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RESPONSE TO PUBLIC COMMENTS RECEIVED

Three-month Projection Reporting Requirements
CEC Docket No. 23-OIR-03
OAL File No. 2025-0213-03E

LEGEND

Commenter	Comment Nos./Date
California Fuels and Convenience Alliance (CFCA)	CFCA 1-6 / February 14, 2025
Western States Petroleum Association (WSPA)	WSPA 1-5 / February 18, 2025

The California Energy Commission (CEC) received two sets of comments that satisfied requirements to be considered in this rulemaking (submitted to both the Office of Administrative Law and CEC during the 5-day comment period for these emergency regulations). These comments, from the California Fuels and Convenience Alliance and the Western States Petroleum Association, are excerpted or summarized below, followed by responses.

COMMENT NO. CFCA 1: While we appreciate the proposal to raise the reporting threshold from 20,000 barrels (840,000 gallons) per month to 50,000 barrels (2,100,000 gallons) per month, this level remains insufficient in addressing the undue regulatory burdens placed on mid-sized distributors.

The fuel distribution market in California is composed of a diverse range of businesses, from large multinational entities to small, family-owned operations. Many mid-sized distributors lack the resources and human capital that larger firms have to manage complex reporting requirements. This burden falls disproportionately on small and mid-sized marketers, who do not have the scale to influence California's fuel supply yet must still comply with the same stringent regulations. Thus, raising the threshold beyond 50,000 barrels per month would:

- Ensure meaningful market data is still captured by focusing on larger entities that significantly influence supply trends.
- Eliminate unnecessary compliance burdens for mid-sized businesses that do not impact market volatility but must still dedicate significant resources to regulatory filings.

- Encourage competition by preventing disproportionate regulatory costs from sidelining mid-sized distributors who already face economic pressures from major suppliers and refiners.
- Enhance operational efficiency for both regulated businesses and CEC by reducing the number of entities subject to reporting, thereby streamlining data collection and analysis.

A further increase in the reporting threshold would allow CEC to achieve its goal of gathering critical market insights without placing an excessive compliance burden on businesses that do not substantially impact fuel supply trends.

RESPONSE: These regulations more than double the volume threshold in the definition of Major Petroleum Products marketer to narrow the sphere of reporting entities and reduce the reporting burden on entities with smaller market influence. These regulations strike the appropriate balance between obtaining required and needed information and responding to industry concerns. We will assess further as we gather more data and responses.

COMMENT NO. CFCA 2: The current reporting structure leads to excessive duplication, forcing businesses to report the same transaction multiple times across different reports. This creates unnecessary administrative work without improving the quality of market data. The cumulative effect of these redundant reporting requirements is an overwhelming administrative burden that diverts resources away from core business operations. These duplications do not enhance market transparency but rather introduce inefficiencies that increase compliance costs across the industry.

RESPONSE: The proposed regulations clarify an existing statutory reporting requirement that has been in place since 1981 and apply to projections the CEC collects monthly. These projections provide the CEC with forward visibility into the market and complement other statutory reporting requirements that collect final data after-the-fact. There are no overlapping reporting requirements that serve the same purpose as those clarified by the proposed regulations.

COMMENT NO. CFCA 3: Multiple Reports for a Single Transaction. A fuel purchase made on spot on June 5 is reported in the daily report on June 6. (D354). The same transaction is then re-reported in the monthly report at the end of June. (M700). If the transaction involves a vessel delivery, it must also be included in the 96-hour report (EBR700), weekly report (W700), and forecast report (M07)—all before it is even finalized. CFCA recommends the CEC consolidate data across daily, weekly, and monthly reports to eliminate repetitive filings.

RESPONSE: Each form mentioned above captures a different phase of transactions and the underlying regulations implement separate statutory reporting requirements. M07 forms captures upcoming planned transactions, and the CEC understands there is a degree of uncertainty inherent in any forward-

looking projection. Actual activity is not captured until after the projected period has occurred. D354 captures actual transaction activity in agreement and then settlement phases. EBR700 captures the initial phase of marine transfers, capturing arrangements made by the shipper. The receiving party reports only after receiving custody of the product. Actual received transfers are captured on W700 forms, while M700 forms offer the opportunity to reconcile all transfer activities on balance per month.

COMMENT NO. CFCA 4: Redundant Forecasting Requirements. Businesses are required to submit fuel forecasts on a rolling three-month basis, often leading to inaccurate or outdated projections. These forecasts must be updated with revised estimates and actualized numbers, meaning the same data is repeatedly adjusted and re-reported multiple times. Since fuel purchases fluctuate based on market conditions, this requirement forces companies to submit unnecessary and often speculative reports that add no real value to market monitoring. CFCA recommends the CEC reduce the frequency of forecast reporting requirements and allow businesses to submit updated estimates only when material changes occur rather than on a rolling basis.

RESPONSE: These regulations implement an existing statutory requirement for projections to be submitted each month and to contain information for the three months following the month in which the projection is submitted. The proposed regulations promote consistency across reporting entities and will enable the CEC to better analyze, compare, and aggregate data across reporters. These changes, in turn, increase regulatory certainty for the regulated community and enhance the CEC's ability to collect and analyze this information. The CEC understands there is a degree of uncertainty inherent in any forward-looking projection. Alternative reporting formats have always been available by request through an appropriately addressed letter to the Executive Director, with each independent request decided on a case-by-case basis.

COMMENT NO. CFCA 5: Inconsistencies Between Reports. Due to varying deadlines and data cutoffs across different reports, businesses often struggle to reconcile their data, leading to inconsistencies and increased regulatory risk. The same transaction may be recorded differently in various reports due to timing differences, creating confusion for both regulators and businesses.

RESPONSE: The CEC understands there may be inconsistencies between monthly, weekly, daily, and event-based reporting. Non-projected weekly and monthly reports have always overlapped in scope, while daily and event-based reports differ in scope and are contingent on activity type. Weekly, daily and event-based data captures initial activity, while a monthly report offers reporting entities opportunity to reconcile or refine their data, maintain a more coherent balance, and demonstrate how shorter period data interlocks versus that which was reported through initial submissions.

COMMENT NO. CFCA 6: CFCA recommends the CEC align reporting deadlines and data cutoffs across different reports to ensure consistency and avoid unnecessary corrections.

RESPONSE: All report deadlines are aligned by reporting period cutoff:

Daily: 9:00 a.m. on the day following each reporting period.

Weekly: Tuesday of each week, 5 p.m. PST.

Monthly: No later than 30 days after the last day of each month, 5 p.m. PST.

Annually: No later than February 15, 5 p.m. PST, each calendar year.

Alternative reporting has always been available by request through an appropriately addressed letter to the Executive Director, with each independent request decided on a case-by-case basis.

COMMENT NO. WSPA 1: Regulations were adopted on an “emergency” basis despite the lack of any actual identified emergency under California law, and despite CEC having had decades to consider and adopt changes to the list of information collected from industry. This bypassed the legal timelines typically required for such rulemaking and short-changed the stakeholders and California’s citizens from having adequate time to consider and discuss the projection reporting requirements at issue.

RESPONSE: Transportation fuel, and gasoline in particular, is an essential commodity on which millions of Californians currently rely each day to get to work, access healthcare, conduct business, and navigate other essential aspects of daily life. Even as California transitions to more zero-emission vehicles, at present a majority of California residents rely on petroleum-based transportation fuels. As a result, transportation fuel price spikes have a direct negative impact on the peace, health, safety, and general welfare of California consumers. Rapid increases in fuel prices can force consumers to make difficult choices with little or no time to plan. These impacts disproportionately affect individuals living in disadvantaged communities, who tend to spend a larger share of their income on transportation fuels and are less likely to have access to zero-emission vehicles that could insulate them from these impacts. Recognizing the immediate threat posed by transportation fuel price spikes, the Legislature authorized the CEC in Public Resources Code section 25367 to implement Chapter 4.5 of Division 15 of the Public Resources Code through emergency rulemaking. Public Resources Code 25367 states “regulations or orders implementing [Chapter 4.5 of Division 15 of the Public Resources Code] shall be considered by the Office of Administrative Law as an emergency.” This language is unambiguous and automatically deems these to be emergency regulations. The legislature’s power

to deem regulations to be emergencies is well established.¹ Here, the legislature determined that regulations adopted by the CEC to implement Chapter 4.5 are subject to the emergency rulemaking process and are “necessary for the immediate preservation of the public peace, health, safety, and general welfare.”²

COMMENT NO. WSPA 2: The resulting Regulations mandate provision of extremely sensitive business confidential and trade secret information, and force businesses to speculate about the future market direction based on little to no information on what its competitors intend to do. While such guesses about the future supply little actual empirical evidence to inform policymaking, they are amenable to abuse from bad actors looking to manipulate markets, drive speculation, and/or to intentionally harm the industry. Despite this danger and confidentiality requirements under SB X1-2 and the Petroleum Industry Information Reporting Act (PIIRA), the Regulations do not adequately protect this projection data from harmful disclosure, require aggregation, or limit sharing of the data to internal CEC use only.

RESPONSE: These regulations clarify an existing statutory reporting requirement that has been in place since 1981. These projections provide the CEC with forward visibility into the market and complement other reporting requirements that collect final data after-the-fact. The CEC understands there is a degree of uncertainty inherent in any forward-looking projection. Like the projection information the CEC currently receives pursuant to the statutory requirement, all information submitted to the CEC pursuant to these regulations will be protected by the strict confidentiality requirements in Public Resources Code section 25364. As CEC staff explained at the February 12 business meeting, robust internal processes protect this information from unauthorized use and inadvertent disclosure.

COMMENT NO. WSPA 3: To compound the potential harm, making regulatory decisions about California’s fuels industry based on pure speculation about the future movement of the market is both arbitrary and extremely bad public policy. Such decisions are not only ill-informed but threaten to fuel irrational market speculation by reinforcing potential investor fears and suspicions based on precious little information. This rulemaking deserved full and fair consideration involving robust public participation and consideration of the risks of requiring reporting of such speculative projections.

RESPONSE: These regulations clarify an existing statutory reporting requirement that has been in place since 1981. These projections provide the CEC with forward visibility into the market and complement other reporting

¹ E.g., Pub. Resources Code, § 25545.12; Pub. Util. Code, § 7713; Health & Saf. Code, § 57013; Gov. Code, § 8574.44; Food & Agr. Code, § 11502.5; Food & Agr. Code, § 12812; Food & Agr. Code, § 12841; Water Code § 13260(f)(2).

² Public Resources Code §25367(a).

requirements that collect final data after-the-fact. The CEC understands there is a degree of uncertainty inherent in any forward-looking projection. The proposed regulations promote consistency across reporting entities and will enable the CEC to better analyze, compare, and aggregate data across reporters. These changes, in turn, increase regulatory certainty for the regulated community and enhance the CEC's ability to collect and analyze this information. This rulemaking included full and fair consideration of the proposed changes. Notice of a workshop on the proposal was published on October 29, 2024, draft language was published on November 6, 2024, a workshop was held on November 12, 2024, and an initial written comment period extended to December 9, 2024. The CEC considered all comments received and made significant changes to the proposal as a result. The Notice of Proposed Emergency Action incorporating these changes was published on January 31, 2025, and the proposal was adopted at a public hearing on February 12, 2025, which afforded another opportunity for public comment and consideration and in sum total provided three and a half months of public engagement on the issue.

COMMENT NO. WSPA 4: WSPA also is disappointed that the rulemaking process similarly short-changed the process of environmental impact review. CEC adopted the Regulations based on its claim that “there is no possibility” of the Regulations causing negative impacts. But the truth is that Regulations requiring speculation, and then presumably making further important policy decisions based on that speculation, very well could harm the environment, the market, California industry, and Californians themselves. CEC made this conclusion of “no possibility” of impacts simply to avoid the time-consuming environmental review the California Environmental Quality Act otherwise requires, and this lack of meaningful review now has the potential to cause very real and adverse future impacts to the State.

RESPONSE: As detailed in the adoption resolution, this action has been statutorily deemed to not be a project under CEQA pursuant to Public Resources Code Section 25367. Furthermore, the proposed regulations only clarify an existing reporting requirement imposed by statute on certain participants in the petroleum market. The action to clarify reporting requirements through regulations does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but implements an administrative process. No changes to the operation of the market, availability of petroleum, or indirect changes to consumer behavior are expected to result from adoption of these clarified reporting requirements, nor has WSPA or anyone else provided evidence in the record otherwise.

COMMENT NO. WSPA 5: Finally, the hurried rulemaking process presented a host of regulatory terms and requirements that were vague or undefined. Our letter of December 9, 2024, incorporated by reference here, details numerous problems with the scope of

terms like “refinery inputs,” “acquisitions” and “distributions,” along with refinery reporting and maintenance forms with several unclear reporting categories and little guidance for reporting entities. Again, these are the types of problems that could and should be resolved if the rulemaking had followed normal public review and comment timeframes to avoid unnecessary uncertainty among both stakeholders and CEC staff alike.

RESPONSE: As discussed above, in order to facilitate engagement on these proposed regulations and solicit improvements, the CEC held a workshop on November 12, 2024 regarding the proposed regulations that encouraged feedback from industry to provide insight on any perceived deficiency the rules may have. The CEC made numerous changes to the express terms during the pre-rulemaking process in response to feedback received, including WSPA’s December 9 letter. As a result, the December 9 letter is outdated. For example, the term “acquisitions” does not appear in the regulations and the term “refinery inputs” is defined. Furthermore, as provided in the CEC’s existing regulations, all terms in the proposed regulations are to be construed in a manner consistent with their common commercial usage, absent an express indication to the contrary. These regulations strike the appropriate balance between obtaining required and needed information and responding to industry concerns.