

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
OFFICE OF SPILL PREVENTION AND RESPONSE**

**TITLE 14. CALIFORNIA CODE OF REGULATIONS
OIL SPILL FINANCIAL RESPONSIBILITY
Sections 791 - 798**

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) proposes to amend sections 791 through 798 in subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to the Certificates of Financial Responsibility. OSPR invites interested persons to present comments, statements, or arguments with respect to the regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARINGS

OSPR will hold two public hearings **at the following designated dates, times and locations**. These facilities are wheelchair accessible. At the public hearings, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. OSPR requests, but does not require that persons who make oral comments at the hearings also submit a written copy of their testimony at the hearings.

Date: Tuesday, February 13, 2018
Time: 9:00 a.m. – 12:00 p.m.
Location: Natural Resources Building Auditorium
1416 9th Street
Sacramento, CA 95814

Date: Thursday, February 22, 2018
Time: 1:30 p.m. – 4:30 p.m.
Location: Associated Builders & Contractors
19466 Flight Path Way
Bakersfield, CA 93308

SUBMISSION OF WRITTEN COMMENTS

Any interested person or his or her authorized representative may submit to OSPR written comments relevant to the proposed regulatory action. **The written comment period closes at 5:00 p.m. on February 22, 2018.** All written comments must be

received by OSPR by then in order to be considered. Written comments may be submitted at either of the hearings or by mail, fax, or e-mail, as follows:

Department of Fish and Wildlife
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, California 95811
Fax: (916) 324-5662
E-mail: OSPRRegulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Government Code sections 8670.7.5, 8670.37.53, 8670.37.54, and 8670.37.58 grant the Administrator of OSPR the authority to adopt regulations and guidelines for the proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.3, 8670.37.51, 8670.37.53, 8670.37.54, 8670.37.55, 8670.37.56, 8670.37.58, and 8670.41.

INFORMATIVE DIGEST

Summary: The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) of 1990 requires operators of certain facilities and large vessels to demonstrate the ability to pay cleanup costs and damages for potential oil spill threats they pose to marine waters. An owner or operator must apply for and obtain what is known as a certificate of financial responsibility (COFR) from the Administrator of the Office of Spill Prevention and Response. This certificate offers conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel or facility for purposes of determining liability for an oil spill. (Government Code section 8670.37.51, et. seq.)

In 2014, Senate Bill 861 was signed by the Governor and took effect immediately. The bill expanded the OSPR marine oil spill preparedness and response program to cover all state surface waters, thus expanding the COFR requirements to also apply to operators of facilities that pose an oil spill threat to inland surface waters. These inland operators generally consist of production facilities and oil wells, pipelines, terminals, railroads, and inland refineries.

Pursuant to Senate Bill 861, OSPR initiated emergency rulemaking approved on September 3, 2015 (OAL #: 2015-0825-03EFP). These regulations were readopted on September 1, 2016, and again on August 7, 2017 (OAL #'s: 2016-0822-02EFP and 2017-0727-03EFP, respectively). OSPR is initiating this regular rulemaking action to formally adopt amendments to implement the financial responsibility provisions of Senate Bill 861.

OSPR is also initiating regular rulemaking on regulations significantly interrelated to this rulemaking. Those proposed regulations were also emergency rulemakings approved in the fall of 2015, and readopted in 2016 and 2017. They are for Oil Spill Contingency Plans and Definitions & Abbreviations (14 CCR §817.04 and §790); Inland Facility Drills and Exercises (14 CCR §820.02); and Inland Ratings of Oil Spill Response Organizations (14 CCR §819-819.07). These other packages are also implementing legislative changes by Senate Bill 861.

Policy Statement Overview and Anticipated Benefits of the Proposed Action:

Adoption of these regulations will implement, interpret, and provide specificity not found in the Act, will distinguish inland financial responsibility standards from marine standards, and provide much needed cleanup and clarification.

In enacting this program, the Legislature found that each year billions 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. 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. (Government Code section 8670.2) However, inland waterways differ from the ocean and coastal shorelines. Inland waterways consist of lakes, rivers, streams, wetlands, and also dry washes. Thus, OSPR is proposing financial responsibility based on whether the inland facility is within a quarter mile of a wash that is dry most of the year or a waterway that has water in it most of the year.

The benefits of the proposed regulations ensures a base amount of funding to cover costs associated with cleaning up an oil spill not only into marine waters, but now also into inland surface waters. Ultimately, these regulations will protect the state from incurring potentially millions of dollars annually in oil spill clean-up costs.

Evaluation of Inconsistency or Incompatibility with Existing Regulations

The proposed regulations are not inconsistent or incompatible with existing state regulations. OSPR is the only California state agency implementing an oil spill financial responsibility requirement.

The proposed regulations do not duplicate or conflict with federal regulations. There are federal regulations about financial responsibility for oil spills; however, OSPR's coverage amounts are generally higher than the federal requirements. The California statutory liability for an oil spill is broader than the liability provisions of the federal laws. (Government Code section 8670.56.5) This means the owner or operator of the facility is demonstrating to California that it can cover a broader spectrum of costs and damages from an oil spill than what is required from the federal laws. And OSPR is not preempted from promulgating these regulations.

DOCUMENTS INCORPORATED BY REFERENCE

The following new forms, hereby incorporated by reference, are available on OSPR's website and upon request.

- Guaranty of Financial Responsibility for Oil Spill Response and Damages, referred to as DFW Form 1928 (06/21/17).
- Application for Certificate of Financial Responsibility for Inland Facilities, referred to as DFW Form 1932 (06/21/17).
- Surety Bond for Oil Spill Response and Damages, referred to as DFW Form 1948 (06/21/17).
- Trust Agreement, referred to as DFW Form 1961 (06/21/17).
- California Endorsement for Oil Spill Liabilities, referred to as DFW Form 1962 (06/21/17)

DETERMINATIONS REGARDING THE PROPOSED ACTION

OSPR has made the following determinations, as required by Government Code section 11346.5(a)(5), (6), (7), (9) and State Administrative Manual section 6601:

(a) Mandate upon local agencies and school districts: None

(b) Costs or savings to any state agency: None

(c) Costs or savings to any local agency: None

(d) Costs or savings to any local agency or school districts which must be reimbursed in accordance with part 7, division 4 (commencing with section 17500) of the Government Code: None

(e) Other non-discretionary costs or savings imposed upon local agencies: None

(f) Costs or savings in federal funding to the state: None

(g) Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The impacted companies are involved in the production, transport, refining, and distribution of oil within the state. In general, businesses from outside of California do not compete with California refineries or transporters (although facilities within California may be owned by a larger corporation based outside of California).

Inland producers do compete on the global market with all oil producers worldwide, but because they are located locally, have a strong economic advantage over out-of-state competitors due to minimal transport costs. All domestic California oil production is consumed within California. The increased costs associated with demonstrating financial responsibility incurred by these companies is unlikely to affect their ability to compete with businesses from outside the state.

(h) Cost a representative private person or business would necessarily incur in reasonable compliance: There is no fee for a certificate of financial responsibility (COFR). The costs related to obtaining a COFR are dependent on two factors: the facility's method of demonstrating financial responsibility (i.e. insurance, surety bond, self-insurance, etc.) and the amount of financial responsibility a facility owner or operator is required to demonstrate. Based on OSPR's survey results, the estimated cost that a representative business may incur in reasonable compliance with these regulations is between \$8,900 and \$50,000 for the first year – likely a high estimate. However, some facilities may already have adequate pollution insurance. Some costs will slightly increase in future years, while others will decrease substantially. Overall, the total cost is expected to decline in future years.

(i) Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Pursuant to Government Code sections 11346.2 and 11346.3, and State Administrative Manual section 6601, with regard to the proposed regulations, OSPR determines the following:

- Whether this is a "major regulation", having an economic impact on businesses and individuals exceeding \$50,000,000 in any 12-month period between the date the regulation is estimated to be filed with the Secretary of the State through 12 months after the regulation is fully implemented

No, this is not a major regulation.

- Effects of the regulation on the creation or elimination of jobs within the State of California

It is possible that insurance companies may hire additional staff to meet the demand of additional business activity these regulations may cause, however, is likely to be very small (not exceeding a few individuals), given the small number of companies affected and new policies needed.

- Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State of California

Compliance with these regulations is not anticipated to result in any significant creation or elimination of existing businesses within the state. See the discussion in the previous bullet regarding the insurance industry.

- *Effects of the regulation on the expansion of businesses currently doing business within the State of California*

Compliance with these regulations is not anticipated to significantly expand current businesses within the state.

- *Benefits of the regulation to the health and welfare of California residents*

These regulations are implementing the financial responsibility requirements of inland operators. The initial burden for spill cleanup funding comes from the responsible party. The benefit is that in the event of an oil spill, there will be a proper amount of funding to pay for spill cleanup, providing Californians with a faster initiation of cleanup activities. If there is a spill from a company that is not required to have financial responsibility, there may be initial delay over who will start funding the cleanup.

- *Benefits of the regulation to worker safety*

None directly.

- *Benefits of the regulation to the State's environment*

The benefit is when there is a spill, there is a pre-identified source of funds to pay for oil spill cleanup. This minimizes confusion during emergency response and results in faster initiation and more controlled cleanup activities.

- *Effect on small business*

None of the businesses affected are small businesses as described and defined by sections 11346.3(b)(4)(A) or 11342.610 of the Government Code.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), OSPR must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of OSPR, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The requirement to demonstrate financial responsibility for a potential oil spill in surface waters within the State of California is required by statute. Thus, there are no reasonable alternatives to this regulatory action.

OSPR invites interested persons to present reasonable alternatives to the proposed regulations during the written comment period

AVAILABILITY OF DOCUMENTS / CONTACT PERSONS

OSPR will have the entire rulemaking file available for inspection and copying at its office at the address below. As of the publication date of this notice, the rulemaking file consists of this notice, the proposed text of the regulations, any forms incorporated by reference, and/or documents relied upon, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statement (STD Form 399). Please direct requests for copies of the rulemaking file to the following:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Christine Kluge
1700 K Street, Suite 250
Sacramento, California 95811
Phone: (916) 327-0910
Email: Christine.Kluge@wildlife.ca.gov

The backup contact person is:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Dan Warren
1700 K Street, Suite 250
Sacramento, California 95811
Phone: (916) 324-0173
Email: Daniel.Warren@wildlife.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The entire rulemaking file can be accessed at:
<http://www.wildlife.ca.gov/OSPR/Legal/Proposed-Regulations/COFR>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, OSPR may adopt the proposed regulations substantially as described in this notice. If OSPR makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before OSPR adopts the regulations as revised. Any such modifications will also be posted on OSPR's website. Please send requests for copies of any modified regulations to the attention of the contact person(s) as indicated above. OSPR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice, or may be accessed on OSPR's website indicated above.

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