

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Occupational Safety and Health**

**NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION**

**Process Safety Management Program Assessment**

**NOTICE IS HEREBY GIVEN** that the Acting Chief of the Department of Industrial Relations, Division of Occupational Safety and Health (DOSH), pursuant to the authority vested in her by Labor Code sections 60.5, 6308, and 7870, proposes to make permanent regulations that were adopted on an emergency basis to implement the provisions of Labor Code section 7870 (as amended by Stats. 2013, Ch. 28, Sec. 44, effective June 27, 2013).

The emergency regulations adopted sections 344.76 and 344.77 in Article 12.5 of Subchapter 2, of Title 8, California Code of Regulations. The regulations implement a methodology for determining and collecting an annual assessment to fund the DOSH Process Safety Management Program (Labor Code sections 7855 - 7870). The emergency regulations listed below became effective on October 29, 2013, and will remain in effect for a period of 180 days (until April 29, 2014). The purpose of this rulemaking is to formally adopt the emergency regulations on a permanent basis.

**PROPOSED REGULATORY ACTION**

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|----------------------|---|
| Adopt section 344.76 | Determination of the Annual Process Safety Management Program Assessment. |
| Adopt section 344.77 | Collection of the Process Safety Management Assessment.                   |

**TIME AND PLACE OF PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date: February 3, 2014**  
**Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business**  
**Place: Elihu Harris State Office Building – Auditorium**  
**1515 Clay Street**  
**Oakland, California 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the Process Safety Management Program Assessment Regulations Notice of Rulemaking After Emergency Adoption**

**last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Acting Chief requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Occupational Safety and Health. The written comment period closes at **5:00 P.M., on February 3, 2014**. DOSH will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 P.M., on February 3, 2014**.

### **AUTHORITY AND REFERENCE**

The Acting Chief of DOSH is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 60.5, 6308 and 7870.

Reference is to Labor Code sections 7855-7870.

### **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

The 2013 state budget directs DOSH to use its existing fee authority to fund an additional 15 positions in the Process Safety Management program. Effective June 27, 2013, Labor Code section 7870 requires DOSH to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other process safety management functions conducted by DOSH pursuant to Labor Code sections 7855 through 7870, inclusive. These fees are required to be adopted by March 31, 2014.

The emergency regulations were adopted effective October 29, 2013. This rulemaking would make the regulations permanent. Making the emergency regulations permanent will provide an initial framework

upon which to adopt a new methodology that will equitably spread the cost of the PSM program to other industries, and eventually, to all facilities subject to the PSM standards adopted pursuant to Labor Code section 7856. These proposed regulations implement, interpret, and make specific the above sections of the Labor Code as follows:

**1. Section 344.76. Determination of the Annual Process Safety Management Program Assessment.**

This section sets forth the methodology for the determination of the annual process safety management program assessment:

(a) On or before November 8, 2013 and thereafter September 1 of each year, DOSH will determine the total amount of funds required to support the direct and indirect expenses and cash flow requirements of DOSH process safety management program for the following fiscal year. The DOSH process safety management program includes, but is not limited to, the provision of consultation services, conduct of inspections, and the adoption of standards. This amount will be the process safety management assessment collected for the following year.

(b) On or before November 15, 2013 and thereafter October 1 of each year, DOSH will obtain the following data from the California Energy Commission, for the prior calendar year, as reported to the Energy Commission and the United States Energy Information Administration:

(1) the aggregate total amount of crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to all oil refineries located in the state of California, and

(2) the aggregate total amount of crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to each oil company's refinery (or refineries) located in the state of California.

(c) On or before November 22, 2013 and thereafter November 1 of each year, DOSH will determine, for each oil company with an oil refinery (or refineries) located in California, the total crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to each individual oil company divided by the aggregate total amount of crude oil and unfinished oil input to all oil companies located in California. The result of this calculation shall be the process safety management assessment factor for that company.

(d) The process safety management assessment to be collected for each oil refinery located in California will be determined by multiplying the total assessment amount calculated in subdivision (a) of this section by the assessment factor calculated in subdivision (c) of this section for each oil company with an oil refinery or refineries located in California.

**2. Section 344.77. Collection of the Process Safety Management Assessment.**

This section sets forth the methodology for collection of the annual process safety management program assessment.

(a) On or before December 1 of each year, DOSH will levy each company owning an oil refinery (or refineries) subject to this assessment for the total amount due from that company for its proportional share of the Process Safety Management Assessment, as determined in section 5189.1(d) of these regulations. The levy shall include the calculations used to determine the company's proportional individual assessment.

(b) The full amount of the assessment must be paid to DOSH within 30 days of the billing. Payment shall be made by using the Process Safety Management Assessment electronic payment option on DOSH's electronic payment portal at:

[http://www.dir.ca.gov/dosh/Payment\\_options.html](http://www.dir.ca.gov/dosh/Payment_options.html)

### **Objective and Anticipated Benefits of the Proposed Regulations:**

The objective of the regulations is to comply with the mandate of Labor Code section 7870 by making permanent the procedures, adopted on an emergency basis, to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other process safety management functions conducted by DOSH (pursuant to Labor Code sections 7855 through 7870, inclusive).

The permanent adoption of a fee assessment complies with the statutory mandate of Labor Code section 7870. The statewide benefit of the regulations is to ensure the continued funding of 15 positions in the Process Safety Management program, and conduct enhanced inspections of California oil refineries. While it is impossible to economically quantify the benefits of avoiding the occurrence of potentially catastrophic events at oil refineries, the enhanced inspections made possible by the fee assessment created by the regulations will improve oil refinery safety and have a positive effect on employee safety, public health, and the environmental quality in communities near oil refineries.

### **Determination of Inconsistency/Incompatibility with Existing State Regulations:**

The Acting Chief of DOSH has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Chief of DOSH has concluded that these are the only regulations that set forth the procedures for determining and collecting a fee to fund the Process Safety Management program in DOSH.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Acting Chief of DOSH has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The regulations do not apply to individuals or small businesses. Government Code section 11342.610(b)(10) provides that the term "small business" does not include a "petroleum producer, a natural gas producer, a refiner, or a pipeline". The regulations will apply to the eleven companies that currently own and operate 18 oil refineries in California.

The initial assessment will be \$5,412,000. Based on calendar year 2012 data from the California Energy Commission, the initial assessment will amount to less than one cent (\$0.0079) per barrel of the types of oil, specified in the regulations, input into each refinery. As the assessment is apportioned between refinery owners on the basis of the percentage of the total amount of oil input into their refineries, the per company cost of the initial assessment will range from approximately \$21,000 to approximately \$1,435,000. These figures will change if/when the two refineries that are currently offline come back into operation, if other refineries go offline, and when annual redetermination of the fee required by Labor Code section 7870 occurs.

- Statewide adverse economic impact directly affecting businesses and individuals: None. The proposed regulations do not create the obligation to pay the assessment or surcharge, or determine the total annual amount thereof. These matters are controlled by Labor Code section 7870, which provides as follows:

Notwithstanding the availability of federal funds to carry out the purposes of this part, the division shall annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties conducted pursuant to this part. The fees shall be adopted by March 31, 2014. All revenue collected from these fees shall be deposited into the Occupational Safety and Health Fund. The fees shall be sufficient to support, at a minimum, the annual cost of 15 positions. The expenditure of these funds shall be subject to appropriation by the Legislature in the annual Budget Act or other measure.

The regulations merely adopt the methodology required to determine and collect the assessment.

- Significant effect on housing costs: None.

### **Results of the Economic Impact Analysis/Assessment**

The Acting Chief of DOSH concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely that the proposal would cause the expansion of the business currently doing business within the State of California.

The regulations affect eleven companies that currently own and operate 18 oil refineries in California. The regulations will have a very small economic effect on the companies assessed. As the assessment is apportioned between refinery owners on the basis of the percentage of the total amount of oil input into their refineries, the per company cost of the initial assessment will range from approximately \$21,000 to approximately \$1,435,000. These figures will change if/when the two refineries that are currently offline come back into operation, if other refineries go offline, and when annual redetermination of the fee required by Labor Code section 7870 occurs.

**Benefits of the Proposed Action:** The statewide benefit is to improve the safety of oil refinery operations. This will contribute to the safety of refinery employees, and protect the public health and environmental quality in communities near oil refineries. The regulations implement the directive in the 2013 budget act for DOSH to hire an additional 15 personnel in the Process Safety Management unit to concentrate on oil refinery safety.

There are currently 18 oil refineries located in California. The majority of refineries are in or near very highly populated urban areas. Six refineries are located in close proximity to the San Francisco bay area and nine are located in the Los Angeles metropolitan area. Each day approximately two million barrels (a barrel is equal to 42 U.S. gallons) of petroleum are processed into a variety of products, with gasoline representing about half of the total product volume. Because of California's large demand for gasoline, the 13 refineries capable of producing gasoline usually operate near full capacity.

**Small Business Determination:** The Acting Chief of DOSH has determined that there will be no adverse impact on small business. The Proposed Rulemaking does not affect small businesses, because Government Code section 11342.610(b)(10) provides that the term "small business" does not include "A petroleum producer, a natural gas producer, a refiner, or a pipeline".

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Acting Chief of DOSH must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Acting Chief's attention, would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Chief invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

The text of the draft proposed regulations was made available for pre-regulatory public comment by OAL from October 21 through October 25, 2013. In addition, the emergency regulations were developed in consultation with the Western States Petroleum Association, which represents the majority of California's oil refinery operators.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at:  
[http://www.dir.ca.gov/dosh/rulemaking/dosh\\_rulemaking\\_proposed.html](http://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html).

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons, and any information contained in the rulemaking file may be requested, in writing, to the contact person.

### **CONTACT PERSON FOR GENERAL QUESTIONS**

Inquiries concerning the proposed administrative action may be directed to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Gray at the above address.

The backup contact person for these inquiries is

James M. Robbins  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [jrobbins@dir.ca.gov](mailto:jrobbins@dir.ca.gov)

To obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person.

The telephone number of this contact person is (510) 286-7100.

#### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

No modifications are being proposed to the emergency regulations at this time.

If the Acting Chief of DOSH makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the final Statement of Reasons will be available, and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at:  
[http://www.dir.ca.gov/dosh/rulemaking/dosh\\_rulemaking\\_proposed.html](http://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html).

#### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the DOSH mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, commencing with section 344.76. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).