

**CALIFORNIA CODE OF REGULATIONS, TITLE 19,
DIVISION 1, CHAPTER 14
ARTICLE 4: PIPELINE OPERATOR DRUG TESTING
ARTICLE 6. ENFORCEMENT PROCEEDINGS
PRINT AND FILE JUSTIFICATION**

EXISTING LAW

Pursuant to California Government Codes (CGC) §§ 51010, 51011, and 51018.6, the Office of the State Fire Marshal (OSFM) shall adopt hazardous liquid pipeline safety regulations in compliance with the federal law relating to hazardous liquid pipeline safety, including, but not limited to, enforcement proceedings, compliance orders, penalties, and inspection and maintenance provisions such as drug and alcohol testing requirements. Regulations adopting the minimum standards for hazardous liquid pipelines contained in the Federal Hazardous Liquid Pipeline Safety Act, 49 U.S.C. Sec. 2001 et seq., and Title 49 of the Code of Federal Regulations, by the State Fire Marshal are exempt from the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, except that those regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

SPECIFIC PURPOSE AND RATIONALE

The OSFM is required, through federal certification, to inspect pipeline operators, ensure compliance, and enforce each federal and State pipeline safety regulation and standard, including drug and alcohol testing regulations specified in 49 CFR Part 199 and Part 40. The proposed amendments to OSFM enforcement proceedings and the drug and alcohol testing regulations ensure compliance with both federal and State pipeline safety requirements, enhance public safety, protect California's vital natural resources, and reduce the risk of future jurisdictional hazardous liquid pipeline accidents.

In 1991, 19 CCR, § 2050 adopted, by reference, certain sections of federal drug and alcohol regulations under 49 Code of Federal Regulation (CFR) Part 199, and Part 40. Since then, federal drug and alcohol regulations have been amended to include additional testing requirements and procedures. However, OSFM regulations have not been revised to incorporate the latest federal amendments. Additionally, many of the referenced federal regulations have been removed or renumbered¹. The failure to adopt amendments to the federal regulations limit the OSFM's ability to enforce regulations that were enacted and adopted after the last revision of 19 CCR § 2050.

¹ Sections 199.10 through 199.23 reference in 19 CCR §2050 have been removed from the current federal regulations in 49 CFR Part 199. Drug Testing requirements are now referenced in Subpart B of Part 199 and the Alcohol Misuse Prevention Program are in Subpart C.

Recent legislative action expanded the OSFM inspection requirements on operators which increased the number and type of violations proposed. The existing enforcement proceedings in 19 CCR § 2070 through § 2075 were adopted in 1984. These regulations incorporated federal pipeline safety enforcement proceedings enacted up to that point. However, the current CCR enforcement proceedings fail to provide OSFM the flexibility to issue enforcement and compliance actions based on risk. Instead, OSFM is limited to issuing one type of enforcement action to non-compliant pipeline operators. The proposed amendments incorporate current federal pipeline safety enforcement proceedings and will provide OSFM risk-based enforcement tools such as directing pipeline operators to amend procedures, warning letters, corrective action orders, and immediate orders.

The proposed regulatory action will provide OSFM additional enforcement tools to ensure identified non-compliances and unsafe conditions are addressed. In addition, these amendments will allow the OSFM to issue notices and orders to non-compliant pipeline operators based on the severity and type of violation and will align OSFM enforcement proceeding with federal regulations contained in the 49 CFR Part 199.