

**NOTICE OF PROPOSED
RULEMAKING TO
OFFICE OF THE STATE FIRE
MARSHAL
California Code of Regulations, Title 19, Division 1, Chapter 14
Hazardous Liquid Pipelines - Annual Inspection**

The State Fire Marshal (SFM) is providing notice to adopt proposed regulations related to the annual pipeline inspection of every intrastate hazardous liquid pipeline and operators of intrastate hazardous liquid pipelines as described below after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

The SFM will accept written comments regarding this proposed regulatory action for at least 45 days beginning August 5, 2016 until 5:00 PM on September 19, 2016. All written comments submitted via email or fax shall include **“Title 19, Chapter 14, 45-Day Comments”** in the subject line.

Comments may be submitted to the SFM via:

- Email: diane.arend@fire.ca.gov; or
- Facsimile: (916) 445-8458; or
- US Mail (**postmarked no later than September 19, 2016**):

Office of the State Fire Marshal
P.O. Box 944246
Sacramento, CA 94244-2460
Attn: Diane Arend, Code Development & Analysis Division

PUBLIC HEARING

The State Fire Marshal has not scheduled a public hearing on this proposed action. However, The State Fire Marshal will hold a public hearing if a written request is received from any interested party or their authorized representative no later than 15 days before the end of the 45-day comment period, pursuant to Government Code Section 11346.8.

If a written request for a hearing is received the State Fire Marshal will hold a public hearing as scheduled below:

Date: September 19, 2016

**Resources Building
First Floor Auditorium
1416 Ninth Street
Sacramento, CA 95814
From 10 am to 12 pm**

If a public hearing is held, the SFM will provide notice of the hearing in accordance with the requirements of Gov. Code sec. 11346.8(a), in addition to posting the information on our website.

The public hearing facilities are accessible to persons with mobility impairments. If any special assistance is required (i.e. interpreter), please notify the contact person named in this notice at least 15 days prior to the public hearing.

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 submit a written copy of their testimony at the hearing.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day comment period, the SFM may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text – with changes indicated – shall be made available to the public for at least 15 days before the SFM adopts, amends, or repeals the regulations as revised. The SFM will accept written comments on the modified regulations for 15 days after the date on which they are made available.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modified regulations. Requests should be sent to the contact person at the address indicated above.

AUTHORITY & REFERENCE

The SFM is proposing this regulatory action pursuant to Government Code §51015.1, with reference to Government Code §51015.1, in that the SFM, or an officer or employee authorized by the SFM, shall adopt regulations and annually inspect all intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines under the jurisdiction of the SFM to ensure compliance with applicable laws and regulations associated with the implementation of this section.

INFORMATIVE DIGEST - POLICY STATEMENT OVERVIEW

The broad objective of the proposed action is to define the regulatory requirements of the SFM for annual inspection of hazardous liquid pipelines and operators of hazardous liquid pipelines as mandated pursuant to Government Code §51015.1. The regulations proposed in this rulemaking action would specify and define the regulatory requirements by making the following changes:

Develop a SFM annual inspection program for each pipeline and pipeline operator under the jurisdiction of the SFM to protect California's vital natural resources, and reduce the risk of future pipeline accidents.

The SFM is proposing to adopt California Code of Regulations (CCR), Title 19, Chapter 14, Sections 2020, 2021 and 2030. The SFM is proposing to incorporate by reference the California Intrastate Pipeline Operator Annual Report Form PSD-101 (dated July 1, 2016), instructions for Form PSD-101(dated July 1, 2016) and Annual

Inspection Procedure identified in the text of regulations in Sections 2020 which are used in the annual inspection process for each intrastate hazardous liquid pipeline and operators of intrastate hazardous liquid pipelines.

Forms and Documents Incorporated by Reference

The forms and documents incorporated by reference in Title 19 have also been included in this rulemaking file as follows:

- California Intrastate Pipeline Operator Annual Report, Form PSD-101 (dated July 1, 2016)
- Instructions for Form PSD-101 (dated July 1, 2016)
- California State Fire Marshal Annual Inspection Procedures (dated July 1, 2016)

The SFM consulted with the SFM Pipeline Safety Advisory Committee (PSAC) and the OSFM Pipeline Safety Regulations Work Group and sought their recommendations and analysis of the proposed amendments. They both concur with the proposed rulemaking establishing an intrastate hazardous liquids pipeline annual inspection program.

These were conversations only, and there were no documents relied upon in connection with these consultations except for the meeting summary notes for the OSFM Pipeline Safety Regulations Work Group (dated June 2016).

Summary of Existing Laws

Currently, Government Code Section 51011 authorizes the State Fire Marshal to adopt hazardous liquid pipeline safety regulations in compliance with the federal law relating to hazardous liquid pipeline safety, including compliance orders, penalties, and inspection and maintenance provisions, and including amendments to those laws and regulations which may be hereafter enacted and adopted. Government Code Section 51012.3 requires that every operator of a pipeline to conform to the federal regulations in Subparts A to F, inclusive, of Part 195 of Title 49 of the Code of Federal Regulations.

Section 51015.1 is added to the Government Code, to read:

“(a) Commencing January 1, 2017, the SFM, or an officer or employee authorized by the SFM, shall annually inspect all intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines under the jurisdiction of the SFM to ensure compliance with applicable laws and regulations. By January 1, 2017, the SFM shall adopt regulations implementing this subdivision.”

This section mandates the SFM to propose regulation for adoption an annual inspection program for inspecting all intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines under the jurisdiction of the SFM.

Summary of Existing Regulations

Title 19, Chapter 14, Article 1, Section 2000 adopted by reference Title 49, Federal Code of Regulations, Part 195 as it relates to hazardous liquids pipelines. The SFM currently regulates the safety of intrastate hazardous liquid pipeline through the certification from United States Department of Transportation (USDOT), Pipeline and

Hazardous Materials Safety Administration (PHMSA). The current USDOT PHMSA certification requires the SFM to conduct six different types of inspections on each operator of hazardous liquid pipeline, and two different types of inspections on each intrastate hazardous liquid pipeline once every five years.

There are no existing regulations that require annual inspection of intrastate hazardous liquid pipelines under the jurisdiction of the SFM.

The SFM proposes to adopt new CCR, Title 19, Chapter 14, Article 2, entitled Annual Inspection of Intrastate Hazardous Liquid Pipelines and Operators of Intrastate Hazardous Liquid Pipeline, Sections 2020, 2021, and 2030.

Summary of Effect

The effect of this proposed rulemaking is the establishment of an annual inspection program that will ensure compliance with federal and state regulations, enhance public safety, protect California's vital natural resources, and reduce the risk of future pipeline accidents. The proposed rulemaking serves to improve pipeline inspections which have no negative effect on the business environment.

The proposed rulemaking establishes additional inspections of intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines. The proposed rulemaking specifies violations and specifies existing penalties for such violations.

Comparable Federal Statute or Regulations

There are no comparable federal regulations or statutes.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting a review of any and all other regulations that would relate to or affect the area of intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines inspections, the SFM concluded that this proposed rulemaking is the only rulemaking that concerns the establishment of minimum statutory mandate. The SFM has determined this proposed regulation is not inconsistent or incompatible with existing regulations.

Objective and Anticipated Benefits

The broad objective of the proposed rulemaking is to ensure that pipelines and pipeline operators in California are inspected more frequently to mitigate the risk of spill and/or accident that harm the environment. The anticipated benefit would be to enhance public safety, protect California's vital natural resources and wildlife, and reduce the risk of future pipeline accidents/spills.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to the SFM, or to any specific regulation or class of regulations. There are no other matters to identify.

DISCLOSURES REGARDING THE PROPOSED ACTION

The SFM has made the following initial determinations:

Notice of Proposed Action (45 Day Public Comment Period)

1. Mandate on local agencies and school districts: **None**
2. Cost or savings to any other State agency: **None**
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code, Sections 17500-17630: **None**
4. Other non-discretionary cost or savings imposed upon local agencies: **None**
5. Cost or savings in federal funding to the State: **None**
6. Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States: **None**
7. Significant effect on housing costs: **None**

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

8. The cost impacts that a pipeline operator would necessarily incur in reasonable compliance with the proposed action are provided as follows:

Title 19, Chapter 14, Sections 2020 and 2021 will result in an insignificant cost to a pipeline operator. All intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines are required to have inspections every 5 years as required by US DOT PHMSA. The SFM annual inspection will focus on the risks of every intrastate hazardous liquid pipeline and carry out the customized inspections every year.

The proposed regulation will comply with statutory mandate, enhance public safety, protect California's vital natural resources and wildlife, and reduce the risk of future pipeline accidents/spills. The costs for litigation, fines, oil discharge containment and clean-up from pipeline releases are far more significant compared to the cost impact for the operators that are incurred by this proposed rulemaking.

DECLARATION OF EVIDENCE

The SFM conducted a survey on the economic and fiscal impact to the operators of intrastate hazardous liquid pipelines that incur by this rulemaking. The SFM has not relied on any other facts, evidence, documents, or testimony to make its initial determination of no statewide adverse economic impact.

SMALL BUSINESS EFFECTS

The SFM has made the initial determination that these proposed regulations will have no "substantial" effect to small businesses and the SFM has not identified any alternatives that would lessen any adverse impact, if any, on small business. Government Code Section 11342.610 (b)(9) excludes a petroleum producer, a natural gas producer, a refiner, or a pipeline from the definition of "small business".

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The SFM concludes that the proposed regulatory action, within the State of California, would have no significant adverse economic impact and adoption of these regulations *will not*:

- a) Create or eliminate jobs within California;
- b) Create new businesses or eliminate existing businesses within California; or
- c) Affect the expansion of businesses currently doing business within California.

The SFM has assessed that this regulatory proposal *will*:

d) Will benefit the public health and welfare of California residents, enhance public safety, and benefit the environment by protecting California's vital natural resources and wildlife, and reducing the risk of future pipeline accidents/spills.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the SFM must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention 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 described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

There is no reasonable alternative since the new law mandates the SFM to conduct annual inspection of all intrastate pipelines and operators of intrastate pipelines. The SFM invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

BUSINESS REPORT

This regulatory proposal does not mandate any new annual reporting or recordkeeping requirements beyond the business practice that has already been established by the SFM.

CONTACT PERSON(S)

Inquiries concerning the proposed regulatory action, or requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations or other information upon which the rulemaking is based may be directed to:

Office of the State Fire Marshal:

Diane Arend, Senior Deputy SFM (RA), Regulations Coordinator, for general inquiries

Phone: (916) 324-9592

Email: diane.arend@fire.ca.gov

Doug Allen, Supervising Pipeline Safety Engineer, Pipeline Safety Division, for substantive or technical questions

Phone: (916) 445-8345

Email: doug.allen@fire.ca.gov

Ben Ho, Pipeline Safety Engineer, Pipeline Safety Division, for back-up substantive or technical questions

Phone: (916) 445-8348

Email: ben.ho@fire.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The SFM will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 1131 "S" Street, Sacramento, California 95811. As of the date this notice is published in the Notice Register, the SFM's rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons for the proposed action, all documents incorporated by reference and an economic impact assessment contained in the initial statement of reasons. Copies may be obtained through the contact(s) at the address or telephone numbers listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons (FSOR) may be obtained by making a written request to the contact person at the above address or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons (ISOR), the text of proposed regulations in underline and strikeout, documents incorporated by reference and all information upon which this rulemaking is based may be accessed through the SFM web site at:

http://osfm.fire.ca.gov/codedevelopment/codedevelopment_title19development.php