

STATEMENT OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES DIVISION 1. FISH AND GAME COMMISSION – DEPARTMENT OF FISH & WILDLIFE SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE CHAPTER 6. FUND ADMINISTRATION SUBCHAPTER 2. OIL SPILL PREVENTION AND ADMINISTRATION FUND FEE

SECTIONS 870.15 - 870.21

SB 861 (Chapter 35, Committee on Budget and Fiscal Review, Statutes of 2014) signed by the Governor to go into effect on July 1, 2014, created a statewide oil spill prevention and response program by expanding the long-standing marine program to apply to all surface waters of the state, including expanding collection of the per-barrel-of-oil fee that funds the program. The bill added Government Code section 8670.7.5, which expressly authorized emergency regulations so the Administrator can implement this important program as soon as possible:

“(a) The administrator may adopt regulations to implement this chapter pursuant to the Administrative Procedures Act (Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3).

(b)(1) An emergency regulation adopted pursuant to amendments made to this chapter by Senate Bill 861 of the 2013–14 Regular Session shall be deemed an emergency and necessary to avoid serious harm to the public peace, health, safety, or general welfare for the purposes of sections 11346.1 and 11349.6, and the administrator is hereby exempt from the requirement that he or she describe facts showing the need for immediate action and from review by the Office of Administrative Law.”

An emergency rulemaking action for the Oil Spill Prevention and Administration Fund fee (OSPFAF) was approved by the Office of Administrative Law (OAL) on October 23, 2014 (OAL Matter No. 2014-1013-04 EFP) and readopted on January 29, 2016 (OAL Matter No. 2016-0115-03EFP). As emergency regulations, they did not go through the formal comment process.

Every attempt has been made to limit the emergency regulations for the purposes of the amendments made by SB 861. To implement a fully comprehensive Oil Spill Prevention and Response program for all waters of the state, provisions have been either added to existing regulations, or adopted as separate sections that mirror the Oil Spill Prevention and Response Program for marine waters. Additionally, language has been added or amended to make the provisions applicable to rail without triggering federal pre-emption issues.

DILIGENT ADOPTION OF PERMANENT REGULATIONS

As required for re-adoption of emergency regulations, the Office of Spill Prevention and Response (OSPR) has made substantial progress and is proceeding with diligence to comply with subdivision (e) of Government Code section 11346.1. (Cal. Code Regs., title 1, section 52(b)(1).) The following actions demonstrate OSPR's progress toward the adoption of permanent regulations since the emergency regulations were enacted:

- Since September 2015 staff from OSPR has met with industry representatives several times, at their request, to discuss the draft regulations.
- In November 2015 OSPR held a workshop in Bakersfield to seek comment regarding the emergency regulations and explain their implementation.
- In 2016 OSPR has received at least six written comment letters from industry.
- On December 8, 2016 OSPR opened a 15-day public comment period from November 23, 2016 through December 8, 2016 and held a public hearing on December 8, 2016 to seek comment regarding proposed changes to the text and addition of documents relied upon.

Staff has spent much time evaluating industry's comments.

A re-adoption of the emergency regulations will ensure that oil spill preparedness and response standards necessary to protect against a present threat to public health, safety and the environment, remain in effect while OSPR works to complete the regular rulemaking process for permanent regulations.

As required for re-adoption of emergency regulations (Cal. Code Regs., title 1, section 52(b)(2)), there have been no material changes in emergency circumstances since the original emergency adoption of these regulations (OAL file number 2016-0115-03).

Pursuant to Government Code section 11346.1(b)(2), following is the information required by Government Code section 11346.5(a)(3):

Informative Digest

Senate Bill 861 of the 2013-14 Regular Session was signed by the Governor and became effective June 20, 2014. OSPR is proposing to readopt and amend regulations regarding the OSPAF pursuant to statutory amendments enacted by Senate Bill 861.

The bill expanded the OSPR marine oil spill preparedness and response program to also cover all state surface waters at risk from oil spills from any source, including production facilities, pipelines, and railroads.

Prior to Senate Bill 861, for nearly 25 years, the OSPAF was funded by a per-barrel-fee collected at marine terminals, assessed upon barrels of crude oil and petroleum products arriving by a marine mode of transportation. The statutory maximum for the fee

is six and one-half cents (\$0.065) per barrel of oil. [Ref. CA Government Code §8670.40]

As relevant to this regulatory action, Senate Bill 861 expanded collection of the per-barrel-fee to include collection at refineries, and made the fee applicable to barrels of oil delivered by any mode of transportation that passed over, across, under, or through waters of the state. This statutory change would require some owners of crude oil or petroleum products, who had not previously been paying the fee, to pay the fee when the oil is received at a refinery or marine terminal regardless of method of delivery. New fee paying situations involve deliveries by railroads, in-state oil production (not off-shore), in-state pipelines (not off-shore), and deliveries by truck (if any).

These proposed regulations do not differ substantially from existing comparable Federal regulations or statutes because there are no comparable federal regulations or statutes.

The proposed regulations are not inconsistent or incompatible with existing State regulations. The Board of Equalization has regulations regarding how the fee is to be collected and paid to the Board, but there is no inconsistency or incompatibility.

STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

- Board of Equalization OSPAF Fee Report of May 2016 (attached)
- [California Energy Commission 2015 Crude Oil Imports By Rail](#) (incorporated by reference)
- [Department of Conservation, Division of Oil, Gas, and Geothermal Resources, 2015 Report of California Oil and Gas Production Statistics](#), issued April 2015 (incorporated by reference)

DISCLOSURES REGARDING THE PROPOSED ACTION

OSPR has made the following determinations, as required by regulation:

- (a) *Mandates upon local agencies and school districts:* None
- (b) *Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:* The proposed action will not have a significant statewide adverse economic impact directly affecting business, or affect the ability of California businesses to compete with businesses in other states.
- (c) *Cost impacts on representative private persons or businesses:* This fee does not have a direct impact on individuals – unless they own the oil delivered to a refinery or marine terminal. However, the Board’s list of registered OSPAF fee payers does not include any individuals; they are all corporations, LLC’s, partnerships, or other businesses. If industry could pass on the entire fee to California consumers at gas stations, the result would be an increase of 5% of a penny per gallon at the gas pump. Thus, at \$0.0005 cents per gallon fuel, only half a penny (\$0.005) would be

added to the price of a 10 gallon fill-up. Given the context of recent dramatic declines in the retail price of gas (from over \$4/gallon to under \$3/gallon), this fee is expected to have a negligible impact on consumers.

- (d) *Effect on small business:* None directly. None of the companies registered with the Board of Equalization for payment of the OSPAF fee are “small businesses”, as that term is defined at section 11342.610 of the Government Code.

The potentially directly affected businesses are oil producers, pipelines, railroads, refineries, or oil owners. The regulations do not affect business activities in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, as described by section 11342.610 of the Government Code. Petroleum producers, refineries, and oil brokers are expressly excluded from the definition of “small business”. To the extent that small businesses use gasoline or other petroleum products, the effect would be similar to that described for individuals and businesses above (g).

- (e) *Significant effect on housing costs:* None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

These proposed regulations:

- Will not result in the creation or elimination of jobs within the State of California.
- Will not result in the creation of new businesses or the elimination of existing businesses within the State of California.
- Will not result in the expansion of businesses currently doing business within the State of California.
- Will provide benefits to the health and welfare of California residents, worker safety, and the state's environment, by providing the funding for OSPR to oversee the ability of facilities, pipelines, and railroads to adequately prepared for and respond to an oil spill. This helps OSPR implement its “best achievable protection” statutory mandate by potentially eliminating or mitigating the impacts of an oil spill on the environment.

Pursuant to Government Code section 11346.1(b)(2), the finding of emergency is based on the following:

In enacting this program, the Legislature found that each year hundreds of millions of gallons of crude oil and petroleum products are transported by vessel, railroad, truck, or pipeline over, across, under, and through the waters of this state. Oil spill accidents can be a significant threat to the environment of sensitive areas. California’s lakes, rivers, other inland waters are treasured environmental and economic resources that the state

cannot afford to place at undue risk from an oil spill. A major oil spill in state waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage. [Ref. Gov. Code section 8670.2]

These proposed regulations would retain the existing per-barrel-fee at 6.5 cents for each barrel of oil received at marine terminals, and would set the same fee for oil received at refineries, regardless of mode of delivery to either location.

These proposed regulations would also cleanup long-standing unnecessary regulatory language and provide specificity not found in the statutes.

The primary benefits of the proposed regulations contribute to the health and welfare of California residents, worker safety, and the State's environment by ensuring that the OSPR oil spill preparedness and response programs are funded.

Pursuant to Government Code section 11346.1(b)(2), the following is the reference to the authority under which the emergency regulations are proposed:

Authority: Sections 8670.7.5, 8670.39 through 8670.41, Government Code.
Reference: Sections 8670.40 and 8670.41, Government Code.

Pursuant to 1 CCR § 20(c)(1), The following forms are incorporated by reference in these emergency regulations: none

Pursuant to 1 CCR § 48, the email notice contained the following statement which is substantially similar:

Pursuant to Government Code section 11346.1, subdivision (a)(2), and California Code of Regulations, Title 1, section 52, at least five working days prior to submission of the proposed readoption to OAL, notice must be provided to every person who has filed a request for notice of regulatory action with OSPR. After submission of the proposed readoption to OAL, any interested person will have five (5) calendar days to submit related comments to OAL as set forth in Government Code section 11349.6. Also upon submission, OAL will have ten (10) calendar days within which to review and make a decision on the proposed readoption.

If you wish to comment on this proposed temporary readoption of these emergency regulations, you must submit the comment directly to OAL within five calendar days of OAL's posting of the proposed readoption on the [OAL website](#). You may submit comments on the proposed readoption to OAL at:

Office of Administrative Law
OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
E-mail: staff@oal.ca.gov

When you submit a comment to OAL, you must also submit a copy of your comment simultaneously to OSPR:

Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, CA 95811
E-mail: OSPRRegulations@wildlife.ca.gov

OAL will confirm that OSPR has received the comment before considering it. Pursuant to California Code of Regulations, title 1, section 55, subdivision (b)(1) through (4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency.

Adoption of emergency regulations does not require response to submitted comments. Any response to comments from OSPR will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable.

Any questions regarding this proposed emergency regulatory action may be directed to OSPRRegulations@wildlife.ca.gov or by calling Christine Kluge at the Office of Spill Prevention and Response at (916) 327-0910.

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(4):

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(5):

The proposed regulations do not impose a mandate on any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)).

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(6):

There is a potential for fiscal revenues of approximately \$12.3 million into the OSPAF initially. This amount fluctuates annually based on the number of barrels of oil produced and delivered to California.

The Board of Equalization is required to collect the fee on behalf of OSPR, but the Board is also required to be reimbursed for its reasonable costs incurred to implement OSPAF fee collection. [Gov. C. §8670.40(a) and (e)(5)] The Board receives an appropriation each year in the Governor's budget commencing FY14/15.

The proposed regulations do not impose any costs or generate any savings to any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4.

Pursuant to Government Code section 11349(f) and 1 CCR § 12, the following is the information required by 1 CCR § 12:

The proposed regulations duplicate and/or rephrase/ statute and existing rules to satisfy the clarity and consistency standards of the Administrative Procedures Act. Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Act. Where the statute is made specific or interpreted, an explanation regarding why the proposed rule is reasonably necessary to carry out the purpose and to address the problem for which is it proposed is provided.