UPDATE OF INITIAL STATEMENT OF REASONS

The Office of the State Fire Marshal (OSFM) has provided an update to the Initial Statement of Reasons. The formal 45-day public comment period began on February 15, 2019 and closed at 5:00 p.m. (Pacific Time) on April 2, 2019, pursuant to Notice of Proposed Regulatory Action duly published in the California Regulatory Notice Registry on February 15, 2019 (Notice File No. Z2019-0205-05, Register No. 2016 32-Z). Following the close of the 45-day public comment period, changes were made to the Text of the Proposed Regulation and the addition of a document to be incorporated by reference was included for this rulemaking titled: “CAL FIRE – OFFICE OF THE STATE FIRE MARSHAL, Download Ecologically and Environmentally Sensitive Sites in the Coastal Zone (January 1, 2020).”

A 15-Day public comment period for modifications begins October 2, 2019 and ends October 16, 2019. The OSFM proposes modifications and clarifies and updates requirements in the text and the newly added document incorporated by reference. Modifications to the text and incorporated documents are illustrated by double underline to indicate additions and double strikethrough to indicate deletions.

MINOR EDITS FOR CONSISTENCY, PUNCTUATION, GRAMMAR, AND ORGANIZATION:

Section 2100 Definitions – 2100(a)(14). Amended citation from the nonexistent Government Code section 51010.5(b)(3) to the appropriate code section reference 51010.5(a)(3).

Section 2100 Definitions – 2100(a)(16). Amended language to clarify the definition for “Replacement Pipeline”.

Section 2101 - Incorporated By Reference 2101(a)(5). Amended existing subsection 2101(a)(4) to 2101(a)(5) to reflect the addition of new subsection 2101(a)(4) identifying new reference document.
Section 2102 – Identifying Pipelines Subject to This Article – 2102(b). Amended existing subsection 2102(b) to 2102(c) to reflect the addition of new subsection 2102(b).

Section 2103 – Exemption for Pipelines Located Outside the Coastal Zone. Added new subsection 2103(b), which required amending existing lettering in subsections 2103(b) through (d) by shifting one letter higher in the alphabet to subsections 2103(c) through (e).

Section 2104 – Exemption Deferral for Pipelines with Existing Best Available Technology. Added new subsection 2104(b), which required amending existing lettering in subsections 2104(b) through (d) by shifting one letter higher in the alphabet to subsections 2104(c) through (e).

Section 2105 – Future Releases From Jurisdictional Pipelines Impacting Environmentally And Ecologically Sensitive Areas In The Coastal Zone. Added reference to Section 2102 for clarity and amended language in 2105(a)(1) to reflect title change to Section 2104.

Section 2106 – Intrastate, Interstate, And Other Non-Jurisdictional Pipelines. Struck the word “becoming” and added “became” in its place for grammatical purposes.

Section 2107 – Relocation of Pipelines Struck the word “significant” before the word “change” for clarity.

Section 2110 – Best Available Technology Determination. Subsections 2110(a)(1) through (4) were appropriately numbered. However, subsequent numbering in that subsection was incorrect and did not follow sequentially. Amended repeated subsections 2110(a)(3), (a)(4), and (a)(5) to 2110(a)(5), (a)(6), and (a)(7) respectively. Amended subsections 2110(a)(6), (a)(7), and (a)(8) to 2110(a)(8), (a)(9), and (a)(10) respectively.

Section 2111 – Risk Analysis. Amended the language “restricting device” to “restriction devices” in 2111(c)(4)(C)(11) for grammatical purposes.

Section 2112 – State Fire Marshal Risk Analysis Assessment. Amended language in 2112(b)(3)(C) to reflect title change to Section 2104.

Section 2115 – Testing Requirements and Test Failures. Added identification of first paragraph as it was not previously identified as a subsection of 2115. The existing subsection is now identified as 2115(a). The addition of the identification of this subparagraph necessitated amending the subsequent subparagraphs lettering.
Subparagraphs 2115(a) through (h) were amended to read 2115(b) through (i) to account for the previously unidentified initial subparagraph, now identified as 2115(a).

Subsection 2117(a) – Risk Analysis Updates and Review. Added a reference to require updates and resubmittal of previously accepted risk analysis for review every five years after an operator receives a Letter of Acceptance issued under Section 2112 (State Fire Marshal Risk Analysis Assessment).

PURPOSE AND NECESSITY:

Specific Sections which have been modified: 2100(a)(14), 2100(a)(16), 2101(a)(4)(5), 2102(b)(c), 2103(a), 2103(b), 2103(c), 2103(d), 2104, 2104(a), 2104(b), 2104(c), 2104(d), 2104(e), 2104(f), 2105(a)(1), 2106(b), 2107(b), 2110(a)(5-10), 2111(c)(4)(C)(9), 2111(c)(4)(C)(11), 2115(a-i) and 2117(a).

MODIFICATIONS TO TEXT OF THE PROPOSED REGULATIONS:

Section 2100(a)(14) – Definition of “Pipeline”. Amended citation from the nonexistent Government Code section 51010.5(b)(3) to the appropriate code section reference 51010.5(a)(3).

Necessity: The proposed change will provide clarity and the correct reference for defining what “pipeline” means.

Subsection 2100(a)(16) – Definition of “Replacement Pipeline”: edited to remove the language “a significant repair of an existing pipeline or” to provide clarity and consistency throughout the proposed regulation.

Necessity: The proposed change will provide clarity through removal of the language regarding “significant repair” by specifying that all pipelines that are constructed as a replacement to an existing pipeline will be treated as a new pipeline. All pipelines contemplated by the authorizing legislation are either new, replacement, or existing. The term significant added unnecessary confusion as to what “significant” meant. Additionally, the authorizing statute makes no differentiation based on significance and its application to what constitutes a replacement pipeline. The statute reads only that any new or replacement pipeline is subject to the statute and proposed regulations, as are existing pipelines. The amended definition more clearly recognizes that the statute discusses “new or replacement pipeline” in the same section, 51013.1(a), which emphasizes the intent to treat replacement pipeline similarly to a new pipeline. Ultimately the definition will have little or no impact on whether a pipeline is required to comply with the proposed regulations. It will either have to comply or not based on other factors. However, for purposes of OSFM review and operator compliance in submitting risk analysis, the impact may be greater. The OSFM and operator may utilize previously submitted risk analyses for replacement pipeline comparisons and review based on the
formerly existing pipeline. Similarly, the construction of a replacement pipeline will allow for the implementation of best available technologies that may otherwise be impossible to achieve on the retrofit of an existing pipeline.

**Subsection 2102(b):** was added to include reference to a new guidance document incorporated by reference that should aid in identifying Coastal Zone and Environmentally and Ecologically Sensitive Areas data needed for determining whether a pipeline must comply with the provisions of the proposed regulations. Existing subsection 2102(b) is now 2102(c).

**Necessity:** This new subsection provides a guidance document and general instructions on how to download data identifying the Coastal Zone and Environmentally and Ecologically Sensitive Areas information described in the preceding subsection 2102(a) of the proposed regulations. This guidance document will allow operators to determine the applicability of the proposed regulations to particular pipelines. Operators will still need to analyze the data sets in conjunction with their pipeline location data but this process should aid in simplifying that task. The data is housed within the Environmental Response Management Application (ERMA). ERMA is a web-based geographic information system (GIS) tool that helps emergency responders and environmental resource managers address incidents that may adversely impact the environment. The ERMA tool is currently used by the California Fish and Wildlife’s – Office of Spill Prevention and Response for various spill contingency planning requirements and resembles some of the OSFM requirements. Operators should already be familiar with the OSPR requirements to some extent and should be able to adapt the guidance document here to fit their needs in identifying protected resources. The foundation of the proposed regulations is built on operators properly identifying these resources so the OSFM can ensure compliance. Likewise, the OSFM will utilize the ERMA application to check for operator’s proper identification of pipelines being subject to the proposed regulations.

**Subsection 2103(a):** was amended to add clarifying language on the application of the exemption provisions.

**Necessity:** This subsection was amended to clearly state that a pipeline subject to the proposed regulations under Section 2102 may apply for an exemption. It is unnecessary to apply for an exemption for a pipeline that does not meet the requirements of Section 2102 because it would not be subject to the proposed regulations. The subsection further clarifies that a risk analysis must demonstrate that a spill from a pipeline will not impact the coastal zone portion of an environmentally and ecologically sensitive area to qualify for exemption.

**Subsection 2103(b):** is a new subsection but was previously existing language found in 2103(a).

**Necessity:** This new subsection is broken out from previously existing section 2103(a) to clearly state how an exemption will be evaluated. The language makes clear that all
provisions of the Article will be considered in determining to grant or deny an exemption request. This is important to inform operators to be inclusive of information submitted in risk analyses submitted for OSFM evaluation of potential exemptions.

Subsection 2103(d): is amended to reflect the moving of language from this section to 2103(a).

Necessity: By moving language from this subsection it clarifies that the risk analysis submitted to the OSFM must include the factors identified in Section 2111 (Risk Analysis). This is important because the authorizing legislation requires operators to submit a risk analysis to OSFM for review, and an exemption request is no different.

Section 2104: Title of the section is now “Deferral for Pipelines With Existing Best Available Technology.”

Necessity: The title of this section reflects that a pipeline currently equipped with best available technology receives a deferral for compliance with the proposed regulations. The deferral is applicable consistent with the requirements of Section 2117 (Risk Analysis Updates and Review) because the thrust of the authorizing statute is to ensure pipelines are equipped with best available technology on a rolling basis and is not static in time. This language is also consistent with the rest of the proposed regulations where pipelines that do not receive a deferral are required to update and review risk analysis on a 5 year basis. The change to the title adds additional clarity that a deferral does not act to permanently remove a pipeline from potentially upgrading technologies in the future and makes clear that the provisions found in sections 2111, 2112, and 2117 act as an integrated review of best available technology on an ongoing basis.

Subsection 2104(a): was amended to add clarifying language on the application of the deferral provisions.

Necessity: This subsection was amended to clearly state that a pipeline subject to the proposed regulations under Section 2102 may apply for a deferral. It is unnecessary to apply for a deferral for a pipeline that does not meet the requirements of Section 2102 because it would not be subject to the proposed regulations. The subsection further clarifies that a risk analysis must demonstrate that a pipeline is currently using the best available technology.

Subsection 2104(b): is a new subsection but was previously existing language found in 2104(a).

Necessity: This new subsection is broken out from previously existing section 2104(a) to clearly state how a deferral will be evaluated. The language makes clear that all provisions of the Article will be considered in determining to grant or deny a deferral request. This is important to inform operators to be inclusive of information submitted in risk analyses submitted for OSFM evaluation of potential deferral.
Subsection 2104(c): informs operators that deferral requests must be submitted by February 1, 2020

Necessity: This subsection is necessary so operators can submit a deferral request within an appropriate amount of time for the OSFM to review and approve or deny the request. The date provided allows the OSFM enough time to address deferral requests prior to the due date for risk analysis required for pipelines that do not receive deferrals.

Subsection 2104(d): is amended to reflect the moving of language from this section to 2104(a).

Necessity: By moving language from this subsection it clarifies that the risk analysis submitted to the OSFM must include the factors identified in Section 2111 (Risk Analysis). This is important because the authorizing legislation requires operators to submit a risk analysis to OSFM for review, and a deferral request is no different.

Subsection 2104(e): this subsection informs operators how deferral requests will be evaluated and communicated to the operator.

Necessity: this subsection is necessary so operators are aware of how a deferral is approved or denied and be communicated to an operator from the OSFM. This subsection further provides operators with an understanding of the standards of review that the OSFM will use when reviewing deferral requests.

Subsection 2104(f): is being proposed to allow operators an opportunity to request a deferral for pipelines that may already be equipped with best available technology and therefore need not comply with all provisions of the proposed regulations at the time of implementation. This subsection would clearly inform operators that a deferral must comply with section 2117 and the risk analysis associated with that deferral must be updated and reviewed consistent with those provisions.

Necessity: Some existing pipelines may not need to comply with all the requirements of the proposed regulation. Here the deferral may be granted based on the pipeline in question already being equipped with best available technology. One of the goals of AB 864 is the retrofit of existing pipelines with best available technology. This section looks to that goal and balances the possibility that a pipeline may already be equipped with best available technology. Operators seeking a deferral must demonstrate to the OSFM, through the submission of a risk analysis, that best available technology is currently installed on the pipeline. The OSFM will evaluate the risk analysis consistent with the applicable provisions of the proposed regulations assuring that a thorough review of deferral materials is conducted and evaluated with the detail of any other risk analysis submitted to the OSFM. Including this section is necessary for the OSFM to ensure that operators are complying with legislative and regulatory requirements to protect EESAs in the coastal zone, while making sure OSFM and operator resources are dedicated to pipelines that are required to retrofit with best available technology at implementation or going forward as new technologies may be developed.
Subsection 2105(a)(1): language was added to this section to clarify that analysis under section 2102 may lead to a pipeline not being identified as subject to the proposed regulations.

**Necessity:** This subsection informs operators that a pipeline that was not originally subject to the proposed regulations analysis under Section 2102 may become subject if a future release impacts an environmentally and ecologically sensitive area in the coastal zone. This provision is important because a future release from a pipeline may impact these resources, despite carefully crafted regulation. In the event an impact occurs, it is imperative to understand the failing in the risk analysis or regulatory scheme and address the failing by bringing in pipelines that received a deferral to the proposed BAT requirements. This provision will ensure the proper scope of pipelines is captured by the proposed regulations based on unanticipated eventualities.

Subsection 2107(b): this subsection is being provided to clarify that a pipeline relocation is not considered a new or replacement pipeline and that it is the operator’s responsibility to identify changes to pipeline operations or release amounts as a result of the relocation.

**Necessity:** It is necessary to clarify the term “relocation” to avoid confusion with the already defined pipeline terms, “new pipeline” and “replacement pipeline” found in the proposed regulations. In some scenarios, small sections of a pipeline may need to be moved from an existing location due to construction projects, changes to or expiration of easement agreements, or other unanticipated reasons. This subsection differentiates the intentional use of “relocation” of existing pipelines from, “new or replacement pipelines.” This differentiation is necessary for pipeline operators to clearly understand that construction of new pipelines or the replacement of large portions of pipelines will not be treated as a relocation, but instead will be treated as an existing pipeline. A relocation may not be subject to all parts of the proposed regulations but may be required to comply with certain requirements because it is an existing pipeline. For example, if the relocation of a pipeline results in significant changes to pipeline operations or the profile of the pipeline (procedures, volume, pressure, etc.), the relocated pipeline will be subject to requirements found in Section 2117 (Risk Analysis Update and Review) if a risk analysis has already been submitted, or Section 2111 (Risk Analysis) where a risk analysis has not yet been submitted. It is the operator’s responsibility to identify changes in the pipeline operations or amount of product released that would impact an environmentally and ecologically sensitive area in the coastal zone. A relocation may not always result in a change to operations or spill volumes therefore it is not necessary for the OSFM to assess every relocation, where an operator is better equipped to determine if a profile change or release amount has increased due to a relocation. For example, a pipeline may not have been subject to the proposed regulations prior to the relocation, but because of the relocation it is now situated near an EESA and must comply. Alternatively, a relocation may involve a change to pipeline profile operations and amount released at which point in time the
operator would need to notify the OSFM to determine if the change would result in a pipeline being subject to the proposed regulations or require an updated risk analysis. This section adds the clarity needed to inform operators that a relocation may still require compliance with the proposed regulations even though a relocation project is not considered a “new or replacement pipeline.”

**Subsection 2111(c)(4)(C)(9):** clarifies that a product’s behavior in the event of air dispersion is important in considering spill analysis.

**Necessity:** The inclusion of product behavior, air dispersion mechanisms, and ignition are important to determining the potential effects of a pipeline failure on an environmentally and ecologically sensitive areas. This language addresses particular concerns across product during a release, such as the behavior of volatile liquids that are more combustible than crude and have unique impacts associated with dispersion and ignition relevant to OSFM review of a spill analysis.

**Subsection 2117(a):** is being proposed to require updates and resubmittal of previously accepted risk analysis for review every five years after an operator receives a Letter of Acceptance issued under Section 2112 (State Fire Marshal Risk Analysis Assessment).

**Necessity:** One of the primary goals of AB 864 is the protection of state waters and wildlife, as well as EESAs. To achieve this goal, pipeline operators are required to construct or retrofit pipelines near EESAs with BAT to reduce the size of a release, thereby protecting these precious resources. Areas that are considered EESAs, are not limited to just wildlife but include habitat and myriad other resources deemed valuable enough to protect under State law. These resources are mobile, new species may be identified as needing protection, and other locations such as breeding grounds may be added to areas meeting the definition of an EESA. Similarly, new technologies may be developed over time that could be considered BAT because they represent significant improvements over existing technology, may be more effective, less costly, or surpass existing BAT so significantly to warrant review of currently installed BAT. This does not mean that operators will be required to retrofit BAT on a rolling 5-year basis. However, this subsection affords the opportunity to review BAT and potentially require retrofit where technologies yet to be developed supplant technology existing at the time the proposed regulations are adopted. Requiring operators to consider these factors on an ongoing basis and communicate their conclusions to the OSFM is necessary to achieve the goal of protecting existing and yet to be identified EESAs, and to ensure advancements in BAT are considered in future pipeline operations.

**CAL FIRE - Office Of The State Fire Marshal, Download Ecologically And Environmentally Sensitive Sites In The Coastal Zone (January 1, 2020): (Document Incorporated by Reference)**

**Subsection 2101(a)(4) – Incorporated by Reference:** added the above noted document.
**Necessity:** The purpose of the proposed guidance document is to assist operators in complying with the requirements set forth in proposed regulations. In particular, the guidance document will assist operators in identifying the Coastal Zone and Environmentally and Ecologically Sensitive Areas to be protected as mandated by the authorizing statute. Furthermore, operators may use the guidance document when evaluating whether a particular pipeline is subject to the proposed regulations then make the determinations and considerations found in Section 2102 (Identifying Pipelines Subject To This Article). Operators are not required to use the guidance document but it is being provided to add clarity to the described analysis in Section 2102 to ensure accuracy and compliance.