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Project Title:	SB 2 Implementation
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Document Title:	WSPA Petition for Formal Rulemaking
Description:	Petition the CEC to initiate a formal rulemaking pursuant to California Code of Regulations Section 1221 regarding implementation of both Senate Bill (SB) X1-2 (Skinner, 2023) and SB 1322 (Allen, 2022), the "California Oil Refinery Cost Disclosure Act."
Filer:	Andrea Baley
Organization:	Western States Petroleum Association (WSPA)
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Catherine H. Reheis-Boyd
President and CEO

May 11, 2023

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 9th Street
Sacramento, CA 95814

RE: PETITION FOR FORMAL RULEMAKING – IMPLEMENTATION OF SB X1-2 & SB 1322

Dear Executive Director Bohan,

On behalf of the Western States Petroleum Association (WSPA), I hereby petition the California Energy Commission (CEC) to initiate a formal rulemaking pursuant to California Code of Regulations Section 1221 regarding implementation of both Senate Bill (SB) X1-2 (Skinner, 2023) and SB 1322 (Allen, 2022), the “California Oil Refinery Cost Disclosure Act.” WSPA is a non-profit trade association representing companies that import and export, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California.

Transparency, open, and honest communication are core principles both WSPA and CEC share. In this spirit of cooperation, WSPA believes that a formal rulemaking is necessary to ensure clarity, consistency, and accuracy for both CEC staff and all regulated entities in interpreting, implementing, and properly complying with SB X1-2 and SB 1322. As you know, the success of any new law entrusted to CEC’s implementation hinges on regulated parties and the public understanding the new requirements and what is required to properly comply with these new laws – one of which (SB 1322) has already led to widely varying report figures and now appears to have been subsumed and added to by the other (SB X1-2). Formal rulemaking is necessary to address these concerns and would also help ensure that the CEC can continue to protect highly confidential and proprietary data in accordance with federal antitrust and state reporting laws.

Under California Public Resources Code (PRC), Division 15 – Energy Conservation and Development, the State Energy Resources Conservation and Development Commission (the CEC) is tasked with implementing both SB X1-2 and SB 1322, which together amended or added PRC Sections 25354, 25354.2, 25355, 25355.5, 25355.7, 25362, 25364, 25370, 25372.4, and 25373 – all of which are under the CEC’s purview. We note that WSPA’s members represent only some of the regulated entities that would be subject to expansive new reporting requirements under SB X1-2. A robust rulemaking process would allow CEC to solicit additional industry input on how to ensure new requirements are understandable and workable in practice, thus allowing CEC to effectively implement the statute as the Legislature intended.

INTRODUCTION

WSPA has consistently endorsed CEC's collection of anonymous, aggregated market data from refiners and other market participants for use by the CEC to carry out its responsibilities regarding energy policy and planning. Historically, one of the CEC's primary data gathering tools for this purpose has been the Petroleum Industry Information Reporting Act of 1980 (PIIRA). WSPA does not seek to delay data reporting requirements under new statute; rather, we note that CEC had previously used interim reporting forms to initiate data collection while a formal rulemaking process continued on a parallel path in the initial 2003-2005 PIIRA expansion proceeding.

The introduction of novel reporting terms and directives under SB 1322 and SB X1-2 requires clarification that is best informed through rulemaking. WSPA has remained steadfast here – rulemaking is necessary where key terms lack clarity, are contradictory, and/or may have multiple interpretations, which could thereby render reporting inaccurate, inconsistent, and open to misinterpretation. Indeed, CEC's own February 7, 2023 letter to refiners acknowledged that industry may have "more than one definition for any of the terms" in SB 1322 and asked each refiner to explain "definitions or meanings." This is precisely the dilemma our previous SB 1322 petition sought to avoid for all involved – including CEC staff, and, again, is amongst the multiple concerns we seek to avoid now with the addition of SB X1-2 and its many "first of their kind" reporting requirements. This includes, for example, potentially delaying fuel deliveries to Californians given the introduction of the new reporting requirement "at least 96 hours" prior to arrival at a California port or marine terminal. While we do not believe CEC intends to have ships wait at sea for four days before delivery to California, WSPA member companies will need guidance to ensure they are both reasonably maintaining the flow of interstate and international commerce while also not taking actions that could trigger non-compliance with the 96-hour vessel reporting requirement. A rulemaking would provide the forum needed to work through such issues.

We share CEC's goal to ensure the production and sharing of responsive, high quality and consistent data and appreciate that the CEC shares the desire for clarity, consistency, and accuracy in data reporting. Unfortunately, prior implementation of the then-new "gross" gasoline refining margin data reporting under SB 1322 – without the benefit of formal rulemaking – predictably resulted in CEC's publication of broadly disparate data based upon the different interpretations by individual companies of vague and ambiguous statutory text. Indeed, the California volume-weighted gross gasoline refining margin data first reported for January 2023 varied significantly, from a negative number (-\$0.18) to a positive number (\$0.80).

At the time, the Commission rejected WSPA's petition for a SB 1322 rulemaking, citing the need to "wait until pending legislation has been resolved" in extraordinary session.¹ With the enactment of SB X1-2, this condition previously cited by staff no longer exists; thus, WSPA seeks a formal rulemaking process to avoid further confusion – particularly given the potential production and sharing of inconsistent data and the additional numerous regulated entities now involved under the dramatically expanded and novel scope of SB X1-2 (also including SB 1322).

Attachment A provides an initial list of issues and questions underpinning this rulemaking request. WSPA and our members stand ready to work cooperatively with the CEC to address these statutory shortcomings.

¹ CEC Staff Presentation, January 25, 2023, CEC Business Meeting, Item 17, slide 4 at <https://www.energy.ca.gov/event/meeting/2023-01/energy-commission-business-meeting>

SCOPE OF RULEMAKING

Uniform and standardized compliance by reporting entities is critical not only to ensure that requirements are understandable to reporting companies, but also to guarantee that CEC obtains responsive, high quality and consistent information to carry out its statutory duties. We have identified an initial list of issues that ranges from, at a basic level, the need for definitional clarifications, to the more fundamental issues related to the reporting itself – including further evaluation of the guardrails (e.g., robust information security systems and processes) necessary to protect confidentiality and promote security in a sensitive market.

As with other PRC statutes, the statutory changes here provide the CEC flexibility where they use the term “may.” This flexibility is especially important given both the universe of newly obligated reporting entities (many of whom may not even know they will soon have a reporting obligation) and the time CEC will need to conduct extensive outreach to regulated parties and ensure that the scope and nature of the reporting it requires truly fulfills the stated goal of the legislation to “ensure adequate gasoline supplies and prevent future extreme price spikes for gasoline prices in California.”² Although there may be circumstances when some of the data and materials outlined in the new laws may be beneficial or even necessary to CEC’s analysis and reporting, much of the data and materials likely are not. Thus, WSPA requests that CEC take a close look at the scope of the new data requirements and determine what data and materials it initially needs to receive and review in connection with its analysis as it stands up its new Division that will receive and process this information. Again, we believe that the rulemaking process is the correct approach and will foster much needed open industry and CEC dialogue concerning the scope of the SB X1-2 (including SB 1322) reporting requirements that is critical to the industry in providing clarity on the requirements and will enable regulated entities to properly comply with the reporting requirements and providing meaningful information to CEC.

Requiring the unnecessary and voluminous production of documents and data from “day one,” without consideration of what the associated benefits are with their collection, would cause undue costs and burdens both on reporting entities and on CEC staff. We believe that failure to provide further clarity around these new requirements through a rulemaking will lead to a myriad amount of varied and inconsistent responses from industry, leading to incorrect conclusions and monumental document management burdens on the CEC.

PROCESS AND TIMING

We understand that CEC intends to work in an administrative capacity to implement the new laws as the new Division of Petroleum Market Oversight and the new Independent Consumer Fuels Advisory Committee are established and staffed. We recommend that CEC prioritize rulemaking activities and narrow the scope of SB X1-2’s initial reporting requirements during this time. Doing so would ensure regulatory certainty and compliance for known obligated entities now and provide time to phase-in compliance for unknown or newly obligated entities in the future as the State hires additional staff. This may require a survey to help identify the universe of regulated entities involved.

² CEC Notice of Senate Bill 2 Implementation Workshop – May 16, 2023 agenda
<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02>

Hosting only one 3-hour implementation workshop mere weeks before these expansive new and potentially unclear reporting obligations take effect is inadequate. Significant compliance efforts and coordination will be required by regulated entities, CEC staff, a new Division, CEC leaders, and outside stakeholders to carry out the many new obligations these laws created. That cannot all be accomplished in a single 3-hour workshop. Accordingly, in addition to the formal rulemaking process, WSPA requests assurances that CEC will host additional workshops and provide ample time to review and answer questions about any new or amended reporting forms well in advance of any reporting deadline. Regulated entities will need sufficient time to ensure internal protocols are in place to collect and report the information in a responsive, accurate, and timely manner.

SECURITY

Providing the proper protections in accordance with federal antitrust and state reporting laws for the confidential and proprietary data that is gathered remains critically important to WSPA members. This compliance and protection should be achieved through the aggregation or withholding of confidential data, as well as through the robustness of CEC's own information technology system integrity to guarantee the protection of this market sensitive information. WSPA seeks to better understand and inform the standards CEC will use, or seek to use, to guarantee the robust information technology system necessary to protect this data. Failure to do so will harm regulated industry entities and may result in the extreme price spikes CEC seeks to avoid.

RECOMMENDATION

Our industry welcomes the opportunity to work with the CEC through a rulemaking process, associated workshops, and a staff-level working group to interpret and comply with these new laws. As described above, ensuring that CEC establishes clear and reasonably implementable rules, guidance, forms, and directions for the new data reporting requirements under both laws would be beneficial to both CEC and the regulated entities by offering much needed clarity given the gaps identified to date. Given the scope and breadth of the data and expanded group of obligated reporting entities involved across the petroleum industry's supply chain – some of whom may not even know that they now have obligations under SB X1-2 – we recommend a phased-in rulemaking approach beginning with priority issue areas first for SB X1-2 (including SB 1322) to ensure that information is readily accessible and not subject to multiple interpretations. A joint staff-level working group would be helpful in determining what those priorities are, based upon what can be more easily implemented. We also suggest CEC staff establish a more formalized process to ensure regular check-ins with the regulated community to allow a forum for questions to be raised and clarification sought.

SUMMARY

Without additional guidance obtained through a formal rulemaking process, both SB X1-2 and SB 1322 will likely result in inconsistent and uneven interpretation and application by the regulated community. For the foregoing reasons, we request that the CEC initiate a formal rulemaking pursuant to California Code of Regulations Section 1221 regarding implementation of SB 1322 and SB X1-2 by issuing an order to initiate such a proceeding. It is also encouraged, as part of that order, that compliance be phased-in as additional information is gathered about regulated entities, priorities are determined, and what additional information that is needed is identified and understood.

Thank you for considering this essential request. We look forward to working with the CEC to provide input through a rulemaking process to ensure regulated entities have the instructions and materials needed to properly comply and to ensure that the data submitted is responsive and consistent across the industry. My address and phone number are included in the footer of this document should you have any additional questions for me or for Tanya DeRivi on my staff, who can be reached at (916) 325-3088 or at tderiv@wspa.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cathy Boyd". The signature is fluid and cursive, with the first name "Cathy" and last name "Boyd" clearly legible.

cc: The Honorable David Hochschild, California Energy Commission, Chair
The Honorable Siva Gunda, California Energy Commission, Vice Chair
Shant Apekian, WSPA

ATTACHMENT A

SB X1-2 Items Requiring Clarification Through Rulemaking

The bulleted categories and sections below describe areas of the statutes at issue that still require additional clarity and would benefit from the rulemaking process. WSPA and its members are still evaluating the statute for additional items that require clarification so that the legislature's intent for transparency and clarity can be achieved. We expect to complete that process and convey such information to CEC prior to or during the rulemaking process.

- **Definitional Terms**

- In **Section 25354(a)(1)** the term “price” may not be available or able to be calculated. The term lacks specificity in application to receipts, inventories, and exports.
- In **Section 25354(a)(1)** the “entity receiving those exports” may not be knowable if they are the final recipient. This is possibly infeasible for foreign exports, especially marine cargos with multiple deliveries and marine cargos that are sold to another entity prior to delivery to its final destination.
- Section **25354(a)(1)** requires refiners to report “all current inventories of refined and unrefined petroleum products.” The term “unrefined petroleum products” is undefined and could have multiple meanings.
- Section **25354(b)(6)** introduces “Pipeline Operator” as a new party without defining this term.
- Section **25354(h)(2)** requires refiners to report monthly on “weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company operated retail outlets, sales to other end users, and wholesales of No. 2 diesel fuel, No. 2 fuel oil, and any renewable fuel.” The new term added “renewable fuel,” which is not listed on the EIA form and provides no specificity as to the different types of renewable fuels that would be reported. Clarity is needed to determine the feasibility of reporting these types of fuels as they are typically blended into gasoline, and ultra-low sulfur diesel fuels.
- Section **25354(i)(2)(F)** may require reporting of “copies of all contracts or agreements entered into, or amendments to contracts or agreements, with other oil refiners, oil producers, petroleum product transporters, petroleum product marketers, petroleum product pipeline operators, terminal operators, or any other entity that trades in petroleum products whether or not those entities take possession of petroleum products, as designated by the commission, during the monthly reporting period, along with records of every transaction made under those contracts or agreements and the prices charged for those transactions.” This section could be widely interpreted and may result in multiple submissions of the same documents, in addition to the questionable necessity of these contracts having to be submitted each week.
- Section **25354(j)** uses the term “importers.” It is unclear if this means the owner of the cargo, the importer of record prior to transfer of title at the point of discharge at the marine terminal, the owner of the vessel, or the company that chartered the vessel.
- **Section 25354(j)** states reporting must happen “at least 96 hours before the arrival.” This 96-hour rule may impact supply of “refined products and renewable fuels” if

- ships must sit out at sea waiting for the 96 hours to pass before “delivery to California.”
- **Section 25354(j)(4)** uses the term “landed cost,” which may not be knowable for many imported cargoes since an importer transfers ownership at the berth and can be on a floating basis against different benchmarks.
 - **Section 25354(l)(1)** refers to the term “spot market.” This does not specify which spot markets are to be included under this provision. It is unclear if this could include the San Francisco Bay Area or Los Angeles, or Pacific Northwest, Gulf Coast, Atlantic Coast or Midwest. There should be clarity on which spot market transactions would need to be reported under this subsection.
 - **Section 25354(l)(16)** requires the “time and date” of a transaction. Spot market transaction published each business day by OPIS for the West Coast identify pipeline cycles, rather than specific dates and times.
 - **Section 25354(l)(18)** requires reporting of methods of transportation such as pipeline, marine vessel, or truck. Spot market transactions published each business day by OPIS for the West Coast are only for pipeline delivery.
 - **Section 25354(l)(19)** requires reporting of “the actual title transfer date.” The actual title transfer usually takes place upon transfer from one party to another. Since spot pipeline transactions reported by OPIS are for future delivery, it could be infeasible to know what date transfer will occur when reporting spot transaction each day.
 - **Section 25354(m)(1)(C)** refers to “return-to-service date.” This should be properly defined to clarify how to treat circumstances of gradual ramp-ups for processing units to return to full service.
 - **Section 25354(m)(1)(E)** refers to “operational capacity.” This should be further defined to clarify either barrels per stream day or barrels per calendar day.
 - **Section 2535 (m)(1)(G)** refers to “finished gasoline.” Decreased output of gasoline component from process units associated with either planned or unplanned work are not “finished gasoline” that contains ethanol at a concentration of 10% by volume. This needs to be clarified to properly compare reported declines in process unit output to the contractual supply obligations.
 - **Section 25354(m)(1)(K)** refers to “noncontracted sales of gasoline.” This requires clarification.
 - **Section 25354(m)(4)(A)(iv)** requires “a description of the season for the unplanned maintenance or outage.” This may not be known with 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment.
 - **Section 25354(m)(4)(A)(v)** requires “a projected duration of production reduction.” This may not be known with 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment.
 - **Section 25354(o)** requires refiners to “report annually to the commission their planned production levels and schedule for turnarounds and planned maintenance for the following 12 months, by month and by finished product.” No clarity or direction exists to identify the optimal submittal date each year that would be properly sequenced to be aligned with the refinery information provided to the Division of Industrial Relations.

- **Information Technology (IT)/Security**

- Is the CEC confident, and how so, in the capabilities of its IT system to handle the market sensitive data and other reporting data to be collected under SBX1-2?
 - How will the CEC ensure confidentiality of the sensitive data provided to the Commission under SBX1-2?
 - What steps will CEC take to identify and mitigate any breach of security?
 - Would the CEC be willing to engage a third party to monitor and ensure stringent IT security measures to protect data reported?
- **Stakeholders**
 - **Section 25354(b)(6)** introduces new obligated reporting entities of “port operators” and “pipeline operators,” to report their capacities for all pipelines and ports used to transport refined gasoline. It is unclear whether port operators and pipeline operators possess this information.
 - **Section 25354(i)(2)(F)** may create a new obligation for “oil refiner, oil producer, petroleum product transporter, petroleum product marketer, petroleum product pipeline operator, and terminal operator” to report each week “copies of all contracts or agreements entered into, or amendments to contracts or agreements, with other oil refiners, oil producers, petroleum product transporters, petroleum product marketers, petroleum product pipeline operators, terminal operators, or any other entity that trades in petroleum products whether or not those entities take possession of petroleum products, as designated by the commission, during the monthly reporting period, along with records of every transaction made under those contracts or agreements and the prices charged for those transactions.” It is unclear whether all entities required to report would be able to adequately comply with reporting likely thousands of contracts that will likely vary in length.
 - **Section 25354(k)** introduces new reporting entities of “nonrefiners, such as proprietary storage companies, that commercially trade in gasoline, gasoline blending components, diesel fuel, or renewable diesel fuel not subject to contractual supply obligations”. It is unclear who these “nonrefiners” are.

SB 1322 Items Requiring Clarification Through Rulemaking

The bulleted sections below describe areas of statute that still require additional clarity and would benefit from a rulemaking process:

- First, the term “gross gasoline refining margin” is itself unclear. If the term is meant to be the summation of Section 25355 (b)(1)-(4), then certain compliance issues must be considered.
- Alternatively, if “gross gasoline refining margin” is intended to mean something different than the summation of Section 25355 (b)(1)-(4), refiners will need additional clarity before attempting to quantify associated costs for Low Carbon Fuel Standard and Cap-and-Trade programs compliance in dollars per barrel as initially requested. An agreed-upon benchmark derived during the rulemaking could be a better approach.
- Section 25355 (b)(3) references the “quantity of wholesale gasoline sales.” If this term is not adequately defined or is inconsistently applied, such as by some refiners including spot pipeline sales, the result could be the improper “double counting” of these volumes because such volumes could be resold.
- Section 25355 (b)(1) and (2) reference both “received” crude oil volumes and “received and intended to be refined during that month” crude oil volumes which can have different interpretations. First, these two characterizations of crude oil volumes are not the same due

to timing differences between purchasing and processing. Second, it is unclear whether “received” volumes include or exclude purchased crude oil that has not yet arrived at a refinery.

- Section 25355 (b)(4) is unclear as to whether stationary refinery Cap-and-Trade obligation costs should be included.

Additionally, it is important to note that the components included in SB 1322 that appear to be used to calculate a “gross gasoline refining margin” fail to accurately represent refining profits, because they exclude significant costs incurred by refiners including, but not limited to: federal renewable identification numbers (RIN) obligation costs, other refinery costs (e.g., electricity, natural gas, chemicals, maintenance, hydrogen, other intermediate oil products), capital investments, logistics costs, additive costs, and gasoline purchases. In other words, the use of gross margin, particularly on one product line in a complex operation, artificially inflates profits, rather than reflecting actual profit margins. This runs counter to providing the public with facts.

The list above excludes other concerns (such as regulatory compliance costs) – but is a sampling of the multitude of SB 1322 issues that still needs clarification, which should be addressed through a formal rulemaking. That would be the best mechanism through which all stakeholders will have an opportunity to provide input on SB 1322 implementation. It will allow for discussion on what new data is needed to comply with the law and which can be provided by the parties under antitrust laws with the proper protections, and how the required data will be used and to who it will be made available. Other considerations include avoiding any future misunderstandings or misuse of publicly available data. We want to ensure a consistent interpretation of SB 1322 by privately held, competing companies subject to SB 1322 that each have different assets and market positions and by CEC staff.