been designated to represent the employees, whether or not the workers at the worksite are represented by a union. The definition of "Employee Representative" will be further clarified to state explicitly that it does not supersede an employee representative selection process in a collective bargaining agreement.
- Changes to the definition of "Highly Hazardous Material" to clarify that this term does not include "any substance in quantities below the lesser of the thresholds set forth in the California Hazardous Materials Business Plan Rule" found at Section 25507(a)(1)(A) of the Health and Safety Code, or in the Code of Regulations, Title 19, Section 5130.6.
- Changes to the definition of "Major Change" to specify that the term covers the introduction of new process equipment or new highly hazardous material that "results in any operational change outside of established safe operating limits." The changes to this definition also clarify that any alteration in "a process, process equipment, or process chemistry" that results in an operational change outside of established safe operating limits is also covered by the definition of "Major Change," and that an alteration in a process or process equipment "does not include a replacement in kind." The definition of "Major Change" will also clarify that an introduction of new process equipment or alteration in process or process equipment will only be considered a major change if it results in an operational change outside of established safe operating limits.

Amend Subsection (I) Hierarchy of Hazard Control Analysis.

- With respect to the requirement that employers consider publicly available information regarding inherent safety measures and safeguards, the proposed revisions to subsection (I)(4)(D) change the instruction to include inherent safety measures and safeguards that have been achieved in practice, or that are required or recommended by federal or state authorities, from mandatory to permissive.

- The proposed revisions to subsection (l)(4)(E) direct the members of the Hazard Control Analysis team to consider all process safety hazards that may be affected by a particular safety measure or safeguard, and must choose safety measures or safeguards that are the most effective at reducing process safety hazards.
- New subsection (l)(5)(F) directs the members of the Hazard Control Analysis team to include in their report the rationale for not recommending any inherent safety measures and safeguards that the team analyzed and identified when reviewing publicly available information on inherent safety measures and safeguards.

Amend Subsection (q) Employee participation.

- The changes to subsection (q)(1) add a new means of fulfilling the employer's mandate to effectively provide for employee participation. An employer will allow for "effective participation" in a PSM element if the employer provides advance notice of the PSM activity and considers input provided by workers who participate in the PSM activity, including the employee representative. If the employer provides this advance notice, the employer is not required to delay a PSM activity because a union, or employees who are not unionized, fails to select an employee representative, or because a selected employee representative does not participate in the PSM activity.
- With the proposed revisions to subsection (q)(2), the selection process for employee representatives will be governed by the written employee-participation plan (as opposed to authorized collective bargaining agents selecting employee representatives).

Business Report

Existing section 5189.1(l)(5) requires the filing of a report, and it is necessary for the health, safety, and welfare of the people of the state that this regulation continues to apply to businesses. However, these amendments do not affect the reporting requirement.

The Board has evaluated the proposed changes pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a comprehensive system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the Federal Occupational Safety and Health Administration (OSHA) and the Labor Code that state regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

This proposal is at least as effective as the equivalent federal standards in Title 29 Code of Federal Regulations, section 1910.119 (general industry) and section 1926.64 (construction industry) published by OSHA.

ANTICIPATED BENEFITS OF THE PROPOSED ACTION

Because the proposed amendments would clarify and add greater specificity to existing regulatory provisions, they would benefit the petroleum refineries subject to section 5189.1. These amendments would provide more clarity to petroleum refineries and would allow

petroleum refineries to better understand their obligations with respect to worker safety and health. Clarifying the language of section 5189.1 will also streamline business compliance, as well as the enforcement and regulatory work of the Division.

The Division is engaging in this rulemaking pursuant to the court-approved resolution of two pending lawsuits:

- *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, California Division of Occupational Safety and Health, and California Environmental Protection Agency* (Sacramento Super. Ct., Case No. 34-2019-00260210)
- *Western States Petroleum Association v. California Occupational Safety and Health Standards Board, and The California Environmental Protection Agency* (E.D. Cal., Case No. 2:19-cv-1270-JAM-DB)

In proposing changes to the text of section 5189.1, the Board is complying with its obligations under the court-approved resolution of the above-mentioned lawsuits.

At the same time, CalEPA is complying with its obligations under the court-approved resolutions of the above-mentioned lawsuits by proposing amendments their regulations (found in Title 19 of the California Code of Regulations, §§ 5050.3, 5110.1, 5110.13, 5110.16, and 5130.6) establishing and governing the Accidental Release Prevention Program.

DISCLOSURES REGARDING THE PROPOSED ACTION

- Mandate on local agencies and school districts: NONE
- Costs or savings to any state agencies: NONE
- Costs or savings to local agencies or school districts, which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE
- Other nondiscretionary costs or savings imposed on local agencies: NONE
- Costs or savings in federal funding to the state: NONE
- Costs to housing: NONE

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The proposed regulatory changes would not result in significant cost impacts on jobs and businesses in the state. However, there would be an expected one-time cost of \$21,260.69 statewide associated with updating the written Operating Procedures required under existing subsection (f), and updating training materials required under existing subsection (g) with the proposed regulatory changes. Because there are no consensus data on standard reading and writing times for regulatory material, the Division assumes 16 hours for an Occupational Safety and Health Specialist to draft the updates to operating procedures and training materials (including internal meetings regarding the updates), three hours for a Manager to review the proposed updates (including internal meetings regarding the updates), and three hours for an Attorney to review the proposed updates (including internal meetings regarding the updates).

The calculations are as follows:

Tasks	Occupation Type/BLS Code	Mean Hourly Wage (unloaded)	Scaling Factor	Fully Loaded Mean Hourly Wage	Hours Spent	Total Wages Per Employee (Fully Loaded Mean Hourly Wage)
Draft updates to operating procedures and training materials; Internal meetings re: same	Occupational Safety & Health Specialist (BLS Code 19-5011) ¹	\$50.74	1.43	\$72.56	16	\$1,160.96
Manager review of draft updates to materials; internal meetings re: same	Manager (BLS Code: 11-0000) ²	\$77.10	1.43	\$110.25	3	\$330.75
Attorney review of draft updates to materials; internal meetings re: same	Lawyer (BLS Code: 23-1011) ³	\$102.82	1.43	\$147.03	3	\$441.09
Total Wages Per Refinery	N/A	N/A	N/A	N/A	N/A	\$1,932.80
Total Wages for All 11 Refineries	N/A	N/A	N/A	N/A	N/A	\$21,260.80

STATEWIDE ECONOMIC IMPACT ON BUSINESS

The Board has determined that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability to compete. It will impose a one-time cost on petroleum refineries in the state as discussed above.

SMALL BUSINESS DETERMINATION

¹ The latest data (2023) indicate that the average hourly wage in California in 2023 for an occupational safety and health specialist was \$50.74. (U.S. Bureau of Labor Statistics, May 2023 State Occupational Employment and Wage Estimates, California, at https://www.bls.gov/oes/2023/may/oes_ca.htm [Occupation Code 19-5011 "Occupational Health and Safety Specialists"].)

² The latest data (2023) indicate that the average hourly wage in California in 2023 for a manager was \$77.10. (U.S. Bureau of Labor Statistics, May 2023 State Occupational Employment and Wage Estimates, California, at https://www.bls.gov/oes/2023/may/oes_ca.htm [Occupation Code 11-0000 "Management Occupations"].)

³ The latest data (2023) indicate that the average hourly wage in California in 2023 for an attorney was \$102.82. (U.S. Bureau of Labor Statistics, May 2023 State Occupational Employment and Wage Estimates, California, at https://www.bls.gov/oes/2023/may/oes_ca.htm [Occupation Code 23-1011 "Legal Occupations"].)

The proposed amendments to section 5189.1 will, by definition, apply only to petroleum refineries in California. Petroleum refineries are explicitly excluded from the definition of "small business" as defined in Government Code section 11342.610(b)(9). The proposed amendments do not affect small businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

As set forth above, the proposed regulation will have an expected one-time cost of \$21,260.80 statewide is associated with updating the written Operating Procedures required under existing subsection (f), and updating training materials required under existing subsection (g) with the proposed regulatory changes. The Board has determined that the proposed regulation: will neither create nor eliminate jobs within the state; will neither create new businesses nor eliminate existing businesses within the state; will not expand businesses doing business within the state, except to the extent that it will require petroleum refineries to increase spending minimally in the areas of compliance and legal costs; and will benefit the health and welfare of California residents, worker safety, and the state's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, 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 law.

Cal/OSHA is required to propose these changes to section 5189.1 and engage in the subsequent rulemaking process pursuant to a lawsuit settlement. Failure to do so would bring the Division out of compliance with the court-approved resolution and its obligations thereunder.

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

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the express terms of the proposed regulations, this notice, the Initial Statement of Reasons, any substantially related changes, and the Final Statement of Reasons (when available), may be obtained upon request at the following location or from the contact people listed below:

Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, STE. 350
Sacramento, CA 95833

The full text of any proposed changes pursuant to Government Code section 11346.8 will be available at least 15 days prior to adoption by the Board. Documents relied upon in preparing these regulations are available for inspection by appointment Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California and online at [Petroleum Refinery Process Safety Management Standards Rulemaking - Advisory Meetings](#).

In addition, the Notice of Purposed Action, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the Board's website at the following address: [Occupational Safety and Health Standards Board Proposed Standards](#)

Questions regarding the regulatory process or clarification on the substance of this regulatory proposal may be directed to:

Ruth Ibarra, Staff Services Manager I
Telephone: (916) 274-5795 / Email: ribarra@dir.ca.gov

Millicent Barrajas, Executive Officer
Telephone: (916) 274-5721 / Email: oshbrulemaking@dir.ca.gov