

California Code of Regulations

Title 19. Public Safety

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

**Chapter 4.1. Regional Railroad Accident Preparedness and Accident
Response Fund**

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§ 2700. Purpose.

The purpose of the Regional Railroad Accident Preparedness and Immediate Response Regulations are to establish a schedule of fees to be paid for the top 25 Most Hazardous Material Commodities that are transported by rail car 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. These regulations further serve to establish the administration and enforcement of Government Code sections 8574.30 through 8574.48. Creating and enhancing a robust statewide hazardous material incident response

capability will benefit the owners of hazardous material commodities transported by rail in California, railroads, and Californians by mitigating the impacts of hazardous material incidents by rail.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.30 – 8574.48, Government Code.

§ 2701. Applicability 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) “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.

(c) “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 as set forth in 49 C.F.R. §171.8.

(d) “Route” is the path on which the train or rail car operates.

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

(f) “Short line” means a railroad as defined in Government Code section 8574.30(h).

NOTE: Authority cited: Section 25520, Health and Safety Code 8574.32 (a)(1), Government Code. Reference: Section 25520, Health and Safety Code Sections 8574.30 – 8574.48, Government Code.

§ 2702. 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 classification or name. The railroad must collect a fee from the owner of any of the hazardous material(s) listed in subsection (b) of this section. The hazardous material commodities may be identified without limitation by the corresponding United Nations four-digit identification number (UN Numbers).

(b)

<u>Acetonitrile</u>	<u>1648</u>
<u>Ethanol; also known as Ethyl Alcohol; also known as Alcohols, N.O.S.</u>	<u>1170, 1987</u>
<u>Ammonia, Anhydrous</u>	<u>1005</u>
<u>Ammonium Hydroxide</u>	<u>2672</u>
<u>Calcium Hypochlorite</u>	<u>1748, 2208, 2880, 3485, 3486, 3487</u>
<u>Chlorine</u>	<u>1017</u>
<u>Corrosive Liquid, Basic, Inorganic</u>	<u>3266, 2672, 2073, 3318</u>
<u>Diesel Fuel; also known as Fuel Oil</u>	<u>1202, 1993</u>
<u>Environmentally Hazardous Substances, Liquid, N.O.S.</u>	<u>3082</u>
<u>Gasoline; also known as Flammable Liquid, N.O.S.; also known as Hydrocarbons, Liquid, N.O.S.</u>	<u>1203, 3295</u>
<u>Hydrogen Peroxide</u>	<u>2014, 2015, 2984</u>
<u>Liquefied Petroleum Gas; also known as LPG; also known as Propane; also known as Liquefied Gas, Flammable, N.O.S.</u>	<u>1075, 3161, 1978</u>
<u>Methanol; also known as Methyl Alcohol</u>	<u>1230</u>
<u>Methyl Ethyl Ketone</u>	<u>1193</u>
<u>Nitric Acid</u>	<u>2031</u>
<u>Petroleum Crude Oil; also known as Petroleum Oil; also known as Oil, Petroleum</u>	<u>1267, 1270</u>
<u>Phenol</u>	<u>2312, 1671</u>
<u>Phosphoric Acid</u>	<u>1805, 3453</u>

<u>Potassium Hydroxide</u>	<u>1813, 1814</u>
<u>Propylene</u>	<u>1075, 1077</u>
<u>Sodium Borohydride and Sodium Hydroxide</u>	<u>3320</u>
<u>Sodium Hydroxide</u>	<u>1823, 1824</u>
<u>Sulfuric Acid; also known as Sulphuric Acid</u>	<u>1830, 1832, 2796</u>
<u>Toluene</u>	<u>1294</u>
<u>Vinyl Acetate</u>	<u>1301</u>

(c) The railroad, including short line and regional railroads, must collect a fee when transporting a hazardous material commodity under a generic code upon having actual or constructive knowledge that the hazardous material commodity being transported is on the identified hazardous material commodity list in subsection (b) of this section.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.30 – 8574.48, Government Code.

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

(a) If the owner does not have a contractual or direct business relationship with the railroad, the railroad must collect the fee from the owner through the payor of freight. The payor of freight, in certain circumstances, may be the person who has the ultimate control over, and the right to use or sell, the hazardous material commodity being shipped and therefore is directly liable for the fee.

(b) “Consignee” means the person named in a bill or in transportation documents to whom or to whose order the bill promises delivery.

(c) “Consignor” 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) “Right to use” means the authority to ship or retrieve the hazardous material commodity.

(e) “Shipper” means the person who contracts or who has a business relationship with a carrier, such as the railroad, for the transportation of a hazardous material commodity.

(f) “Ultimate control over” means the person who has the authority to ship or retrieve the hazardous material commodity that is subject to the fee.

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~~ 8574.30(f), Government Code; and Sections ~~25503(b)(4), 25503.1, 25507, 25518 and 25520~~, Health and Safety Code.

§ 2704. Intermodal Cargo Containers.

The railroad must collect the fee 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(a)(1), (b)(1), (b)(5), Government Code.

§ 2705. Written Reporting of Emergency ReleasesRoute.

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 25507.1~~, Health and Safety Code. Reference: Section ~~8585~~ Sections 8574.32 (a)(1), (b)(1)(A) – (b)(1)(B), Government Code; and Sections ~~25503(b)(4), 25503.1, 25507.1, 25518 and 25520~~, Health and Safety Code.

§ 2706. Fee Schedule.

(a) The person registered with the board 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 2702 (b) which is transported by rail in California.

(b) The board will report to the director the amount of fees paid and refunded on a quarterly basis during each calendar year.

(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.

(e) The board will notify the person registered of any rate or other changes regarding the fee program.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.32, 8574.34, and 8574.44, Government Code.

§ 2707. Cap and Refund for Fees Collected in Excess of Cap.

(a) The board may issue a refund to the railroad if the railroads collect fees in excess of the collection caps in Government Code sections 8574.44 (g)(1)-(g)(3).

(b) To obtain a refund for fees collected in excess of the cap set forth in Government Code sections 8574.44 (g)(1)-(g)(3), the owner or the railroad must provide: (i) a statement under penalty of perjury from the person who paid the fee indicating it was paid to the board and the requestor will not request a refund of fee being refunded by the board to the other party; (ii) the name and address of the person the refund will be issued to; (iii) the name of railroad that remitted the fee; (iv) the account number of the railroad; and (v) the amount to refund.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.32, 8574.34, and 8574.44(g)(1)-(3), Government Code.

§ 2708. Administrative Cost Reimbursement.

The five (5) percent of the fee collected, if any, by the person operating the railroad to offset the administrative costs is in addition to the fee collected under section 2706 of this chapter. No portion of the fee is to be retained or withheld by the person operating the railroad to offset administrative costs.

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

§ 2709. 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.

(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.

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

§ 2710. 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 board of the amount to be refunded.

(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: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.32(f) and 8574.44(g)(1)-(3), Government Code.

§ 2711. 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 without limitation: (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. If the person fails to comply with the request in or whole or in part, the person will have failed to exhaust their administrative remedies with regard to that owner's particular claim or petition.

(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.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Section 8574.40, Government Code.

§ 2712. Rebuttable Presumption.

The rebuttable presumption is a legal standard should a dispute arise between and among the owner of the hazardous material commodity, the payor of freight, and the railroads as to which person is assessed the fee at the time that hazardous material commodity is transported by loaded rail car. Should a dispute arise over whether the owner is subject to the fee, the railroads must continue to collect the fee from the payor of freight until the dispute is resolved.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Section 8574.30 (f), Government Code.

§ 2713. Training Cost Reimbursement.

Local governments may seek reimbursement for training in connection with Regional Railroad Accident Preparedness and Immediate Response. Reimbursable expenses may include: tuition for training; lodging in accordance with the written travel policy of the local government, but not to exceed the state government rate; reasonable and necessary costs to travel to and from the training site in accordance with the written travel policy of the local government, not to exceed the state government rate; meals and incidental expenses up to the limits set in the written travel policy for the local government, not to exceed the maximum allowed by the state government reimbursement policy; and overtime or backfill labor costs incurred for hours in which another responder directly provided backfill to cover while a participating responder attended required training. Other training expenses may be reimbursable at the director's discretion. Local governments seeking reimbursement must provide all documentation, including evidence of training course(s) completed and passed, related to and in support of the requested reimbursement.

NOTE: Authority cited: Section 8574.32 (a)(1), Government Code. Reference: Sections 8574.44(e)(5)-(e)(7), Government Code.

END REGULATIONS