

**State of California
Office of Administrative Law**

In re:
Office of Emergency Services

Regulatory Action:

Title 19, California Code of Regulations

Adopt sections: 2700, 2701, 2702, 2703,
2704, 2705, 2706, 2707,
2708, 2709, 2710

Amend sections:
Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0609-01

OAL Matter Type: Emergency (E)

This emergency rulemaking action by the Governor's Office of Emergency Services proposes to adopt regulations to implement the Regional Railroad Accident Preparedness and Immediate Response legislation in Government Code sections 8574.30 through 8574.48, as enacted by Statutes 2015, Chapter 25, Section 6 (SB 84).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/20/2016. Sections 2700, 2701, 2702, 2703, 2704, 2706, 2707 and 2709 will expire on 12/20/2016. The Certificate of Compliance for these sections is due no later than 12/19/2016. Pursuant to Government Code section 8574.44, subdivision (c), sections 2705, 2708 and 2710 shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the director of the Office of Emergency Services.

Date: June 20, 2016



Kevin D. Hull
Senior Attorney

For: Debra M. Cornez
Director

Original: Mark S. Ghilarducci
Copy: Jennifer L. Plescia

NOTICE PUBLICATION / REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|-------------------------|---------------------------------|---------------------------------|--|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2016-0609-01E |
|-------------------------|---------------------------------|---------------------------------|--|

For use by Office of Administrative Law (OAL) only

2016 JUN -9 A 8:37
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 20 2016
1:58 PM

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Governor's Office of Emergency Services

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|--|---|--|---|--|
| 1. SUBJECT OF NOTICE Fee on Hazardous Materials Transported by Rail | | TITLE(S) 19 | FIRST SECTION AFFECTED 2700 | 2. REQUESTED PUBLICATION DATE June 9, 2016 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Jennifer L. Plescia | TELEPHONE NUMBER (916) 845-8815 | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|---|
| 1a. SUBJECT OF REGULATION(S) Regional Railroad Accident Preparedness and Accident Response Fund | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|---|---|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

| | |
|--|---|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT 2700 through 2713 <i>See Attached</i> |
| | AMEND |
| TITLE(S) 19 | REPEAL |

3. TYPE OF FILING

| | | | |
|--|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input checked="" type="checkbox"/> Other (Specify) <u>Gov. Code § 957.44</u> | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

| | | | |
|---|---|--|--|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) |
|---|---|--|--|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) | | |

| | | | |
|---|---|------------------------------|--|
| 7. CONTACT PERSON Jennifer L. Plescia | TELEPHONE NUMBER (916) 845-8815 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) HMBR.Reg@CalOES.ca.gov |
|---|---|------------------------------|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|--|-----------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 6/8/16 |
| PRINTED NAME AND TITLE OF SIGNATORY Mark Ghilarducci, Director | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 20 2016

Office of Administrative Law

EDMUND G. BROWN JR.
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



Attachment to Form 400

Adopt sections 2700, 2701, 2702, 2703, 2704, 2706, 2707, and, 2709.

Pursuant to Government Code section 8574.44, adopt section 2705, 2708, and, 2710.

California Code of Regulations

Title 19. Public Safety

**Division 2. California Emergency Management Agency Governor's Office of
Emergency Services**

**Chapter 4.1., Article 1 Regional Railroad Accident Preparedness and
Accident Response Fund**

- 2700. Definitions.
- 2701. Applicability Hazardous Material Commodities.
- 2702. Intermodal Cargo Containers.
- 2703. Immediate Reporting of a Release or a Threatened Release Route.
- 2704. Fee Schedule.
- 2705. Written Reporting of Emergency Releases Cap and Refund for Fees Collected in
Excess of Cap.
- 2706. Administrative Cost Reimbursement.
- 2707. Exemptions.
- 2708. In-Kind Contributions.
- 2709. Appeal of Determination.
- 2710. Training Cost Reimbursement.

§ 2700. Definitions.

Any term not defined in this section shall be deemed to have the same meaning as set forth in
Government Code section 8574.30. For the purpose of this chapter:

(a) "Calendar year" means the period of time from January 1 to December 31.

(b) "Consignee" as used in Government Code section 8574.30 (f) means the person named in a
bill or in transportation documents to whom or to whose order the bill promises delivery.

(c) "Consignor" as used in Government Code section 8574.30 (f) means the person who delivers a consignee's hazardous material commodity to a railroad for transporting it to a consignee named in the transportation documents.

(d) "Intermodal cargo containers" means containers used to transport freight during a continuous movement whereby two or more modes of transportation are used, for example, railroad, vehicle, or vessel.

(e) "Payor of freight" means the person responsible for paying the cost of transporting the hazardous material commodities by rail car.

(f) "Residue" means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors.

(g) "Right to use" as used in Government Code section 8574.30 (f) means the authority to take, hold, or deploy the hazardous material commodity.

(h) "Route" is the path on which the train or rail car operates.

(i) "Short line" means an intrastate railroad and is considered a railroad as defined in Government Code section 8574.30(h).

(j) "Shipper" as used in Government Code section 8574.30 (f) means the person who contracts with or is the payor of freight with respect to a railroad for the transportation of a hazardous material commodity.

(k) "Ultimate control over" as used in Government Code section 8574.30 (f) means the person who has the authority to ship or retrieve the hazardous material commodity that is subject to the fee.

NOTE: Authority cited: 8574.32 (a)(1), Government Code. Reference: Sections 8574.30(f), (h), 8574.32 (b)(1)-(4), Government Code.

§ 2701. Applicability-Hazardous Material Commodities.

(a) The railroad, which includes short line or regional railroads, must collect a fee on any portion of the rail car excluding residue that contains any of the identified hazardous material commodities, set forth in subsection (b) of this section, regardless of the corresponding United Nations four-digit identification number (UN Number). The person registered with the board pursuant to Government Code section 8574.34 must impose the fee, set forth in section 2704(b) of this Chapter, on the owner of any of the hazardous material(s) listed in subsection (b) of this section.

(b)

| <u>Hazardous Material Commodity</u> | <u>UN Number</u> |
|--|---|
| <u>Acetonitrile</u> | <u>1648</u> |
| <u>Alcohols, N.O.S.</u> | <u>1987</u> |
| <u>Ammonia, Anhydrous</u> | <u>1005</u> |
| <u>Ammonium Hydroxide; also shipped as Ammonia Solutions</u> | <u>2073, 2672, 3318</u> |
| <u>Calcium Hypochlorite</u> | <u>1748, 2208, 2880, 3485, 3486, 3487</u> |
| <u>Chlorine</u> | <u>1017</u> |
| <u>Corrosive Liquid, Basic, Inorganic, N.O.S.</u> | <u>3266</u> |
| <u>Diesel Fuel; also shipped as Fuel Oil; also shipped as Gas Oil</u> | <u>1202, 1993</u> |
| <u>Environmentally Hazardous Substances, Liquid, N.O.S.</u> | <u>3082</u> |
| <u>Ethanol; also shipped as Ethyl Alcohol</u> | <u>1170</u> |
| <u>Gasoline; when shipped as Flammable Liquid, N.O.S.; when shipped as Hydrocarbons, Liquid, N.O.S.; also shipped as Gasohol; also shipped as Motor Spirit; also shipped as Petrol</u> | <u>1203, 1993, 3295</u> |
| <u>Hydrogen Peroxide</u> | <u>2014, 2015, 2984, 3149</u> |
| <u>Liquefied Petroleum Gas; also shipped as LPG; also shipped as Liquefied Gas, Flammable, N.O.S.</u> | <u>1075, 3161</u> |
| <u>Methanol; also shipped as Methyl Alcohol</u> | <u>1230</u> |
| <u>Methyl Ethyl Ketone</u> | <u>1193</u> |
| <u>Nitric Acid</u> | <u>2031, 2032</u> |

| | |
|---|-------------------------------|
| <u>Petroleum Crude Oil; also shipped as Petroleum Oil; also shipped as Oil, Petroleum</u> | <u>1267, 1270</u> |
| <u>Phenol</u> | <u>1671, 2312, 2821</u> |
| <u>Phosphoric Acid</u> | <u>1805, 3453</u> |
| <u>Potassium Hydroxide; also shipped as Caustic Potash</u> | <u>1813, 1814</u> |
| <u>Propylene</u> | <u>1075, 1077, 3138</u> |
| <u>Sodium Hydroxide; also shipped as Caustic Soda</u> | <u>1823, 1824, 3320</u> |
| <u>Sulfuric Acid; also shipped as Sulphuric Acid</u> | <u>1830, 1831, 1832, 2796</u> |
| <u>Toluene</u> | <u>1294</u> |
| <u>Vinyl Acetate</u> | <u>1301</u> |

NOTE: Authority cited: Section 25520, Health and Safety Code 8574.32 (a)(1), Government Code. Reference: Section 25520, Health and Safety Code Sections 8574.32(a)(1), 8574.32 (b)(1)-(b)(4), Government Code.

§ 2702. Intermodal Cargo Containers.

The railroad must impose the fee, set forth in section 2704(b) of this Chapter, for intermodal cargo containers to the extent the freight containing the hazardous material commodity has not otherwise already been assessed pursuant to this Chapter.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Section 8574.32 (b)(1) - (b)(5), Government Code.

§ 2703. Immediate Reporting of a Release or a Threatened Release Route.

As used in Government Code section 8574.32, “transported by rail in California” includes any form of non-highway ground transportation on any route that runs on rails or electro-magnetic guideways without regard to where the rail car enters California, where the rail car is loaded, or the rail car’s final destination.

NOTE: Authority cited: Section 8585 8574.32 (a)(1), Government Code; and Sections 25503, 25503.1 and 25520, Health and Safety Code. Reference: Section 8585 Sections 8574.32 (a)(1), Government Code; and Sections 25503(b)(4), 25503.1, 25507, 25518 and 25520, Health and Safety Code.

§ 2704. Fee Schedule.

(a) The office will provide the board with a list of railroads that should receive a notice, consistent with the board's practices and the Fee Collection Procedures Law, to register pursuant to Government Code section 8574.34. The fee is to be imposed upon receipt of the notice but no later than six months after the effective date of the regulations set forth in this Chapter.

(b) The person registered with the board pursuant to Government Code section 8574.34 must remit, on behalf of the owner, a fee of \$45.00 to the board per loaded rail car containing any quantity of the hazardous material commodities set forth in section 2701 (b) which is transported by rail in California.

(c) Once the fund reaches the maximum limit set forth in Government Code section 8574.44(g), the fee will be reduced to \$0.00 for the remainder of that calendar year beginning on the first day of the next calendar quarter. The fee will revert back to the amount set forth in subdivision (a) of this section on January 1 of each calendar year. Any fee change will be on the beginning of a quarterly period.

(d) Residue in a railcar is not assessed a fee.

NOTE: Authority cited: Sections 8574.32 (a)(1), 8574.32 (b)(1), Government Code. Reference: Sections 8574.32(a)(1), 8574.32 (b)(1)-(b)(4), and 8574.32 (c), Government Code.

§ 2705. ~~Written Reporting of Emergency Releases~~ Cap and Refund for Fees Collected in Excess of Cap.

(a) The office authorizes the board to refund persons registered with the board any fees collected in excess of the collection caps in Government Code sections 8574.44 (g)(1)-(g)(3) on a last in first out basis.

(b) The office will notify the persons registered with the board when the collection caps set forth in Government Code sections 8574.44 (g)(1)-(g)(3) are reached.

NOTE: Authority cited: Section 8585 Sections 8574.32 (a)(1) and 8574.44(c), Government Code and Sections 25503, 25503.1 and 25507.1, Health and Safety Code. Reference: Section 8585 Sections 8574.44(g)(1)-(3), and 8574.44 (h) Government Code ; and Sections 25503(b)(4), 25503.1, 25507.1, 25518 and 25520, Health and Safety Code.

§ 2706. Administrative Cost Reimbursement.

The fee collected pursuant to Government Code section 8574.32(b)(4)(B) to offset the administrative cost, if any, is in addition to the fee collected under section 2704 of this Chapter. No portion of the fee imposed pursuant to Government Code section 8574.32 is to be retained or withheld.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Section 8574.32(b)(4)(B), Government Code.

§ 2707. Exemptions.

(a) An owner may submit a written petition to the director for an exemption from the fee on the basis set forth in Government Code section 8574.32 subsection (c) for materials that do not merit inclusion in the state Regional Railroad Accident Preparedness and Immediate Response Plan developed pursuant to Section 8574.48 and those shipments of hazardous materials that do not merit additional governmental preparation to respond to their release in the event of a railroad incident. The director, in his or her sole discretion, may approve or deny the petition for exemption on a case by case basis.

(b) The director may request information, documents, or specific evidence from the owner relating to the petition. Should the director make a request for information, the owner must provide requested information within thirty (30) calendar days of the request. Any failure to provide the requested documentation will be deemed a waiver of the owner's claim for exemption.

(c) The director may delegate the authority to grant or deny the petition to any individual within the office as he or she deems appropriate.

(d) The office will notify both the owner and the board if the director approves the petition. If the director denies the petition, the office will notify only the owner.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Section 8574.32(c), Government Code.

§ 2708. In-Kind Contributions.

(a) In order to request the refund for an in-kind contribution made during the preceding calendar year, an owner must submit a written request to the director between March 1 and March 31 inclusive of each calendar year. This request must include documentation relating to the full payment of the fee, the railroad operator's account number, a detailed description and suggested monetary value of the in-kind contribution it provided, and a statement signed under penalty of perjury by the railroad operator that the fee was paid to the board and that the railroad operator will not request a refund of the fees for which the owner is seeking reimbursement.

(b) Types of in-kind contributions that may be considered include, without limitation, rail cars retrofitted for hazardous material training, incident management software, and response training directly related to hazardous material commodities transported in and through California. The director, in his or her sole discretion, may approve or deny the request for an in-kind contribution, or any portion thereof.

(c) Should an in-kind contribution be approved, the director will notify the owner and board of the amount to be refunded. Should an in-kind contribution be denied, the director will notify only the owner.

(d) Should an in-kind contribution be approved, the monetary value will be included in the amount the director has the authority to collect. The monetary value is assessed at the lower of cost or the fair market value.

NOTE: Authority cited: Sections 8574.32 (a)(1) and 8574.44(c), Government Code. Reference: Sections 8574.32(f) and 8574.44(g)(1)-(3), Government Code.

§ 2709. Appeal of Determination.

(a) Any petition or claim for refund made pursuant to section 8574.40 of the Government Code based upon whether the rail car content is or is not a hazardous material commodities should be made to the director and mailed to office headquarters.

(b) The envelope mailed to the director containing the petition or claim must be labeled "Hazardous Material Petition" or "Hazardous Material Claim." The petition or claim must include at minimum: (1) contact information for person registered with the board; (2) hazardous material commodity disputed; (3) route; (4) date fee was imposed or invoiced by the railroad; (5) identification of the owner of the material in dispute; (6) any information, evidence, or documentation regarding the disputed hazardous material commodity; and, (7) statement of reasons why the petition or claim should be granted.

(c) Any petition or claim must be made within thirty (30) calendar days of the date the fee was imposed or invoiced, whichever occurs first, pursuant to Government Code section 8574.32.

(d) The director may request information, documents, or specific evidence from the person who submitted the claim or petition. Should the director make a request for information, the person must provide requested information within thirty (30) calendar days of the request.

(e) The director may delegate the determination of the claim or petition to any of his or her executive staff.

(f) The office will provide a written determination of the petition or claim. If the petition is granted, the office will notify both the board and the owner. If the petition is denied, the office will notify only the owner.