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RESPONSE TO PUBLIC COMMENTS RECEIVED

Revised SB X1-2 Spot Market Reporting Requirements
CEC Docket No. 23-OIR-03
OAL File No. 2024-0215-02E

LEGEND

Commenter	Comment Nos./Date
Abate-A-Weed Incorporated (AAW)	AAW 1 / February 19, 2024
American Petroleum & Convenience Store Association (APCA)	APCA 1-3 / February 19, 2024
A T Industrial Products Corporation (AT)	AT 1 / February 19, 2024
California Delivery Association (CDA)	CDA 1-3 / February 20, 2024
Hills Flat Lumber Co. (HFL)	HFL 1 / February 19, 2024
Idemitsu Apollo Corporation (IAC)	IAC 1-25 / February 20, 2024
National Federation of Independent Businesses (NFIB)	NFIB 1-4 / February 19, 2024
Star Milling Co. (SMC)	SMC 1 / February 20, 2024
Steve Uhler (U)	U 1-10 / February 16, 2024
Western States Petroleum Association (WSPA)	WSPA 1-13 / February 16, 2024

Responses to comments are organized below by topic. Topics are underlined. Responses to comments are indented. Responses apply to all comments grouped together above, including situations in which multiple paragraphs are grouped above one response.

FINDING OF EMERGENCY

COMMENT NO. IAC 18: The commenter recognizes that the Legislature authorized OAL to treat these regulations as emergency regulations, but that procedural safeguards still apply.

RESPONSE: The CEC appreciates the recognition that the statute provides that these regulations qualify as emergency regulations. The CEC has not acted arbitrarily or capriciously, ignored due process, or acted beyond the scope of its authority in adopting these regulations. These regulations simply tailor the data reporting requirements to the data the CEC has determined is necessary to carry out its responsibilities under pre-existing and recently enacted statutory directives. The CEC has

been engaged with stakeholders on these issues since updated legislation became effective on March 28, 2023. The statute directs the CEC to collect data so that the causes of petroleum price volatility can be better understood and addressed. These regulations are tailored to collect this data and are within the authority of the CEC to implement. No due process rights have been violated in establishing these reporting requirements and they are not arbitrary or capricious; they have been tailored to implement updated statutory requirements and result in data the CEC can use to explore and address market volatility as directed by the Legislature.

COMMENT NO. AAW 1: The commenter asserts that no emergency exists.

COMMENT NO. WSPA 3: The commenter asserts that the CEC failed to provide supporting facts for its finding of emergency and instead simply cited the emergency authority in Public Resources Code section 25367, and therefore failed to satisfy the APA. The commenter states that the Legislature lacks the power to deem regulations to be emergencies and suggests that the statute relied upon for this rulemaking, Public Resources Code section 25367, is merely an urgency statute. The commenter notes that an urgency statute is not a sufficient basis, in and of itself, to support a finding of emergency.

COMMENT NO. IAC 22: The commenter asserts that the CEC is not obligated to adopt these regulations as emergency regulations, and it would be prudent for the CEC to instead use “a formal rulemaking process.”

COMMENT NO. U 2: The commenter notes that the CEC opened a docket related to this rulemaking (23-OIR-03) on October 2, 2023, and suggests that this allowed sufficient time for a regular rulemaking. The commenter suggests that the only motivation for using the emergency rulemaking process was appearances and asserted that gasoline price spikes do not justify use of the emergency rulemaking process.

RESPONSE: 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 emergency regulations. The legislature’s power to deem regulations to be

emergencies is well-established.¹ When the legislature delegates quasi-legislative (i.e., rulemaking) power to agencies via statute, it may also determine which APA procedures such agencies must follow in carrying out that power.² The legislature may subject agency rulemaking to only part of the APA process, or it may exempt the rulemaking from the APA entirely, as it did in several sections of SB X1-2 not at issue here. Here, the legislature determined that regulations adopted by the CEC to implement petroleum market reporting requirements, including the spot market reporting requirements in section 25354(l), are subject to the emergency rulemaking process. The proposed regulations are not based merely on an urgency statute, but rather on the specific statutory provision above, which deems these regulations to be emergency, along with the relevant facts stated in the finding of emergency.

COMMENT NO. WSPA 1: The commenter asserts that the proposed regulations fail to meet the statutory requirements for an emergency rulemaking and that the CEC improperly mischaracterized it as such. Specifically, the commenter asserts that the CEC failed to provide the information required by Government Code section 11346(b)(2), including facts explaining the failure to address the situation through nonemergency regulations. The commenter suggests that the finding of emergency is undermined by inclusion of specific facts regarding the historical context of gasoline price spikes in California.

RESPONSE: The CEC carefully prepared the proposed regulations consistent with the Administrative Procedure Act (APA) as it applies to Chapter 4.5 of Division 15 of the Public Resources Code. The CEC did not bypass the procedural safeguards of the APA. Pursuant to the enabling legislation, SB X1-2,³ these regulations are deemed to be an emergency and therefore subject to the APA emergency rulemaking procedure.⁴ Accordingly, the CEC followed the procedural safeguards of the APA's emergency rulemaking procedure, including those enumerated in Government Code sections 11346.1 and 11349.6 and in the California Code of Regulations, title 1, sections 48 and 50. Government code section

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 See Gov. Code, § 11346, subd. (a) (“This chapter shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*” (emphasis added).)

³ Stats. 2023, 1st Ex. Sess. 2023, ch. 1.

⁴ Pub. Resources Code, § 25367.

11346.1 governs findings of emergency *made by an agency*. In this instance, the proposed regulations are deemed to be an emergency *by statute* and this status conferred by statute supersedes the requirements in Government Code section 11346.1(b)(2) requiring the agency to make a finding of emergency, demonstrate the existence of an emergency, and explain why the situation could not have been addressed through non-emergency means. Nevertheless, the CEC has acted with expediency. The proposed regulations implement a complex statutory reporting requirement that took effect less than eight months ago. The self-executing provisions of the statute resulted in new data being provided to the CEC and time was necessary to collect, process, and analyze enough of this data to begin to identify gaps in reporting, inconsistencies in interpretation, and other areas that needed clarification and revision to the reporting requirements.

COMMENT NO. WSPA 2: The commenter acknowledges that agencies have discretion in making a finding of emergency but asserts that courts are not bound by an agency's decision and ultimately decide whether an agency's statement of facts supports its finding of emergency. The commenter cites *Poschman v. Dumke*, ((1973) 31 Cal.App.3d 932, 941), to support the assertion that an agency's finding of emergency must contain more than statements of motivation or statements that the proposed action is supported by sound policy.

RESPONSE: As noted above, the proposed regulations are deemed to be an emergency by statute. As such, the commenter's assertions, as well as the holding of *Poshman v. Dumke*, do not apply. As discussed in the response to Comment No. WSPA 3, the legislature's power to deem regulations to be emergencies is well-established.

COMMENT NO. WSPA 4: The commenter characterizes the emergency procedure as extraordinary and requests that, going forward, the CEC use the emergency regulation procedure sparingly. The commenter cites *Schenley Affiliated Brands Corp. v. Kirby*, (21 Cal. App. 3d 177, 194 (1971)), to support the assertion that an agency abuses the emergency rulemaking power when it habitually uses it without credibly stating a genuine emergency.

RESPONSE: As noted above, the proposed regulations are deemed to be an emergency by statute. As such, the commenter's assertions, as well as the holding of *Poshman v. Dumke*, are not applicable here. In adopting SB X1-2, the Legislature found that "[f]undamental change is necessary to

prevent future extreme price spikes and price gouging by oil companies.”⁵ The proposed regulations will ensure the CEC gathers accurate data, which is the first step in understanding these price spikes and crafting solutions to address the problem. In the meantime, inflation is impacting consumers and there is the very real possibility that without immediate action these price spikes will continue unabated, further affecting the ability of consumers to afford daily necessities. Recognizing the need for immediate action, the Legislature deemed any regulations implementing the Petroleum Industry Information Reporting Act of 1980,⁶ as modified by SB X1-2, to be emergency.

COMMENT NO. IAC 24, 25: The commenter asserts that it is not clear “a legitimate emergency exists such that the CEC needs to bypass formal rulemaking” considering the motivating event for this activity was the 2022 retail gasoline price spikes and since then SB X1-2 was adopted, establishing self-executing daily reporting obligations that are already underway.

RESPONSE: The proposed regulations are deemed to be emergency by statute. See response to Comment Nos. AAW 1, WSPA 3, and U2. The 2022 retail gasoline price spikes occurred shortly before the Governor convened a special legislative session that led to the enactment of Senate Bill (SB) X1-2. As noted in the finding of emergency, another price spike occurred in September of 2023. The SB X1-2 reporting requirements gave the CEC greater visibility into the spot market in the fall of 2023 and the DPMO determined that this spike appeared to have been caused by unusual spot market trading activity. The proposed regulations make important clarifications to those reporting requirements to further enhance the CEC’s ability to understand and prevent further price spikes.

SECTION 1366

COMMENT NO. WSPA 6, 10: The commenter asserts the proposed regulations do not reflect real-world practice and contain misunderstandings of how market transactions work. The commenter offers an explanation of industry practice associated with reversals, described as a cancelled invoice, and rebooks, described as a reissuance of a cancelled invoice, and asserts that a more frequent reporting cycle will cause more reversals and rebooks to be reported.

⁵ Senate Bill (SB) X1-2, Stats. 2023, 1st Ex. Sess. 2023, ch. 1, section 1.

⁶ Pub. Resources Code, Ch. 4.5, §§ 25350 – 25367.

The commenter requests that the CEC require a monthly report, instead of a daily report.

RESPONSE: The transaction complexity described by the commenter was considered as part of this rulemaking and directly informed the proposed regulations. To account for this complexity, the proposed regulations split reporting into two steps, a transaction report and a settlement report. As explained in the Informative Digest⁷, Section 1366, and in Appendix D, sections I and II, the transaction report captures information on the initial agreement whereas the settlement report captures information available after a transaction is settled.

COMMENT NOS. IAC 3, 9, 10: The commenter asserts that the definition of “nonrefiner” is overbroad, inconsistent with the statute, and creates inconsistency with and incoherence in the regulatory definitions, and would produce unnecessarily duplicative reporting.

RESPONSE: The use of the term “nonrefiner” in the proposed regulations is consistent with the use of the term as used in Public Resources Code section 25354(l) to refer broadly to persons who consummate spot market transactions. The proposed regulations use the term in a similarly broad manner, while providing several illustrative examples. Per the terms of the statute and proposed regulations, only nonrefiners (and refiners) *who consummate spot market transactions* are subject to the spot market reporting requirements. Thus, this term is not overbroad and will not lead to duplicative reporting. Moreover, the reference to “nonrefiner” in section 25354(k) is not the same use as in (l) and is not intended to limit the use of the term as it applies to spot market transactions.

COMMENT NO. IAC 11: The commenter asserts that the “definitions create internal ambiguities and incoherence” because the definition of importer contains a threshold for volume of business whereas the definitions of broker and trader do not.

⁷ NOPA, p. 4 (“To account for the complexity of spot market transactions and ensure timely reporting of required information, the proposed regulations bifurcate the daily spot market reporting into a trading phase and a settlement phase. This will allow the CEC to efficiently gather information about transactions close in time to contract formation, and to subsequently collect information on final settlement terms and delivery details after parties settle the transactions.”)

RESPONSE: The definitions of "importer", "trader", and "broker" do not create internal ambiguities or incoherence. These terms are used for different purposes in different parts of the regulatory scheme and, in some instances, such as the hypothetical posed by the commenter, overlap one another. Importantly, these terms are provided only as illustrative examples of the types of nonrefining entities subject to the reporting requirement. Public Resources Code section 25354(I) and the first sentence of section 1366 make clear that all refiners and nonrefiners that consummate spot market transactions are subject to the spot market reporting requirements. The CEC recognizes that not all nonrefiners that consummate spot market transactions fit within the defined classes of importer, broker, or trader, and therefore used the term "nonrefiner" in the broad sense intended by the statute. See response to Comment Nos. IAC 3, 9, 10.

APPENDIX D, SECTIONS I-II

COMMENT NO. IAC 2, 6: The commenter asserts that the use of the phrase "occurs in California" is vague and ambiguous, making it unclear which transactions are covered. The commenter suggests that the CEC intends to regulate transactions that occur outside of California, such as a sale of fuel "from Korea for delivery in Nevada [that is] delivered into a pipeline that originates at a California port and runs through California to Nevada" or a "sale of fuel from Japan to Alaska ... that enters a pipeline in Alaska [and involves] a party ... located in California at the time of the transaction."

RESPONSE: The reporting requirements detailed in these appendices, which are derived directly from Public Resources Code section 25354(I), are limited exclusively to transactions on the "spot market." A spot market is a fairly specialized concept, but one that is essential to and universally known in the petroleum industry. It describes the market in which deals are made "on the spot" and physical product changes hands immediately or shortly thereafter.⁸ Deals in the spot market are always done in bulk (typical volumes range from 5,000 to 50,000 barrels) and always involve a physical product to be exchanged at a specific location such as refinery

⁸ California Energy Commission, Petroleum Watch (Feb. 2022), available at <https://www.energy.ca.gov/media/6765>.

gates or other major pricing hubs located at specific terminals.⁹ These markets are carefully tracked by industry participants, price reporting agencies, and government entities as they have an outsize influence on the price at the pump.¹⁰ The proposed regulations clarify and refine a statutory reporting requirement that applies to this highly technical market environment in which sophisticated entities trade in large volumes of petroleum products.

The phrase identified by the commenter, “occurs in California”, is unambiguous as it is used in the context of the proposed regulations. The definition of “spot market transaction” makes clear that reportable transactions involve the transfer of physical custody of the petroleum products.¹¹ This definition directly informs the reporting requirements. Specifically, section 1366 provides that specified entities that “consummate[] a *spot market transaction* shall file a daily report containing all of the information specified in Appendix D, Sections I and II, for each transaction or settlement, respectively, occurring the preceding day.” (emphasis added). This language in 1366, together with the definition of “spot market transaction” restricts the reporting requirement to trades involving the purchase of a physical product for delivery. The Legislature and the CEC are interested in these transactions because of their direct impact on the price of fuel products in California.

Far from introducing ambiguity, the phrase “occurs in California” in Appendix D, Sections I and II removes all doubt as to the scope of the reporting requirements.¹² Setting aside the last clause, which accounts for imports effectuated through spot market transactions, the sentence at issue indicates that the reporting requirement applies to *spot market transactions* that occur in California. This language clarifies that the reporting requirement is triggered where the spot market transaction *itself* (i.e., the *purchase* of a physical product *for delivery on the spot*) occurs in

⁹ OPIS, Oil Spot Pricing, available at <https://www.opisnet.com/product/pricing/spot/> (last accessed Feb. 22, 2024); OPIS Staff, Pricing 101: Spot Fuel Markets Made Simple (Mar. 10, 2023), available at <https://www.opisnet.com/blog/spot-fuel-markets-made-simple/>.

¹⁰ *Id.*; McKinsey&Company, Spot market, available at <https://www.mckinseyenergyinsights.com/resources/refinery-reference-desk/spot-market/> (last accessed Feb. 22, 2024).

¹¹ Express Terms, § 1363.2 (“‘Spot Market Transaction’ means a trade in which petroleum products...*are purchased on the spot for delivery* by [various methods].” (emphasis added).)

¹² Appendix D, Section I (“This report is required for each *spot market transaction* for a transportation fuel product that either occurs *in California* or involves a transportation fuel product *that will be delivered on the spot within the California fuels market.*”

California. The intransitive nature of the operative verb “occurs” makes clear that the reporting requirement is triggered by the transaction, rather than the location of or an action by a particular party involved in the transaction.

Furthermore, these particular reports are a small component of the broad reporting construct known as the Petroleum Industry Information Reporting Act of 1980, as that law was modified by SB X1-2 in 2023.¹³ The statute makes clear that this program applies to the import and export of petroleum products as well as other types of activities *in California* related to these products (e.g., capacity and inventories at refineries; transportation to or from refineries, etc.).¹⁴

The regulatory language works in concert with the statutory scope of the program and is limited by the express terms to *spot market transactions* that occur in California. Parties engaging in these transactions know the location of these trades and there is no ambiguity in the proposed regulations as to what transactions are reportable under Appendix D, Sections I and II.

COMMENT NOS. IAC 7, 8: The commenter asserts that the regulations, if applied to the “purchase and sale of transportation fuels wholly outside California” would violate the Commerce Clause. The commenter also notes it does not expect OAL to resolve this assertion as part of its review but notes that this assertion goes to the question of clarity of the regulations.

RESPONSE: Please see response to Comment No. IAC 2, 6. When read in context with the statutory and regulatory provisions and with an understanding of how spot market transactions are made (which any entity covered by this regulation would reasonably be aware of), it is clear that the regulations would not extend to transactions that occur wholly outside of California.

COMMENT NO. IAC 14: The commenter asserts that the regulations bifurcate reporting between the initiation of the transaction and its settlement and this creates an unsupported duplicative reporting requirement.

¹³ Public Resources Code §§ 25350 – 25367.

¹⁴ See Pub. Resources Code §§ 25354 subdivisions (a)(1), (b), (i), (j), and (m), 25355, 25355.5 (referencing imports, exports, or both.)

RESPONSE: The proposed regulations refine and clarify an existing statutory reporting requirement. The statute requires daily reports of information, some of which is available at the time of an initial transaction along with certain information that is only available upon settlement. Currently, entities subject to the reporting requirement have to resubmit the same form once additional information becomes available upon settlement. The proposed regulations clarify the statutory reporting requirement and eliminate this redundant and duplicative reporting by allowing entities to submit separate reports for the transaction and settlement phases. To the extent that additional information is collected under the proposed regulations, the CEC is authorized to do so by Public Resources Code sections 25354 and 25367.

APPENDIX D, SECTION I, PARAGRAPH G

COMMENT NO. WSPA 7: The commenter asserts that the proposed regulations are ambiguous because the term “spot market trading location” is not defined. The commenter expresses confusion about how to differentiate the term “spot market trading location” from the delivery location and how to define the geographic boundaries of the spot market trading location.

RESPONSE: The phrase “spot market trading location” is unambiguous in the context used. Paragraph G implements and clarifies section 25354(l)(1), which requires entities to report the “identity of the spot market where the transaction occurred.” The second sentence of this paragraph states “[t]ransactions that occur at any point north of the southernmost point in Kern County shall be attributed to the San Francisco spot market. All other transactions shall be attributed to the Los Angeles spot market.” Therefore, the spot market trading location is either San Francisco or Los Angeles, as determined by where the spot market transaction (i.e., the *purchase* of a physical product *for delivery on the spot*) occurs relative to southernmost point of Kern County. Parties engaging in these transactions know the location of these trades and there is no ambiguity in the proposed regulations as to what location is being asked for in Appendix D, Section I, Paragraph G.

APPENDIX D, SECTION II, PARAGRAPH G

COMMENT NO. WSPA 8: The commenter asserts that the proposed regulations are ambiguous because the term “Type of Settlement” is not defined, aside from two examples of settlement types that are defined in section 1363.2 (“Book Transfers” and “Net-Out”).

RESPONSE: The proposed regulations use the term settlement in the common meaning of the term. Transactions subject to this reporting requirement happen on standardized commodity markets on a daily basis and commonly understood settlement types are used for these transactions. The proposed regulations expressly allow reporting of any of those settlement types, including those examples defined in section 1363.2.

APPENDIX D, SECTION II, PARAGRAPH U & V

COMMENT NO. WSPA 9: The commenter asserts that the proposed regulations are ambiguous because the term “Invoice” is not defined. The commenter asserts it is unclear if the CEC intends the industry to report received invoices or approved invoices, and notes that sellers and buyers often report different dates for the settlement.

RESPONSE: “Invoice” is a commonly used and understood accounting term. The word “invoiced” is used in the proposed regulations to describe two requirements for the “settlement” report, invoiced volume and invoiced price. As these reporting requirements appear exclusively in the settlement report, they are only required after the final step in the transaction has taken place.

SECTION 1364. REPORTING PERIODS

COMMENT NO. AT 1: The commenter expresses concern that the 9:00 a.m. reporting deadline will increase costs for spot market participants.

COMMENT NO. NFIB 2: The commenter asserts that the 9:00 a.m. deadline will require employees to work after hours to complete reports before the start of the business day.

COMMENT NO. IAC 4, 13: The commenter asserts that the 9:00 a.m. deadline for reporting is extremely burdensome and the CEC has not explained why this deadline is needed. The commenter notes that a copy of the express terms was

issued on February 6, 2024, in which the daily reporting deadline was 5:00 p.m. and that the CEC issued a corrected version of the express terms on February 7, 2024 in which the daily reporting deadline is listed as 9:00 a.m.

RESPONSE: The information collected under the proposed regulations, including the market price, is available to reporters the day each transaction or settlement takes place. Existing law requires most of this information is to be submitted to the CEC on the day following the transaction or settlement. Under the current reporting requirements, the CEC already receives spot market reports from industry earlier than 9:00 a.m. the following day. Information collected by these reports is currently transmitted to the market, often at the time of the transaction. For these reasons, the CEC has concluded that compliance with this requirement is possible and there is nothing to indicate it would be unduly burdensome. As stated in the NOPA, the CEC needs this information immediately as evidence indicates that not all spot market transactions are reported to the Oil Price Information Service (OPIS), which serves as the benchmark for pricing spot market products. The 9:00 a.m. deadline will ensure the CEC can understand how the Oil Price Information Service (OPIS) spot market price is being determined and, as explained in the necessity statement in the NOPA, provide oversight of the market in as close to real-time as possible. As noted in Comment Nos. IAC 4 and 13, the CEC erroneously issued a copy of the NOPA (including the finding of emergency) and express terms on February 6, 2024, that listed 5:00 p.m. as the daily reporting deadline. That version did not reflect the internal consensus on the appropriate deadline and the CEC quickly issued a corrected NOPA and express terms with the correct deadline on February 7, 2024. The February 7 documents superseded the February 6 documents, were noticed to the public at least five business days before submission to OAL as required by Government Code 11346.1(a)(2), and are the documents submitted to OAL on February 15, 2024. To avoid any confusion, the CEC noted that the February 7 documents superseded the February 6 documents both in the docket description and in the message circulated to subscription lists and identified the changes made for the public's awareness.

MISCELLANEOUS COMMENTS

COMMENT NO. AAW 1: The commenter expresses concern that the proposed regulations will increase costs for small petroleum businesses, impacting their ability to deliver gas to rural and independent stations.

COMMENT NO. APCA 1: The commenter expresses concern that the proposed regulations will further tighten the gasoline market in California, increase burdens on spot market participants, and thereby harm independent gas stations.

COMMENT NO. APCA 2: The commenter asserts that the proposed regulations will harm underserved and rural communities.

COMMENT NO. AT 1: The commenter expresses concern that the proposed regulations will increase costs for spot market participants who will pass costs onto customers. The commenter also asserts that no cost analysis was provided for the proposed regulations.

COMMENT NO. CDA 1: The commenter expresses concern that the proposed regulations will discourage fuel imports and spot market participation, leading to restricted fuel supply and increased costs.

COMMENT NO. HFL 1: The commenter expresses concern that the proposed regulations will increase gas prices and indirectly impact shipping costs.

COMMENT NO. U 4: The commenter expresses concern that the proposed regulations will lead to permanent increases in the price of gasoline.

COMMENT NO. NFIB 2: The commenter asserts that the proposed regulation will impose a large number of new reporting requirements, increase costs for industry participants, and impact the cost of fuel.

COMMENT NO. IAC 12: The commenter asserts that application of these regulations to resellers will negatively impact independent gas stations that disproportionately serve disadvantaged communities and the rulemaking record does not show that this impact has been considered.

COMMENT NO. IAC 17: The commenter asserts that these regulations will cause smaller entities to leave the market and may “artificially restrict how transactions themselves are conducted so as to align with the required fields” and that this will “exacerbate the current supply challenges” and harm the markets and consumers and was not what the Legislature intended.

COMMENT NO. NFIB 3: The commenter asserts that the proposed regulation is likely to drive industry participants who deal in imported fuel out of the California market, leading to reduced fuel supply and decreased competition, and thereby increasing fuel costs.

COMMENT NO. SMC 2: The commenter expresses concern that the proposed regulations will increase the costs and complexity of selling fuel in California and drive fuel suppliers out of California, thereby reducing fuel supply and increasing fuel costs.

RESPONSE: The proposed regulations clarify and refine existing daily reporting requirements set by statute. Market participants have provided the CEC with daily reports since July of 2023. The transactions subject to these reporting requirements are also already reported to news agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange at nearly same-day intervals. The CEC does not expect the proposed regulations to change any market interactions within California.

COMMENT NO. U 6: The commenter asserts that the petroleum industry is characterized by “just in time production” and that the proposed regulations could cause a shift to “just in case production”, and that this would decrease the supply of petroleum products and permanently increase costs.

RESPONSE: The proposed regulations refine and clarify an existing statutory reporting requirement for transactions that are already reported to news agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange at near same day intervals. There is no support for the assertion that requiring the reporting of similar information to the CEC would change any market interactions within California.

COMMENT NO. U 1: The commenter states that he did not receive notice of this rulemaking and suggests that the CEC overlooked the notice requirement.

RESPONSE: The notice provided by the CEC satisfied Government Code section 11346.1(a)(2). In addition to sending the NOPA on February 7, 2024, to all individuals who have expressed interest in this matter by signing up for the relevant subscription topics (Rulemaking on Procedural Changes, General Transportation and Petroleum, SB X1-2 Implementation), notice of consideration of the matter at the February 14,

2024, business meeting was sent on February 2, 2024, to everyone interested in general CEC proceedings and the CEC published the NOPA on February 7, 2024 as backup materials for the February 14, 2024, business meeting. Through these varied distribution channels, the CEC has ensured that everyone interested in CEC rulemakings on this subject received timely notice five working days before the CEC submitted the regulations to OAL on February 15, 2024.

COMMENT NOS. AAW 1, APCA 3, CDA 2, HFL 1, NFIB 1, SMC 1, WSPA 5, WSPA 13: The commenters express concern that insufficient time was provided for public input.

RESPONSE: Public Resources Code 25367 states “regulations or orders implementing this chapter shall be considered by the Office of Administrative Law as an emergency”. The CEC is using the Emergency Rulemaking process as directed by the California State Legislature. The timelines for public notice and OAL review are set by the Administrative Procedure Act.

COMMENT NO. IAC 23: The commenter asserts that the CEC has not responded to requests for it to conduct a formal rulemaking and that the five-day comment period afforded these regulations is insufficient.

RESPONSE: The CEC responded to two petitions for rulemaking in 2023 related to the Petroleum Industry Information Reporting Act (PIIRA), as amended by SB 1322 and SB X1-2. The CEC denied both petitions, in large part because they were submitted before the relevant laws had taken effect, making the petitions premature as the CEC had yet to determine whether a rulemaking was necessary to implement the statute that, by its own terms, is self-executing. The CEC is not aware of any requests for formal rulemaking that have gone unanswered. The public notice and comment periods for the instant rulemaking are set by the Administrative Procedure Act.

COMMENT NO. CDA 3: The commenter expresses support for the CEC’s goal of preventing price spikes and price gouging.

COMMENT NO. HFL 1: The commenter expresses support for the CEC’s efforts to stop market manipulation and price gouging.

COMMENT NO. IAC 1: The commenter notes support for the CEC's goals of the rulemaking to increase transparency, decrease price spikes, and increase liquidity in the marketplace.

RESPONSE: No response needed. The CEC appreciates the support offered for these goals.

COMMENT NO. WSPA 5: The commenter agrees that it is critically important for California citizens to have access to affordable fuel supplies and to be protected from price spikes resulting from market influences. However, the commenter asserts that addressing these issues will require consideration of years of market data, which the commenter asserts is not possible under the proposed rulemaking.

RESPONSE: The CEC intends to continually work with industry on fuel pricing issues. The proposed regulations are not intended to and do not attempt to resolve these issues in one fell swoop. Rather, this rulemaking clarifies a statutory reporting requirement that took effect in July 2023. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively.

COMMENT NO. U 3: The commenter questions why it is more important to investigate price spikes for gasoline than for electricity and asserts that the electric utility industry and California state policies use price spikes as a means to control production costs.

RESPONSE: SB X1-2 directly charges the CEC with understanding the petroleum market and investigating gasoline price spikes. The CEC is following the direction and charges given to it by the California State Legislature.

COMMENT NO. U 5: The commenter requests that the CEC file the Form 400 for this rulemaking in Docket No. 23-OIR-03 and include any delegations pursuant to 1 CCR 101.

RESPONSE: The Form 400 is not a substantive part of the rulemaking package. However, the CEC intends to post the final rulemaking package in Docket No. 23-OIR-03 once it is approved by OAL, including the certified Form 400.

COMMENT NO. WSPA 10: The commenter asserts that the proposed regulations will not address long-term market supply imbalances or the outsized

influence of independent price reporting agencies. The commenter asserts the proposed regulations will instead generate outdated data, that the CEC will publish this data, and that this will impede market transparency.

RESPONSE: The CEC intends to continue to work with industry on fuel pricing issues and general supply concerns. The proposed regulations are not intended to and do not attempt to resolve these issues in one fell swoop. Rather, this rulemaking clarifies a statutory reporting requirement that took effect in July 2023. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively.

COMMENT NO. IAC 15: The commenter asserts the regulations require details that do not align with how transactions are processed and will not “capture the structure and nuance of a given transaction.”

RESPONSE: This rulemaking clarifies a statutory reporting requirement that took effect in July 2023 and under which entities have been submitting daily reports for more than seven months. This rulemaking refines the statutory requirements to give the CEC better information and allow it to prevent future price spikes more effectively. Much of the information required by the proposed regulations is already reported to price reporting agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange.

COMMENT NO. IAC 16: The commenter asserts that the reporting requirements assume the information is “automatically or routinely captured every time a trade occurs” but this is “not the case” and compliance will require “extensive staffing and technological infrastructure to managing these reports.”

RESPONSE: The majority of the information required by the proposed regulations, which revise and clarify the statutory reporting requirements, is the basic information required to engage in a transaction (e.g., price, volume, counterparty, trading location, delivery method). The statutory reporting requirement clarified by the proposed regulations took effect in July 2023 and entities have been submitting daily reports pursuant to the statute for more than seven months. The clarifications in the proposed regulations will eliminate unnecessary overreporting that currently occurs. Much of the information required by the proposed regulations is already reported to price reporting agencies such as OPIS, with similar commodity information also being reported to the Intercontinental Exchange.

COMMENT NO. WSPA 11: The commenter asserts that the CEC will require reporting of settlement information at the time of contract execution and on a daily basis thereafter. The commenter is concerned that this will create confusion, fail to represent real-time gasoline prices, and make it more difficult for market participants to identify the real-time direction of the spot market.

RESPONSE: As specified in Section 1366 and Appendix D, Section II, the proposed regulations do not require settlement information to be provided until 9:00 a.m. on the day after a settlement, which is defined in 1363.2 as the final step in a transaction. There is no indication that terms and aspects of a transaction would change after it has been finalized. The proposed regulations require a “transaction” report detailed in Appendix D, Section I to be submitted to the CEC by 9 a.m. on the day after a transaction takes place. Together, these reports will provide the CEC with a much better picture of the spot market, including real-time gasoline prices.

COMMENT NO. WSPA 12: The commenter suggests that the CEC improve CEC Form M1322 to better capture the relationship between operational costs and refining margins.

RESPONSE: CEC Form M1322 collects information required to be reported by Public Resources Code section 25355 and is not in the scope of the proposed regulations, which primarily revise and clarify the spot market reporting requirements enumerated in Public Resources Code section 25354(l).

COMMENT NO. IAC 5, 19: The commenter asserts the rulemaking package is procedurally flawed because the CEC does not appear to have identified each document upon which it relied and “has not adequately considered the fiscal impact or indirect effects of the rulemaking.”

RESPONSE: The CEC has complied with all procedural requirements in adopting these regulations. The NOPA contains an affirmative list of documents the CEC relied on in drafting these regulations. Government Code section 11346.1(b)(2)’s requirement for identifying documents relied upon is not a broad reference to any conceivable document but is specific to “each technical, theoretical, and empirical study, report, or similar document.” The CEC did not rely on any documents that meet this description other than those listed in the NOPA. The APA does not preclude an agency from also using the expertise of its own staff,

experience gained from implementing a program, information gleaned from conversations with stakeholders, other agencies, industry experts, and other sources of information or knowledge in developing regulations and does not require that every conceivable source that may have contributed to the formulation of a regulation be rigorously documented. With regard to fiscal impact the CEC has determined that these regulations have no fiscal impact to any agency, including the CEC. Current agency resources are sufficient to process the updated reporting requirements. As discussed in the response to Comment No. IAC 21 below, the CEC has concluded that the regulations will not result in any indirect impacts.

COMMENT NO. IAC 20: The commenter asserts that the CEC incorrectly claims that it does not anticipate any costs to itself as a result of these regulations.

RESPONSE: The CEC is already receiving and processing reports from the industry. These regulations remove the requirement to submit data the CEC has found is not needed and adds more detail about the exact data the CEC has determined is needed to meet the agency's obligations under statute. The CEC does not anticipate any costs or savings to itself as a result of these regulations because it believes it can process these more tailored reports with existing staff resources and further automation of internal processes.

COMMENT NO. IAC 21: The commenter asserts the CEC has failed to conduct a CEQA analysis for this action and that CEQA applies because smaller market participants will be squeezed out, resulting in a decrease in fuel availability, requiring consumers to travel further to purchase fuel, resulting in more air emissions and traffic or alternatively increased refiner production, which will result in increased truck traffic delivering fuel.

RESPONSE: As detailed in the memorandum made available to the public as backup materials for the February 14, 2024, CEC business meeting on February 7, 2024, the CEC's adoption of the proposed regulations is not a project for the purposes of CEQA.¹⁵ The proposed regulations clarify a reporting requirement imposed by statute on certain participants in the

¹⁵ Chad Oliver, Memorandum re: California Environmental Quality Act Compliance for Emergency Regulations Implementing Revised SB X1-2 Spot Market Reporting Requirements (February 5, 2024), available at <https://www.energy.ca.gov/filebrowser/download/5990>.

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. Therefore, the adoption of the proposed emergency regulations is not a project and is not subject to CEQA. Even if adoption of the proposed regulations was a project, it would fall under the Class 6 exemption¹⁶ as data collection activities and would also be exempt from CEQA under the common sense exemption for the reasons stated above.¹⁷

¹⁶ Pub. Resources Code, § 15061(b)(2); Cal. Code Regs., tit. 14, § 15061(b)(2); Cal. Code Regs., tit. 14, § 15306.

¹⁷ Pub. Resources Code, § 15061(b)(3); Cal. Code Regs., tit. 14, § 15061(b)(3).