



NOTICE OF EMERGENCY RULEMAKING

ADDENDUM: FINDING OF EMERGENCY

FURTHER JUSTIFICATION OF EMERGENCY

The purpose of the Regional Railroad Accident Preparedness and Immediate Response Regulations are to establish a schedule of fees to be paid for the 25 most hazardous material commodities that are transported by rail in California. The fees collected by the railroad will be utilized to build, develop, and enhance emergency response capabilities in the event of a hazardous material incident involving a railroad in California. Creating and enhancing a robust statewide hazardous material incident response capability will benefit the owners of hazardous material commodities transported by rail in California mitigating the impacts of hazardous material incidents.

THE THREAT IS REAL AND PRESENT EVERY DAY:

The transportation of hazardous materials through California's rural and densely populated communities is an important component of the state's economy. However, the potential for a derailment, accidental or deliberate release, of these hazardous materials is an imminent threat to the welfare of the state. Recently, on June 3, 2016, there was a devastating derailment in Mosier, Oregon. When this train crashed, an estimated 42,000 gallons of crude oil spilled and rapidly caught fire. The nearby communities, including an elementary school, had to be evacuated. The oil entered the nearby waterway and the full extent of the damage to the environment is not fully known.

Every day, California faces this same danger and we must be prepared to robustly respond as quickly as possible. The state, working in collaboration with local, federal, and private sector partners, must plan and prepare for the worst case scenario to ensure the utmost protection and preservation of life, property, and the environment.

CALIFORNIA MUST ACT TO PREPARE THE ENTIRE STATE FOR A DERAILMENT:

In March 2015, the Governor's Office of Emergency Services (Cal OES) identified the numerous risks posed by potential major hazardous materials incidents, in the agency's Gap Analysis for Rail in California. (See <http://www.caloes.ca.gov/cal-oes-divisions/fire-rescue/hazardous-materials/hazmat-by-rail>.)



The assessment found that high-hazard areas for derailments are generally located in areas with important natural resources, including critical waterway systems. Additionally, population centers, schools, and hospitals are frequently located near rail lines in urban areas and throughout the Central Valley. Furthermore, rail lines are located along earthquake faults in many areas, especially in urban areas in Los Angeles and the Bay Area.

Cal OES's analysis also identified gaps in the state's ability to reliably, effectively, and safely respond to and mitigate a catastrophic hazardous materials spill, release, or fire along our vast rail system. Particularly, rural and remote portions of the state lack the necessary response equipment and specialized training to support a multi-agency emergency hazardous material (Haz-Mat) response. Many populated areas throughout the state also lack certified Haz-Mat specialists, due to the high cost of maintaining qualified teams and their limited access to specialized training.

These regulations are immediately necessary to fill these gaps with properly trained Haz-Mat responders. We must prepare California for the known risks that travel through our state each day. Any delay, could impact the life, property, and the environment in our state should a derailment occur in one of the areas where Cal OES has identified a gap.

Although money has already been loaned and the training has commenced pursuant to the enabling statute, Cal OES needs to immediately commence collecting the fees, not only to repay the loan, but to continue funding the training and response for the public peace, health and safety, and general welfare for the upcoming coming fiscal year and years. Further, Cal OES must establish emergency regulations pursuant to Government Code section 8574.44 (c) regarding, among other things, the collection caps in Government Code section (g)(1)-(g)(3). The emergency regulations enable Cal OES to address these gaps and build out a comprehensive and reliable Haz-Mat capability that can effectively respond to the cascading impacts of a derailment resulting in a catastrophic release of hazardous materials.

These regulations establish the list of hazardous materials whose owners will be assessed a fee when shipping the material by rail in and through California. Additionally, the regulations establish the fee to be assessed.

THE HAZARDOUS MATERIAL COMMODITY LIST:

Railroads report hazardous material commodity flow data to Cal OES pursuant to Health and Safety Code section 25547.2. A list of 25 hazardous material commodities was derived from data reported by the railroads. Specifically, the top 100 hazardous material commodities most



frequently transported by rail in California were identified and the list was further refined by incorporating guidance from the United States Environmental Protection Agency, input from Cal OES hazardous material subject matter experts, and comments from the Regional Railroad Accident Preparedness and Immediate Response Fund Advisory Committee and the public.

The United States Department of Transportation (U.S. DOT) has already determined that these commodities are hazardous. Cal OES therefore did not need to make that determination, but rather consider these commodities, in light of the frequency with which they are shipped, and the potential response necessary for an incident involving such a class of hazardous materials as defined by the United Nations (UN) Committee of Experts on the Transport of Dangerous Goods and adopted by the U.S. DOT.

BASED ON THE INFORMATION PROVIDED BY THE RAILROADS, THE FEE IS FAIR:

Cal OES analyzed the data reported by the railroads relative to the number of rail cars that transport hazardous material commodities through California. Specifically, Cal OES analyzed only the rail entry points into California in an effort to eliminate the possibility of counting the same rail car of hazardous material commodities multiple times during transport within the state. Cal OES also analyzed data that would enable us to capture rail transport that initiated and potentially terminated in California. However, the data provided by the railroads does not ensure that Cal OES's analysis does not count the same rail cars multiple times. Accordingly, Cal OES reduced the number of rail cars that carry the 25 hazardous material commodities by approximately half to account for potential duplicative reporting. This allowed Cal OES to arrive at a fee that is fair, in accordance with the enabling statute, and sufficient to fund any monies loaned. Lastly, the fee reflects, among other things, the cost of preparations to respond to the release of hazardous material commodities in an incident involving a rail car.

Time Is Of The Essence:

California has known gaps in its ability to respond to a hazardous material incident. Everyday dangerous commodities travel through the state by rail. California must be prepared to rapidly and effectively respond to a derailment carrying hazardous material in order to protect life and property. These regulations will assist in filling the gaps and making California's response capabilities more robust.