

DOCKETED	
Docket Number:	23-SB-02
Project Title:	SB X1-2 Implementation
TN #:	250561
Document Title:	Western States Petroleum Association Comments - Request for SB X1-2 Data Reporting Clarifications
Description:	Western States Petroleum Association Comments - Request for SB X1-2 Data Reporting Clarifications for June 15, 2023 CEC Staff Webinar – Forms and Demonstration
Filer:	System
Organization:	Western States Petroleum Association
Submitter Role:	Public
Submission Date:	6/9/2023 9:59:35 AM
Docketed Date:	6/9/2023

*Comment Received From: Western States Petroleum Association
Submitted On: 6/9/2023
Docket Number: 23-SB-02*

**Request for SB X1-2 Data Reporting Clarifications for June 15, 2023
CEC Staff Webinar “ Forms and Demonstration**

Additional submitted attachment is included below.



Sophie Ellinghouse

Vice President, General Counsel & Corporate Secretary

June 8, 2023

California Energy Commission
Docket Unit, MS-4
Docket No. 23-SB-02
715 P Street
Sacramento, California 95814

Submitted electronically to docket@energy.ca.gov

RE: WSPA Request for SB X1-2 Data Reporting Clarifications for June 15, 2023 CEC Staff Webinar – Forms and Demonstration [Docket No. 23-SB-02]

The Western States Petroleum Association (WSPA) is disappointed in the California Energy Commission's (CEC) order denying WSPA's petition for rulemaking and continues to maintain that rulemaking is essential to the effective implementation of Senate Bill (SB) X1-2 (2023). Since so much uncertainty still remains, WSPA offers the following comments and initial 100 questions in advance of CEC's June 15, 2023 staff webinar regarding implementation of SB X1-2, to demonstrate completion of revised and new reporting forms. WSPA is a non-profit trade association representing companies that import and export, explore, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California. We would appreciate CEC staff's written response to the questions presented as soon as possible but no later than June 20, 2023.

It appears that CEC has attempted to simplify the need for collaboration via rulemaking by offering industry options when interpreting the statutory provisions, definitions, and meanings of terms found in the new law – without time for industry to assist in clarifying those definitions. These terms are used in the context of complex new requirement and can take on many meanings. Uncertainty in applying these new requirements places both the CEC and industry's reputation at risk. Asking for individual companies to submit interpretations in the early stages of implementing new reporting requirements puts industry in a vulnerable position if the information becomes public without the appropriate context. We urge CEC to take additional steps to ensure that all submitted data is protected under the Petroleum Industry Information Reporting Act of 1980 (PIIRA). The implementation of the voluminous new requirements under SB X1-2 and SB 1322 (2022), will require significant efforts from both stakeholders and CEC alike. Regulated entities must also have sufficient time to ensure internal protocols are in place within their respective organizations and at the CEC to collect and report the requisite information in a responsive, accurate, and timely manner. Given the incredibly expansive nature of the new data collection effort, the ambiguities and open questions within the legislation – as we previously

identified^{1,2,3,4,5,6,7} – and the numerous additional regulated entities involved who have not yet had to comply with these first-of-their-kind reporting requirements, we seek to work with CEC to ensure effective implementation and standardized reporting practices when additional new requirements go into effect on June 26, 2023.

Establishing clear and reasonably implementable rules, guidance, forms, and instructions for the new reporting requirements will be beneficial to both CEC and the regulated entities by offering much needed clarity given the gaps identified to date. In advance of the June 15, 2023 SB X1-2 data reporting webinar, we submit the following questions and seek detailed answers from CEC staff. Providing further clarity around these new reporting requirements would prevent varied and inconsistent responses from industry and prevent incorrect conclusions and monumental burdens placed upon the CEC. We again note that these are initial items requiring clarification from CEC and is not an exhaustive list.

- 1) Please confirm the initial deadlines for the following reports: CEC-W08, CEC-W700, CEC-W800, CEC-W900, CEC-M08, CEC-M13, CEC-M700, CEC-M782B, CEC-M810, CEC-M900, CEC-A03, CEC-A04, CEC-A06, CEC-A08, CEC-A14, CEC-A15, CEC-M1322, CEC-D354_I, CEC-EDR_m1, CEC-EDR_m4A, CEC-EDR_m4B, CEC-W700_96j.
- 2) Are the SB X1-2 forms some regulated entities received with CEC's letter on May 30, 2023 the only requirements the CEC is imposing under SB X1-2 at this time?
- 3) One new form calls for Marine Import Notifications. Is gasoline, or all products, included?
- 4) One new form calls for a Daily Spot Transaction Log. Please confirm that only spot pipeline gasoline transactions are to be reported and that they are to be reported when the deal is transacted – not when the contract is entered into.
- 5) Will CEC time submittal of the new Planned Maintenance Form with California Division of Occupational Safety and Health (Cal/OSHA) notifications to prevent variations in reporting?
- 6) For the modified monthly reports, if the reports are due 30 days after the end of the month, is the first report due July 30, 2023 (for the four days of June 2023 data captured under SB X1-2) or due August 30, 2023 (including for the full month of July 2023)?
- 7) On Form CEC-M700, all sections include a column titled "Price Per Barrel." The instructions provided indicate there are specific instructions for each section and only the "movements between marine vessels" section references the price per barrel. Is it correct to infer that this price per barrel definition applies to all sections of Form CEC-M700?
- 8) Does the word "existing" in Section 25354(a) intend to mean changes to reporting that is occurring today?
- 9) What should be reported if "price" in Section 25354(a)(1) may not be available or able to be calculated? It is unclear as the term lacks specificity in application to receipts, inventories, and exports.

¹ See WSPA request for SB 1322 rulemaking letter submitted to CEC on December 7, 2022

² See WSPA petition for SB 1322 rulemaking filed with CEC on January 6, 2023

³ Refer to WSPA public comments provided at CEC's January 25, 2023 Business Meeting <https://www.energy.ca.gov/event/meeting/2023-01/energy-commission-business-meeting>

⁴ See WSPA request for reconsideration of SB 1322 rulemaking petition filed with CEC on February 15, 2023

⁵ Refer to WSPA public comments provided at CEC's March 14, 2023 Business Meeting <https://www.energy.ca.gov/event/meeting/2023-03/energy-commission-business-meeting-0>

⁶ See WSPA petition for SB X1-2 and SB 1322 rulemaking filed with CEC on May 11, 2023

⁷ See WSPA comments on May 16, 2023 SB X1-2/1322 implementation workshop filed with CEC on May 30, 2023

- 10) If “entity receiving those exports” in Section 25354(a)(1) is not knowable (if they are the final recipient) or 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), what should be reported?
- 11) What should be reported for “unrefined petroleum products” in Section 25354(a)(1), which can have multiple meanings?
 - a. Does this require refiners to report “all current inventories of refined and unrefined petroleum products”?
- 12) What should be reported in Section 25354(b) for the term “existing”? It is unclear if it is intended to mean changes to reporting that is occurring today.
- 13) What is the definition for the term “Pipeline Operator” in Section 25354(b)(6) and what should be reported?
- 14) 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 U.S. Energy Information Administration form and provides no specificity as to the different types of renewable fuels that would be reported.
 - a. What should be reported, particularly in determining the feasibility of reporting these types of fuels as they are typically blended into gasoline, and ultra-low sulfur diesel fuels?
- 15) 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.”
 - a. Will CEC confirm that this subsection is at CEC’s discretion (e.g., “in the form and extent as the commission prescribes,” and “may include any of the following”), and is not immediately effective on June 26, 2023?
 - b. How should this be interpreted, and how will CEC avoid requiring multiple submissions of the same documents?
 - c. What types of “transactions” should be compiled and what specific types of petroleum products should be included – i.e., what is the “form and extent” of this requirement as contemplated by Section 25354(i)(1)?
 - d. How should “price” be calculated for transactions using benchmark references?
- 16) Does the term “importers” in Section 25354(j) mean 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?
 - a. What should be reported and how?
- 17) Section 25354(j) states reporting must happen “at least 96 hours before the arrival.”
 - a. Is it the CEC’s intent to ensure that adherence to this 96-hour rule would not impact the supply of “refined products and renewable fuels”?
 - b. If so, what should be done and reported to avoid forcing ships to wait at sea waiting for the 96 hours to pass before “delivery to California”?

- c. What should be done and reported if what is planned can be provided – but is different from what actually happens?
 - d. What mechanism will CEC use and provide to prevent companies from being penalized for trying to deliver needed fuels to Californians in an expedited manner?
 - e. What should be done if a cargo is reported as destined for California import but changes course before it enters the state?
- 18) Is “cargo landed cost” as used in Section 25354(j) synonymous with “price per barrel”?
- 19) What should be reported for Section 25354(j), since the term “imports” is unclear whether it means imports from foreign countries or imports from domestic resources as well (e.g., the United States Gulf Coast and Pacific Northwest)?
- 20) What should be done and reported if circumstances or deliveries change for the purposes of Section 25354(j)(2), if it becomes challenging to provide the information sought? Sometimes purchases are “as delivered” and the source is not necessarily known.
- 21) What should be reported for Section 25354(j)(4), which uses the term “landed cost,” if this 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?
- a. What should be reported if this information is challenging to provide as it does not link costs to every purchase?
- 22) What should be reported for Section 25354(j)(5) if it becomes challenging to provide the information sought as transportation fuel is not tracked by molecules, so there is no way to apply the volumes to specific sales or marketing contracts?
- 23) Can Section 25354(l) be limited to the data “if applicable,” as all of the information required for each transaction may not apply to each such transaction? Daily reporting of this information is expected to be extremely cumbersome, even if it can be achieved at all.
- a. Given the complexity and size of data requested, can there be more time allowed to collect the requested data? There is no indication that this information is needed or will be actioned on an urgent basis, so there would be little benefit to regulators for a slightly longer period to collect and validate the vast amount of information requested.
 - b. Can this requirement be changed to a daily report that reports out three business days after each transaction given the need for reconciliation of information, where a longer lag period would be beneficial?
 - c. How and what should be reported on a Saturday, Sunday, holidays or during emergency events when resources are limited?
- 24) Can CEC clarify the term “spot market” used in Section 25354(l)(1)? There should be clarity on which spot market transactions would need to be reported under this subsection.
- a. Does this include the San Francisco Bay Area or Los Angeles, Pacific Northwest, Gulf Coast, Atlantic Coast or Midwest?
 - b. Does “spot market” only include spot pipeline transactions?
 - c. Does this include exchanges, both physical and paper?
- 25) Section 25354(l)(8), (9), (11) requires the name, or nonanonymized identification, of the broker, as well as the executing and counterparty trader for transactions. Does CEC understand that collection of international personal data may implicate reporters or the CEC under International General Data Protections Regulation (GDPR)?
- a. How will CEC comply with specific guidelines for processing this data?

- b. How will CEC consider and develop transparent privacy safeguards per GDPR requirements?
 - c. How should regulated entities comply with international GDPR requirements while also complying with new state reporting requirements?
- 26) Can estimates be used in Section 25354(l)(14) reporting, which requires the reporting of the volume of each transaction in thousands of barrels, or other unit of measurement? Regulated entities may be unable to report in thousands of barrels and this information may only be known as an estimate.
- 27) Can there be a lag in providing Section 25354(l)(15) information, to report the invoiced volume of each transaction in thousands of barrels, or other unit of measurement, if unable to be indicated in thousands of barrels? There may be a lag in providing this information if unknown until invoiced given a wide range of payment terms.
- 28) What should be reported in Section 25354(l)(19), which requires the actual title transfer date, if this may not be known until after the fact?
- 29) What should be reported for Section 25354(l)(16), which requires the “time and date” of a transaction, if spot market transactions published each business day by the Oil Price Information Service (OPIS) for the West Coast are identified by pipeline cycles, rather than specific dates and times?
- 30) What should be reported for Section 25354(l)(18), which requires reporting of methods of transportation such as pipeline, marine vessel, or truck, if spot market transactions are published each business day by OPIS for the West Coast are only for pipeline delivery?
- 31) What should be reported for Section 25354(l)(19), which requires reporting of “the actual title transfer date,” if 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.
- 32) Does Section 25354(m) and (n) apply only to maintenance at producing units at a refinery and excludes storage or pipelines inside the refinery gate?
- 33) What does “return-to-service date” in Section 25354(m)(1)(e) refer to and how should circumstances of gradual ramp-ups for processing units to return to full service be treated?
- 34) Does “operational capacity” in Section 25354(m)(1)(e) refer to barrels per stream day or barrels per calendar day?
- 35) How will “finished gasoline” in Section 2535 (m)(1)(G) be reported and evaluated? Since 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, properly comparing reported declines in process unit output to the contractual supply obligations would be important.
- 36) What does “noncontracted sales of gasoline” in Section 25354(m)(1)(K) mean?
- 37) What should be reported in Section 25354(m)(4)(A)(iv), which requires “a description of the reason for the unplanned maintenance or outage,” if this is not known within 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment?
- 38) What should be reported in Section 25354(m)(4)(A)(v), which requires “a projected duration of production reduction,” if this is not known within 48 hours of the unplanned outage due to restricted access to the damaged unit and/or equipment?
- 39) When should “report[ing] 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” in Section 25354(o) be done?

- a. How will CEC properly sequence reporting to align with the refinery information provided to the Division of Industrial Relations?
- 40) Please confirm that operational costs in Section 23555(8) should include costs associated with refining or also include the distribution, marketing costs associated with bringing product to spot pipelines sales, unbranded, branded wholesale rack and DTW sales.
- a. If not, how could CEC evaluate net margin, which will also artificially inflate the appearance of profits if distribution costs outside the refinery are excluded?
 - b. How will CEC evaluate purchased gasoline gas costs, which need to be included to match corresponding revenue generated in associated spot pipeline sales, unbranded, branded wholesale rack and dealer tank wagon (DTW) sales?
 - c. Do “operational costs” include the cost of all feedstocks used to produce gasoline? In addition to crudes and intermediates, this may include natural gas, hydrogen, etc.
- 41) How will CEC evaluate costs if they do not include the purchased gas costs that may be needed to be consistent with Section 25355.5(a)(1) definition of gross gasoline refining margin excluding state program costs?
- 42) How will CEC address the definition mismatch in Sections 25355.5(l) and 25355(a)(2)? The definition of “gross gasoline refining margin” as currently defined in Section 25355(a) equals the difference, expressed in dollars per barrel, between the average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received by the refinery. SB X1-2 did not change this definition. Rather, SB X1-2 adds a second definition, the “gross gasoline refining margin excluding state program costs” which equals the difference, expressed in dollars per barrel, between the average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received and refined gasoline imported by the refinery, less state program costs (low carbon fuel standard and cap-at-the-rack costs). The first measure of “gross gasoline refining margin” is reported to the CEC by refineries; while the second is calculated by the CEC monthly based on data received. It appears that policymakers are starting to see that there are more costs associated with producing a barrel of gasoline than just oil purchases but it is unclear why imported gasoline costs are part of the equation for the CEC calculation of “gross gasoline refining margin,” but not the value as reported by the refiners.
- a. Are both gross gasoline refining margins, as reported by the refineries and the one calculated by the CEC are required pursuant to SB X1-2 to be published on the CEC’s website within 45 days of the end of each calendar month?
- 43) Will CEC have specific data output formatting requirements?
- 44) When will CEC’s data reporting portal come live?
- 45) How soon will regulated entities have access to CEC’s data reporting portal?
- 46) What alternative methods will be available for reporting purposes?
- 47) Who will be CEC’s dedicated staff contact (and their contact information) to address questions regarding the reports to be filed?
- 48) Will CEC have a notification process for regulated entities who do not submit complete data and, if so, what form will that process take?
- 49) Will CEC have a grace period to allow for compliance as SB X1-2 reporting is implemented?
- 50) To protect consumers as well as the reporting entities, 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?
- 51) How will CEC ensure confidentiality of the sensitive data provided to CEC under SBX1-2?

- 52) What steps will CEC take to identify and mitigate any breach of security?
- 53) Would the CEC be willing to engage a third party to monitor and ensure stringent IT security measures to protect data reported?
- 54) How will CEC apprise regulated entities of the technical specifications and parameters of the IT security system, process and protocols that will be employed to protect confidential business information prior to uploading such data into the system that is ultimately deployed?
- 55) How will CEC apprise regulated entities that the IT Security System/Technology that is implemented is implemented across all agencies that will have access to the information?
- 56) How will CEC apprise regulated entities regarding which agencies and third parties will have access to Confidential Business Information?
- 57) How will individuals at each regulated entity log in to the CEC data reporting portal and submit their respective reports?
 - a. Will each individual have unique log-in credentials that can be monitored by CEC, or will each regulated entity have a single log-in to be shared across the organization?
- 58) When and how will the CEC data reporting portal be made available to all regulated entities for log-in and testing?
- 59) What would be reported in Section 25354(b)(6), which 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, if port operators and/or pipeline operators do not possess this information?
- 60) What would be reported for Section 25354(i)(2)(F), which 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” if an obligated entity is unable to adequately comply with reporting?
- 61) Who are the “nonrefiners” in Section 25354(k), which 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”?
- 62) Does the term “refiner” in Section 25354(k) mean only someone who owns storage and then would report what it holds in its storage facilities?
- 63) Is the term “gross gasoline refining margin” meant to be the summation of Section 25355 (b)(1)-(4)?
 - a. If “gross gasoline refining margin” is intended to mean something different than the summation of Section 25355 (b)(1)-(4), what does it mean?
 - b. It would appear that gross gasoline margin would not take into account rack gasoline sales. All of the gasoline sold at outlying terminals has the cost of a terminal throughput fee, additive fee, ethanol blending fees and the pipeline transportation

cost. Where are these costs included in the cost of the gasoline when it is sold over a rack? In addition, gasoline sold over the rack has 10% ethanol which must also be imported into the state from either foreign or domestic sources.

- 64) How will CEC avoid the improper double counting of volumes in Section 25355(b)(3), which references the “quantity of wholesale gasoline sales”?
- 65) What should be reported for Section 25355(b)(1) and (2), which reference both “received” crude oil volumes and “received and intended to be refined during that month”?
- a. Does “received” volumes include or exclude purchased crude oil that has not yet arrived at a refinery?
- 66) Are stationary refinery Cap-and-Trade obligation costs included in Section 25355(b)(4)?
- 67) Will the margin cap apply to a regulated company’s margins in California or a company’s margins overall?
- a. How will a company’s wholistic profit and loss statement and financial position fit into the formula used for determining appropriate profit margins in California?
- 68) How will the formula that will be utilized to analyze the data being provided, and to make the determination that a margin cap should be imposed, be determined?

Thank you for considering our comments and answering the above questions. We look forward to both receiving CEC’s written answers to the above questions as soon as possible – but no later than June 20, 2023 – and in working with the CEC to provide ongoing input to ensure regulated entities have the instructions and materials needed to properly comply, to ensure that the data submitted is responsive and consistent across the industry, and that the information is well-protected. Please do not hesitate to contact me at (916) 803-7674 or via email at sellinghouse@wspa.org with any questions, or Tanya DeRivi, who can be reached at (916) 325-3088 or at tderivi@wspa.org.

Sincerely,



Vice President, General Counsel & Corporate Secretary