

**CA DEPARTMENT OF FISH AND WILDLIFE  
OFFICE OF SPILL PREVENTION & RESPONSE**

**ADDENDUM**

**INITIAL STATEMENT OF REASONS**

Amend Section 870.15  
Repeal Section 870.17, 870.19, 870.21  
Add new Section 870.17

Title 14, California Code of Regulations  
Re: Oil Spill Prevention & Administration Fund Fee

- I. Date of Initial Statement of Reasons:** January 15, 2015
- II. Date of Revised Statement of Reasons:** November 22, 2016
- III. Date of this Addendum to Statement of Reasons:** June 15, 2017
- IV. Addendum:**

On January 26, 2017 the Office of Spill Prevention and Response (OSPR), submitted to the Office of Administrative Law (OAL) proposed regulations regarding collection of the Oil Spill Prevention and Administration Fund (OSPAF) fee, pursuant to statutory changes made by Senate Bill 861 in 2014. On March 16, 2017, OAL issued a Disapproval of Regulatory Action. OSPR has made suggested corrections to the rulemaking file, and has submitted the proposed changes for public comment by way of a 15-day comment period.

The following, along with the addition of documents relied upon, and the regulatory text outlines the proposed modifications.

Pursuant to Government Code Section 11347.1, OSPR will provide public notice of the Addendum to the ISOR, and the documents relied upon for a minimum of 15 days.

**V. Purpose, Rationale, and Necessity for the Amendment, Addition, or Repeal of the Regulations**

Government Code section 8670.39 grants the Administrator of OSPR the authority to adopt regulations and guidelines regarding the OSPA. The proposed regulations implement, interpret, and make specific Government Code sections 8670.39 through 8670.41. The proposed regulations are necessary to provide specificity not found in the statutes.

The following are additional proposed changes. The sections set forth a discussion of the specific purpose for each regulatory provision being added, amended, or repealed, and the rationale for why these amendments are reasonably necessary to carry out the purpose and address the problem for which it is proposed. See the text of the proposed regulations.

**Section 870.15:**

The previously stricken out phrase "...of this subdivision" is being added back in for clarity.

**Subsection (a):**

Purpose: The purpose of subsection (a) is to define "barrel fee" in the context of this chapter.

Necessity: The word "fee" was erroneously stricken out during the first 15-day comment period; it is being added back in. Additionally, the text "(commencing with Section 8670.38)" is being removed as duplicative.

**Subsection (b):**

Purpose: The purpose of subsection (b) is to define "nontank vessel fee" in the context of this chapter.

Necessity: The word "paid" was not stricken out during the first 15-day comment period. It is stricken out now. The words "section 870.17(c) of this chapter and" are added to differentiate it from the reference to the Government Code section.

Authority and Reference – Under "Reference" subsection (c) is removed from "Section 8670.37.58(c)" as unnecessary and to avoid confusion in the event of future changes to the statute.

**Section 870.17:**

**Subsection (a):**

Purpose: The purpose of subsection (a) is to direct the Administrator to establish a barrel fee and nontank vessel fee and where said fees are to be deposited.

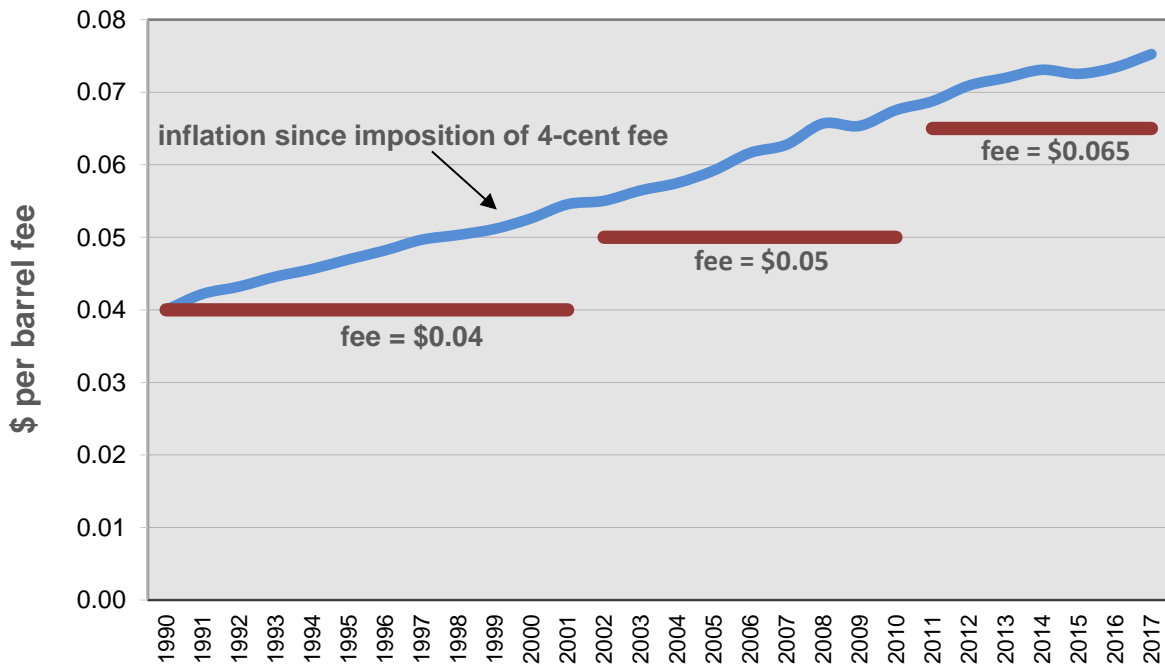
Necessity: "Must" is being changed back to "shall" for consistency in aligning with existing regulatory text. The word "nontank" should have been illustrated in double underline during the first 15-day comment period. It is being illustrated correctly here. "Each fee is deposited" is changed to "Each fee shall be deposited" to align with statutory language in Government Code section 8670.40(c).

**Subsection (b):**

The OSPAF fee was established in 1990 and set at \$0.04/barrel of oil that arrives at marine terminals. It was raised to \$0.05 in 2002 to adjust for inflation. As can be seen in Figure 1 below, these adjustments did not keep up with inflation, leading to structural

deficits. The fee was raised again to 6.5 cents in 2012 to be able to implement new mandates pursuant to Chapter 583, Statutes of 2011 (AB 1112). In addition to keeping up with inflation, the fee increase was necessary to provide proper support for monitoring of bunkering and lightering operations. This necessity was detailed in a 2011 Budget Change Proposal by the Department of Fish & Wildlife. [Referenced herein at section VI. Studies, Reports, or Documents Relied Upon]

**Figure 1: OSPAF fee and inflation**



Under SB 861, OSPR’s responsibilities were expanded to cover the entire state, a significant increase from the previous program which was limited to marine waters. To pay for this expansion to inland areas, as well as to address an on-going structural deficit created by inflation, SB 861 also expanded the fee to apply to more oil deliveries—to all oil delivered to refineries (such as by pipeline and rail) and not just to oil delivered to marine terminals (primarily by vessel). While the fee remains at 6.5 cents per barrel, it is now applied to approximately a third more oil, thus increasing revenues from approximately \$32 million/year to \$44 million/year. The 2014 Budget Change Proposal (BCP) by the Department of Fish & Wildlife [Referenced herein at section VI. Studies, Reports, or Documents Relied Upon] estimated an increase in revenues of \$11.3 million. After implementation of the new fee regime in September, 2014, the actual revenue increase was closer to \$12.3 million; this figure is used in the economic analysis here. Revenues vary from month to month depending upon oil deliveries to California refineries.

The 2014 BCP allocates the revenues to the following costs:

- \$6.7 million to inland expansion for OSPR and the associated Oiled Wildlife Care Network (OWCN);
- \$4-5 million to address structural deficits at OSPR and OWCN.

Of the \$6.7 million for inland expansion, \$6.2 million is to fund an additional 38 positions (a staff increase of 15%) to address the increased workload relating to inland facilities. These responsibilities include reviewing contingency plans, reviewing financial responsibility, conducting tabletop exercises, establishing oil spill response organization ratings appropriate to non-coastal environments, and supporting field staff activities in areas of the state where there previously had been less than optimal coverage. The expansion includes OSPR positions in several new inland locations, such as Redding, Fresno, and Bakersfield. The costs of this expansion to inland locations are detailed in the 2014 BCP. An additional \$0.5 million is to fund OWCN's expansion from marine to inland capabilities.

In summary, these regulations maintain OSPR's 6.5-cent fee as it is expanded and applied to all oil arriving at refineries. This essentially expands OSPR's revenues from \$32 million/year to \$44 million/year, an increase of about \$12 million. These funds are necessary to maintain OSPR's pre-existing program and to fund OSPR's new inland obligations under SB 861.

Subsection (b)(1):

Purpose: The purpose of subsection (b)(1) is to describe how the barrel fee is paid and who must pay the fee.

Necessity: The word "Fee" is changed to lower case 'f' as suggested. The word "not" was left out of the 15-day comment text. It is being added back in, to be illustrated as a strike out. The word "products" was erroneously stricken out during the first 15-day comment period. It is being added back in, followed by "rounded to no more than four decimal places," to align with statutory language in Government Code section 8670.40(b)(7). The word "when" is being stricken out as unnecessary. Changing "must" back to "shall" to align the language with existing regulatory text.

Subsection (b)(2):

Purpose: The purpose of subsection (b)(2) is to set the barrel fee.

Necessity: The words "currently hereby" are deleted as unnecessary. The text "rounded to no more than four decimal places," is also deleted as unnecessary and duplicative of that which is stated in subsection (b)(1).

Subsection (b)(3)(A):

Purpose: The purpose of subsection (b)(3)(A) is to explain how the State Board of Equalization is responsible for collecting the fee.

Necessity: For clarity, deleted “section 2231 et seq.” and adding “chapter 4.5 of division 2” of “...the California Code of Regulations (commencing with section 2231)” to add more specificity to the referenced authority.

Subsection (b)(3)(B):

Purpose: The purpose of subsection (b)(3)(B) is to set when the Administrator must notify the Board of Equalization of the fee rate.

Necessity: This language is necessary in order to provide the Board of Equalization sufficient time to notify fee payers of the new fee level. The annual date of October 1 is based on an agreement between OSPR and the Board. The determination of 90 days is pursuant to section 870.19(b), Title 14, Code of Regulations.

As suggested, this entire subdivision should have been illustrated with double underline during the first 15-day comment period to reflect a new addition. It is being illustrated here as such, in double underline and italics.

Subsection (b)(4):

Purpose: The purpose of subsection (b)(4) is to identify when the barrel fee is to be imposed on a barrel of crude oil.

Necessity: The word “will” is being changed to “shall”, for consistent expression of mandatory provisions; this wording aligns with existing regulatory text. The words “receipt at” are being changed to “delivery to” to more closely align the regulatory text with the Legislature’s intent for collection of this fee, as expressed in uncodified language in Section 5 of Assembly Bill 815 (Chapter 108, Statutes of 2015). This uncodified language clarifies that the fee is applied “upon first delivery” of oil to a refinery or marine terminal.

Subsection (b)(5):

Purpose: The purpose of subsection (b)(5) is to alert operators that they may be required to register with the Board for purposes of fee collection.

Necessity: This language is necessary to identify the three types of entities that need to register with the Board, based on subsections 8670.40(b)(4) and (6) of the Government Code, and section 46101 of the Revenue and Taxation Code.

Subsection (c)(1):

Purpose: The purpose of subsection (c)(1) explains how the amount of the nontank vessel fee is set.

Necessity: Changing “must” back to “shall” to align the language with existing regulatory text. Capitalizing “Administrator” for consistency with existing regulatory text.

Subsection (c)(2):

Purpose: The purpose of subsection (c)(2) is to identify the nontank vessel fee based on the vessel's capacity in barrels of oil.

Necessity: Deleting the words "currently hereby" as unnecessary.

Subsections (c)(2)(A), (B), (C), (D), and (E)

Purpose: The purpose of subsections (c)(2)(A), (B), (C), (D), and (E) is to identify the specific nontank vessel fee amounts based on the vessel's capacity in barrels of oil and ownership of the vessel.

Necessity: In (A), (B), and (D) the comma after "vessel" at the end of each subsection is being deleted, and adding a period. The word "or" and the semicolon at the end of each subsection is deleted, as superfluous. These subsections are distinct categories; but an owner or operator could have vessels from multiple categories.

In (A), (B), (C), (D), and (E) the acronym "USD" before the dollar amounts is being deleted as unnecessary, and to be consistent with formatting of other OSPR regulations.

In (D) the words "the state of" is added before California to align with the same additions in (E) noticed during the first 15-day comment period.

Subsection (d)

Purpose: The purpose of subsection (d) is to make clear the hierarchy of statute over regulations, preserving any authority in the statutes.

Necessity: This subsection is being deleted as unnecessarily duplicative of statute. It does not substantively add to the section. Fee increase authority is provided for in sections 8670.40 and 8670.41 of the Government Code.

Authority and Reference – illustration correction – all text should have been illustrated with double underline during the first 15-day comment period. Subsection (c) is removed from the citation to section 8670.37.58 as unnecessary and to avoid confusion in the event of future changes to the statute.

Citation to uncodified language from Assembly Bill 815 (Chapter 108, Statutes of 2015) is provided as the basis for the Legislature's intent for subsection (b)(4) of this section. This citation is included to align with existing Code of Regulations formatting for uncodified language.

***VI. Studies, Reports, or Documents Relied Upon***

- Budget Change Proposal, Fiscal Year 2012/2013, Department of Fish & Wildlife, BCP No. 10, October 2011 (Section E).

- Budget Change Proposal, Fiscal Year 2014/2015, Department of Fish & Wildlife, BCP No. 12, January 2014 (Section A).

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