

Summary Document for
Petition No. 2004-25
Proposed Amendments to Regulation for the
Chemical Accident Prevention Program

This document was prepared to provide guidance to aid in the review of these proposed amendments.

Purpose for Amendments

These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). The statutory amendments were prompted by recommendations offered by the Legislative Subcommittee on Industrial Explosions upon evaluation of two large explosions that occurred in 2001. In addition to addressing statutory amendments, a fee increase is being proposed.

Scope of this Guidance

A brief overview of the CAPP regulation and an explanation of the major regulatory amendments are provided below. Cross-references to the amendments are provided and a table of contents for the petition has been included to facilitate review.

Overview of CAPP Regulation

The *purpose* of the CAPP regulation is:

1. To *protect the health, safety and general welfare of the residents* from the effects of improper handling of hazardous chemicals or explosives,
2. To ensure the *employees* who work with hazardous chemicals or explosives are *guaranteed a safe and healthful working environment*,
3. To *protect the natural resources of this state* by preventing and mitigating accidental releases of hazardous chemicals, and
4. To *ensure the safe and adequate handling* of hazardous chemicals and explosives.

To accomplish these objectives *CAPP regulation requires the operator* of a facility to:

1. Develop a thorough accident prevention program,
2. Develop and coordinate an emergency response preparedness program with the local emergency responders.
3. Obtain a permit to construct and permit to operate a new process prior to commencing construction and operation, respectively.

CAPP regulation requires NDEP to oversee the implementation of the provisions of the program by conducting annual site inspections and issuing permits for new processes.

Regulatory Amendments

The proposed amendments do not remove facility or NDEP requirements as related to accident prevention programs, emergency response preparedness programs or permitting programs. The amendments do streamline regulatory processes to enable the facility and NDEP to better focus their personnel and economic resources on implementation, without impacting public access to program information.

The amended regulation will flow in a logical sequence, making the *same requirements of all facilities* that are subject to this program as follows (*refer to the table of contents*):

1. Determine Program Applicability (*starts at section 24*)
2. Determine Performance and Submission Requirements and Fees (*starts at section 27*)
3. For a new process only, obtain Permits to Construct and Operate (*starts at section 31*)
4. For an existing facility, implement the applicable requirements determined in item no. 2:
 - a. Submit annual registration (*starts at section 44*)
 - b. Conduct hazard assessment (*starts at section 48*)
 - c. Implement accident prevention program (*starts at section 54*)
 - d. Implement emergency response program (*starts at section 66*)
5. For NDEP, issue Permits to Construct and Operate (*starts at section 31*)
6. For NDEP, conduct annual compliance inspections and prepare inspection reports (*section 76*)

Paperwork Reduction

While the requirements for developing and implementing comprehensive accident prevention and emergency response preparedness programs remain in tact, we are proposing to substantially refine the reporting process that has been in place since 1991. The objective of these amendments is to enable both the facility and the NDEP to focus upon program implementation rather than on developing and processing various forms and documents. NDEP will audit program records for compliance and generate reports as required (*refer to section 76*). The facility will be responsible for providing an annual registration and select information in advance of an NDEP site inspection (*refer to sections 44 – 47 and 76*). Specifically eliminated are the Assessment Report, Annual Compliance Report and Assessment Team Pre-Approval (*refer to repealed section pages 134 to 147, 152, and 148 to 149*). Although these reports are eliminated, the facility is either obligated to provide the information (formerly provided in the repealed reports) to NDEP in the annual registration or to have documented evidence of performance, ‘in house’ (*refer to sections 44 through 46 which incorporate key assessment report and annual compliance report items, and section 55 which specifies assessment team requirements*).

Fee Increase

The proposed regulatory revisions include an annual program fee increase to cover NDEP's implementation cost (*refer to section 28*). Additionally, the maximum annual fee is proposed to be capped at \$35,000.

The annual fee was last increased in June 2000. Two engineering plus ½ clerical positions were to be funded with that increase. A third engineering position was to remain in the program and would be funded by a combination of CAPP permitting fees and by outsourcing to other bureaus when not involved in permitting.

Since that time, two things have happened to necessitate a fee increase: First, a significant adjustment of 24% was made to engineering series salaries. Second, it was recognized that engineering supervision of approximately ½ staff year must be funded by the annual fees in addition to the two engineering positions that are dedicated to inspections.

Consequently, the proposed increase will cover the annual budget for 2-½ engineering positions at the adjusted salary (up from 2 positions) and ¼ clerical position (down from ½).

Assuming a nominal cost of living increase of approximately 2.5% per year, it is also proposed to escalate these fees by 5% in 2007 and 2009 (*see sections 80 to 83*).

CAPP also collects hourly fees for permitting and incident investigations and proposes to increase this rate to account for the salary adjustment (*see sections 42 and 9 respectively*). It is also proposed to escalate those fees in 2007 and 2009 (*see sections 78, 79, 84 and 85*).

Streamlining Program Requirements

In 1999, regulatory language from the EPA's Risk Management Program (RMP) was incorporated into CAPP regulation in anticipation of receiving federal program delegation. This language supplemented substance lists and program requirements of the existing CAPP program. RMP differs from CAPP in that the focus is solely on protecting offsite receptors and the environment, where CAPP is also concerned with protecting the worker. RMP language led to varying program requirements as dictated by offsite consequences. In this amendment, program requirements are unified and simplified consistent with legislative direction, ensuring that *all facilities implement comprehensive accident prevention and emergency response preparedness programs*. Program delegation for the EPA's RMP will be handled as indicated below. This action does not add regulated substances to the program, nor does it increase the size of the regulated community (*refer to section 25 for applicability and sections 27 – 29 for performance requirements*).

It should be noted that several facilities currently registered in CAPP are not required to implement comprehensive accident prevention programs and consequently pay lower annual program fees (per a reduced rate schedule) than the facilities that must implement such programs. Under the proposed amendments, all facilities will be required to implement comprehensive accident prevention programs and pay at the same rate as facilities that currently implement this program.

EPA Risk Management Program Delegation

NDEP's seeking formal delegation of the federal Risk Management Program has been delayed pending the outcome of this latest regulatory proposal. Language has been added to adopt the federal regulatory language by reference and to have NDEP oversee implementation of this program within the federal requirements (*refer to section 7*).

Protection of Confidential Information

The 2003 statutory amendments expand the ability of NDEP to protect confidential information beyond selected reports and allows protection of any information meeting the criteria for trade secret as defined in NRS 459.3822. A new regulatory section has been added that clarifies this process (*refer to section 8*).

Division Investigation of Incidents

The 2003 statutory amendments mandate that CAPP regulation include provisions for NDEP to conduct incident investigations at facilities and have the ability to recover cost. The provision would only apply in facilities that do not conduct the incident investigation required under current regulation (*refer to section 9*).

List of Explosives

The 2003 statutory amendments mandate that a specific list of explosives be developed in regulation. The proposed list is replacing a definition and is intended to provide better clarity on the specific types of explosives that are regulated. A list of explosives under 49 CFR 172.101 has been adopted for this purpose (*refer to section 26, subsections 2 and 3*).

Permitting, Accident Prevention Program and Emergency Response Programs Amendments

Minor, functional amendments have been made to these existing regulatory provisions, which form the core of the CAPP program (*permitting amendments start with section 31; accident prevention program amendments start with section 54; and emergency response amendments start with section 66*).