

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Process Safety Management Program Assessment**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 344.76 AND 344.77**

**Adopt section 344.76. Determination of the Annual Process Safety
Management Program Assessment.**

**Adopt section 344.77. Collection of the Process Safety Management
Assessment.**

BACKGROUND TO REGULATORY PROCEEDING

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the Division of Occupational Health and Safety’s (DOSH) proposed regulations regarding methodology for determining and collecting an annual assessment to fund the DOSH Process Safety Management Program which became effective as emergency regulations on October 29, 2013. This ISOR fulfills the requirements of California’s Administrative Procedure Act. (See Government Code section 11340 et seq.)

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 (as amended by Stats. 2013, Ch. 28, Sec. 44.) 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.

PROBLEMS ADDRESSED BY THIS RULEMAKING

The objective of the regulations is to comply with the mandate of Labor Code section 7870 by permanently adopting 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).

Emergency regulations implementing Labor Code section 7870 were adopted on an emergency basis and took effect on October 29, 2013. Pursuant to Government Code sections 11346.1(e) and 11349.6(d), those regulations will only remain in effect for a

period of 180 days, unless a regular rulemaking is conducted and a Certificate of Compliance is filed with the Office of Administrative Law. This rulemaking will result in a Certificate of Compliance being filed and make the emergency regulations permanent.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

“Improving Public and Worker Safety at Oil Refineries”, a draft report of the Interagency Working Group on Refinery Safety, July 2013.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Acting Chief of DOSH has not identified any effective alternative, or any equally effective and less burdensome alternative, to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS

The Acting Chief of DOSH has made an initial determination pursuant to Government Code §11346.2(b)(6)(A) that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business.

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.

Additionally, the regulations only affect eleven companies that currently own and operate 18 oil refineries in California. (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 have a very small economic effect on the companies assessed – less than one cent (\$0.0079) per barrel of oil 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.

Therefore, it is not anticipated that there will be a significant statewide adverse impact directly affecting business.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Gov. Code section 11346.2(b)(7))

The proposed regulations do not duplicate or conflict with any federal regulations.

SUMMARY OF PROPOSED REGULATIONS

Section 344.76 Determination of the Annual Process Safety Management Program Assessment

Specific Purpose of Section: This section sets forth the methodology for the *determination* of the annual process safety management program assessment.

Subdivision (a) provides that 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 the 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.

Subdivision (b) provides that 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 California 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.

Subdivision (c) provides that 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.

Subdivision (d) provides that 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.

Necessity: Labor Code section 7870 requires DOSH to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties conducted pursuant to this part. The fees must be adopted by March 31, 2014. This section sets forth the methodology for the *determination* of the annual process safety management program assessment. The methodology was developed in consultation with the California Energy Commission, and uses an "inspector assessment" approach based on how much crude oil and unfinished oil is input to a given facility as reported to the California Energy Commission. The California Energy Commission staff recommended this methodology as being based on a reliable data reporting source, and producing an equitable apportionment methodology.

Pursuant to its statutory authority, the California Energy Commission receives mandatory monthly reports on oil refinery operations. These reports are submitted using the U.S. Department of Energy's Energy Information Administration Form EIA-810, "Monthly Refinery Report," which is used to collect data on the operations of all petroleum refineries located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other U.S. possessions.

Applying the "inspector assessment" to each barrel input to the refinery bases the assessment on two separate factors, taking into account both the size of the refinery operation and the actual level of refinery activity. A larger refinery processes more crude oil and unfinished oils compared to a smaller refinery and should therefore pay a higher total assessment because more intensive inspections are required to ensure safe operations for a larger refinery. In addition, the closer a refinery is operating to full capacity, the greater the potential for accidents to occur.

Section 344.77 Collection of the Process Safety Management Assessment.

Specific Purpose of Section: This section sets forth the methodology for *collection* of the annual process safety management program assessment.

Subdivision (a) provides that 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.

Subdivision (b) provides that 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

Necessity: Labor Code section 7870 requires DOSH to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties conducted pursuant to this part. The fees must be adopted by March 31, 2014. This section sets forth the methodology for the *collection* of the annual process safety management program assessment. The collection methodology was developed to provide both an efficient billing methodology and a secure electronic payment methodology.

ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California

The Acting Chief of DOSH has concluded that it is unlikely that the proposal will create or eliminate any jobs within the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California

The Acting Chief of DOSH has concluded that it is unlikely that the proposal will create or eliminate any businesses within the State of California.

Expansion of Business or Elimination of Existing Businesses Within the State of California

The Acting Chief of DOSH has concluded that it is unlikely that the proposal would cause the expansion or elimination of any business currently doing business within the State of California.

Benefits of the Regulations

The adoption of a fee assessment complies with the statutory mandate of Labor Code section 7870. The benefit of the regulations is to fund an additional 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.

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.

On August 6, 2012, a fire broke out at Chevron's Richmond refinery when a severely corroded pipe in the refinery's #4 Crude Unit began leaking. Chevron managers did not shut down the unit but instructed workers to remove insulation, which led to the pipe's rupture and a massive fire. While there were no serious worker injuries, a reported 15,000 residents of surrounding communities sought treatment after breathing emissions from the fire.

In response to the Chevron refinery incident, the Brown Administration formed an Interagency Working Group to examine ways to improve public and worker safety through enhanced oversight of refineries, and to strengthen emergency preparedness in anticipation of any future incident. The Working Group consisted of participants from 13 agencies and departments, as well as the Governor's office. Over an eight-month period, the Working Group met internally and with industry, labor, community, environmental, academic, local emergency response, and other stakeholders. In July of 2013, the Interagency Working Group on Refinery Safety released a draft report "Improving Public and Worker Safety at Oil Refineries" with a series of recommendations intended to improve refinery safety and prevent further incidents like the Chevron refinery fire.

Among the general recommendations of the Working Group was to provide the relevant agencies with sufficient resources to carry out effective regulatory oversight of refineries. One specific recommendation was the establishment of a dedicated funding source, paid for by the refining industry. Labor Code section 7870 and the proposed regulations implement that recommendation.

Oil refineries are not like conventional workplaces; the consequences of a single system failure anywhere in the system can be catastrophic. As a result of the highly flammable and explosive nature of the products they process and the fuels and other volatile chemicals they produce, refineries are uniquely dangerous and capable of generating significant fires, explosions, and releasing plumes of toxic smoke and hazardous vapors into the air around them. These toxins and hazardous materials are borne by the wind toward the communities near the refineries, and can cause both immediate and long term

health problems. In addition, the hazardous chemicals released can contaminate the environment for very long periods of time.

California's refineries are aging; they are processing higher sulfur crude which increases the corrosion that occurs in refinery components (a fact which substantially increases the threat of rupture in a pressurized system and often results in a fire and explosion); maintenance on refinery equipment has often been deferred due to the high demand for refinery products; and, worker and contractor training may not have always been adequate.

Following the Richmond refinery incident, Cal/OSHA found corroded pipe in a crude unit at a Southern California refinery. Additional inspections are urgently needed throughout the state to identify and mitigate similar serious threats at other California refineries before another catastrophic refinery event occurs.

Without the adoption of the emergency regulations on a permanent basis, DOSH will be unable to fulfill its statutory mandate to adequately fund the operations of the DOSH Process Safety Management Unit.