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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 7. California Emergency Services Act [8550 - 8669.87] (Chapter 7 added by Stats. 1970, Ch. 1454.)

ARTICLE 3.9. Regional Railroad Accident Preparedness and Immediate Response [8574.30 - 8574.48] (Article 3.9 added by Stats. 2015, Ch. 25, Sec. 6.)

8574.30. For purposes of this article, the following terms have the following meanings:

- (a) "Board" means the State Board of Equalization.
- (b) "Director" means the Director of Emergency Services.
- (c) "Fund" means the Regional Railroad Accident Preparedness and Immediate Response Fund established pursuant to Section 8574.44.
- (d) "Hazardous material" means a material that the United States Department of Transportation has designated as a hazardous material for purposes of transportation in Part 172 of Title 49 of the Code of Federal Regulations.
- (e) "Office" means the Office of Emergency Services.
- (f) "Owner" means the person who has the ultimate control over, and the right to use or sell, the hazardous material being shipped. There is a rebuttable presumption that the shipper, consignor, or consignee of the hazardous material is the owner of the hazardous material. This presumption may be overcome by showing that ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but is not limited to, documentation, including a bill of lading, shipping document, bill of sale, or other medium, that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee.
- (g) "Person" means an individual, trust, firm, joint stock company, other entity, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, and the United States and agencies and instrumentalities, to the extent permitted by law.
- (h) "Railroad" has the same meaning as defined in Section 229 of the Public Utilities Code.
- (i) "Rail car" means a loaded or unloaded railroad car or rolling stock designated to transport hazardous material commodities, and includes, but is not limited to, those railroad cars subject to the requirements of Part 179 (commencing with Section 179.1) of Title 49 of the Code of Federal Regulations, or successor regulations adopted by the United States Department of Transportation.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.32. (a) (1) The director shall establish a schedule of fees, to be paid by each person owning any of the 25 most hazardous material commodities, as identified in regulations adopted by the office, that are transported by rail in California, that shall be sufficient to fund the appropriation from the fund pursuant to Section 8574.44, to reimburse the California High-Cost Fund-B Administrative Committee Fund for any moneys loaned, and to maintain a reserve for operating costs. The fee shall be based on each loaded rail car as described in subdivision (b).

(2) Prior to the adoption of regulations identifying the 25 most hazardous material commodities, the fee shall apply to the top 25 hazardous material commodities identified by the Association of American Railroads Bureau of Explosives' Annual Report of Non-Accident Releases of Hazardous Materials Transported by Rail, published in August, 2013.

(b) (1) Within six months of the director establishing a schedule of fees pursuant to subdivision (a), the fee shall be imposed on a person owning hazardous material at the time that hazardous material is transported by loaded rail car. The fee shall be based on each loaded rail car.

(A) If the loaded rail car enters the state from outside this state, the fee shall be imposed on the owner of the hazardous material at the time the loaded rail car enters this state. The person operating the train containing the rail car shall collect the fee from the owner of the hazardous material and shall pay the fee to the board. The fee shall be collected consistent with the requirements of the commerce clause of the United States Constitution.

(B) If the rail car is loaded within this state, the fee shall be imposed upon the loading of hazardous material into or onto the rail car for transport in or through this state. The person operating the train containing the rail car shall collect the fee from the owner of the hazardous material at the time the rail car is loaded and shall pay the fee to the board. The fee shall be collected consistent with the requirements of the commerce clause of the United States Constitution.

(2) The fee shall be paid to the board by the person operating the train containing the rail car at the time the return is required to be filed, as specified in Section 8574.38, based on the number of loaded hazardous material rail cars transported within the state.

(3) Any fee collected from an owner of hazardous materials pursuant to this section that has not been remitted to the board shall be deemed a debt owed to the state by the person required to collect and remit the fee.

(4) (A) The owner of the hazardous material is liable for the fee until it has been paid to the board, except that payment to a person operating the train containing the rail car registered under this article is sufficient to relieve the owner from further liability for the fee.

(B) The railroad shall be entitled to collect an amount not to exceed 5 percent of the fee collected pursuant to this section to offset the administrative cost to collect the fee.

(5) Any owner or railroad that has paid the fee pursuant to this section shall not be assessed any additional fee under this section for further transporting the same hazardous materials in the same rail cars on a different railroad within the state.

(c) The fee shall be fair, as required by subsection (f) of Section 5125 of Title 49 of the United States Code and subsection (c) of Section 107.202 of Title 49 of the Code of Federal Regulations. It is the intent of the Legislature that: (1) the fee shall reflect the cost of preparations to respond to the release of hazardous materials from a rail car or a railroad accident involving a rail car, (2) these preparations shall help contain the damage to railroad systems and operations within the state caused by the release of hazardous materials and better enable owners of hazardous materials to expeditiously transport their materials using the railroad after the release of hazardous materials, and (3) these preparations shall mitigate the exposure of the owners of hazardous materials to compensable damages caused by the release of hazardous materials. The director may exempt from the fee those shipments of hazardous materials that do not merit inclusion in the state regional railroad accident preparedness and immediate response plan developed pursuant to Section 8574.48, and those shipments of hazardous materials that do not merit additional governmental preparation to respond to their release in the event of a railroad accident.

(d) The fee shall not result in the collection of moneys that exceed the reasonable regulatory costs to the state for the purposes specified in subdivision (e) of Section 8574.44. The director shall set the fee consistent with Section 3 of Article XIII A of the California Constitution.

(e) The director shall be responsible for reporting fee information to the federal Secretary of Transportation pursuant to paragraph (2) of subsection (f) of Section 5125 of Title 49 of the United States Code.

(f) The director may authorize payment of a portion, but not the entire amount, of fees owed through contributions in kind of equipment, materials, or services.

(g) The director shall create an industry advisory committee to advise the director on setting the fee and on other policy matters related to industry-based shipment of hazardous materials and private sector-based accident response. The committee shall consist of representatives from the following:

- (1) Hazardous materials specialist from the railroad industry.
- (2) Operation specialist from the railroad industry.
- (3) Fire and safety specialist from refinery industry.
- (4) Chemical hazardous materials specialists.
- (5) Agricultural chemical industry.
- (6) Firefighting Resources of California Organized for Potential Emergencies (FIREScope).
- (7) Local emergency preparedness commissions (LEPCs).
- (8) California Fire Chiefs Association.

(9) California Professional Firefighters.

(10) California State Firefighters Association.

(11) California Emergency Services Association.

(12) Fire Districts Association of California.

(13) The public.

(h) (1) The director shall reconsider the amount of the fee, and adjust the fee if appropriate, not less frequently than every three years, with due consideration for existing and expected operational and continued resource requirements.

(2) The director shall conduct an analysis of industry capabilities and resource requirements to assist in the reconsideration of the amount of the established fee. The director may arrange for the analysis to be performed by a third party that is either a public or private entity. Upon finalization of the analysis, the analysis shall be delivered as a report to the Department of Finance, the Legislature, and the Legislative Analyst's Office.

(3) The submission of the analysis to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.34. Every person who operates a railroad that transports hazardous materials by rail car shall register with the board pursuant to Section 55021 of the Revenue and Taxation Code.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.36. The fee imposed pursuant to Section 8574.32 shall be administered and collected by the board in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this section, the references in the Fee Collection Procedures Law to "fee" shall include the fee imposed by this article, and references to "feepayer" shall include a person required to pay the fee imposed by this article.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.38. The return required to be filed pursuant to Section 55040 of the Revenue and Taxation Code shall be prepared and filed by the person required to register with the board, in the form prescribed by the board, and shall contain that information the board deems necessary or appropriate for the proper administration of this article and the Fee Collection Procedures Law. The return shall be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the board for the fee amount due for that period. Returns shall be authenticated in a form, or pursuant to methods, as may be prescribed by the board.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.40. Notwithstanding the petition for redetermination and claim for refund provisions of the Fee Collection Procedures Law (Article 3 (commencing with Section 55081) of Chapter 3 of, and Article 1 (commencing with Section 55221) of Chapter 5 of, Part 30 of Division 2 of the Revenue and Taxation Code), the board shall not:

(a) Accept or consider a petition for redetermination of fees determined under this article if the petition is founded upon the grounds that the rail car content is or is not a hazardous material. The board shall forward to the director any appeal of a determination that is based on the grounds that the rail car content is or is not a hazardous material.

(b) Accept or consider a claim for refund of fees paid pursuant to this chapter if the claim is founded upon the grounds that the rail car content is or is not a hazardous material. The board shall forward to the director any claim for refund that is based on the grounds that the rail car content is or is not a hazardous material.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.42. (a) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article.

(b) The board may prescribe, adopt, and enforce any emergency regulations, as necessary, to implement this article. Except as provided in Section 8574.44, any emergency regulation prescribed, adopted, or enforced pursuant to this article shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 and, for purposes of that article, including Section 11349.6, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.44. (a) The Regional Railroad Accident Preparedness and Immediate Response Fund is hereby created in the State Treasury.

(b) All revenues, interest, penalties, and other amounts collected pursuant to this article shall be deposited into the fund, less refunds and reimbursement to the board for expenses incurred in the administration and collection of the fee.

(c) The adoption of regulations pursuant to this section shall be considered by the Office of Administrative Law as an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, emergency regulations adopted by the director and the board pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law and shall remain in effect until revised or repealed by the director.

(d) The fund shall be used to reimburse the California High-Cost Fund-B Administrative Committee Fund for any moneys loaned from the California High-Cost Fund-B Administrative Committee Fund to the fund to pay for the Office of Emergency Service's administrative costs associated with implementation of the fee pursuant to this article.

(e) All moneys remaining in the fund after reimbursement of the California High-Cost Fund-B Administrative Committee Fund pursuant to subdivision (d) shall, upon appropriation by the Legislature, be used by the director to pay for the following purposes related to the transportation of hazardous materials:

(1) Planning, developing, and maintaining a capability for large-scale hazardous materials releases emergency response relating to railroad accidents involving rail cars carrying hazardous materials, including the risks of explosions and fires.

(2) Planning, developing, and maintaining a capability for large-scale hazardous materials releases emergency response relating to releases of hazardous materials from rail cars, including reducing the harmful effects of exposure of those materials to humans and the environment.

(3) Creation, support, maintenance, and implementation of the Regional Railroad Accident Preparedness and Immediate Response Force created by Section 8574.48.

(4) Acquisition and maintenance of specialized equipment and supplies used to respond to a hazardous materials release from a rail car or a railroad accident involving a rail car.

(5) Support of specialized regional training facilities to prepare for and respond to a hazardous materials release from a rail car or a railroad accident involving a rail car.

(6) Creation and support of a regional, state level, and local emergency response team to provide immediate onsite response capabilities in the event of large-scale releases of hazardous materials from a rail car or a railroad accident involving a rail car.

(7) Support for specialized training for state and local emergency response officials in techniques for prevention of, and response to, release of hazardous materials from a rail car or a railroad accident involving a rail car.

(f) For each of the 2015–2016 and 2016–2017 fiscal years, the amount available for appropriation from the fund shall not exceed twenty million dollars (\$20,000,000). For the 2017–18 fiscal year and each fiscal year thereafter, the amount available for appropriation from the fund shall not exceed ten million dollars (\$10,000,000).

(g) (1) For the 2016 calendar year, the director shall have the authority to collect an amount not to exceed twenty million dollars (\$20,000,000) for deposit into the fund, which shall be used, upon appropriation by the Legislature, for repayment of loans provided from the California High Cost Fund B Administrative Committee and for purposes related to the transportation of hazardous materials by rail cars pursuant to subdivision (e).

(2) For the calendar year 2017, the director shall have the authority to collect an amount not to exceed twenty million dollars for deposit into the fund, which shall be used, upon appropriation by the Legislature, for purposes related to the transportation of hazardous materials by rail cars pursuant to subdivision (e).

(3) (A) Commencing on January 1, 2018, and following an initial review of the amount of the fee by the industry advisory committee established pursuant to subdivision (g) of Section 8574.32 and an initial reconsideration of the amount of the fee by the director pursuant to paragraph (1) of subdivision (h) of Section 8574.32, the director shall have the authority to collect an amount not to exceed ten million dollars (\$10,000,000) annually for deposit into the fund.

(B) For calendar years subsequent to the 2018 calendar year, the director shall reconsider the amount of the fee pursuant to paragraph (1) of subdivision (h) of Section 8574.32.

(h) The board shall inform the director if the amount of fees collected reaches the amount specified in subdivision (g) in each calendar year.

(i) Reimbursement to the state for equipment funded by moneys in the fund that are used for emergency response activities unrelated to regional railroad accident preparedness and immediate response as described in this article shall be made pursuant to the state fire service and rescue emergency mutual aid plan adopted pursuant to Section 8619.5 and deposited into the fund.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.46. (a) (1) The director shall contract with the Department of Finance for the preparation of a detailed report on the financial basis and programmatic effectiveness of the regional railroad accident preparedness and immediate response plan and the Regional Railroad Accident Preparedness and Immediate Response Fund.

(2) The report shall include an analysis of the fund's major expenditures, fees, interest, and penalties collected, staffing and equipment levels, moneys used for coordinated training and response under the emergency mutual aid plan, spills responded to, and other relevant issues.

(3) The report shall recommend measures to improve the efficiency and effectiveness of the program and fund, including, but not limited to, ensuring fair and equitable funding from the fees and measures to modify or improve the implementation of the regional railroad accident preparedness and immediate response plan for release of hazardous materials from a rail car or a railroad accident involving a rail car.

(b) (1) On or before January 1, 2019, and every three years thereafter, the director shall submit the report to the Governor and the Legislature.

(2) The report submitted to the Legislature shall be submitted in compliance with Section 9795.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)

8574.48. (a) The Regional Railroad Accident Preparedness and Immediate Response Force is hereby created in the Office of Emergency Services. The force shall be responsible for providing regional and onsite response and mitigation capabilities in the event of a release of hazardous materials from a rail car or a railroad accident involving a rail car and for implementing the state regional railroad accident preparedness and immediate response plan for releases of hazardous materials from a rail car or a railroad accident involving a rail car. The force shall act cooperatively and in concert with existing local emergency response units pursuant to Article 9.5 (commencing with Section 8607). The force shall be established and operate as outlined in, and as a component of, the state fire service and rescue mutual aid plan adopted pursuant to Section 8619.5. The force shall consist of representatives of all of the following:

- (1) Department of Fish and Wildlife.
- (2) California Environmental Protection Agency.
- (3) State Air Resources Board.
- (4) Department of Resources Recycling and Recovery.
- (5) California regional water quality control boards.
- (6) Department of Toxic Substances Control.
- (7) Department of Pesticide Regulation.
- (8) Office of Environmental Health Hazard Assessment.
- (9) State Department of Public Health.
- (10) Department of the California Highway Patrol.
- (11) Department of Food and Agriculture.
- (12) Department of Forestry and Fire Protection.
- (13) Department of Parks and Recreation.
- (14) Public Utilities Commission.

(15) State Fire Marshal.

(16) Emergency Medical Services Authority.

(17) California National Guard.

(18) Any other potentially affected or participating state, local, or federal agency, as determined by the director.

(b) (1) The Office of Emergency Services, in cooperation with all of the entities listed in paragraphs (1) to (18), inclusive, of subdivision (a), shall develop a state regional railroad accident preparedness and immediate response plan that operates in coordination with the state fire service and rescue emergency mutual aid plan.

(2) The state regional railroad accident preparedness and immediate response plan shall be an annex to the State Emergency Plan.

(c) (1) The Legislature finds and declares that the state has a comprehensive program through the Office of Spill Prevention and Response to prevent and prepare for the risk of a significant discharge of petroleum into state waters, including a discharge caused by the transportation of petroleum by rail. The Legislature further finds and declares that the Regional Accident Preparedness and Immediate Response Force is focused on the emergency response for railroad accidents and rail car discharges involving all designated hazardous materials regardless of where the accident or discharge takes place.

(2) The Regional Accident Preparedness and Immediate Response Force and Office of Spill Prevention and Response shall coordinate in their respective authorities and responsibilities pursuant to Article 9.5 (commencing with Section 8607), to avoid any duplication of effort, ensure cooperation, and promote the sharing of information regarding the risk of discharge of petroleum by rail into state waters.

(Added by Stats. 2015, Ch. 25, Sec. 6. (SB 84) Effective June 24, 2015.)