

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

**AMENDED INITIAL STATEMENT OF REASONS**  
Including  
**ECONOMIC IMPACT ASSESSMENT**  
to  
Amend Sections 791, 791.6, 791.7, 793, 794, 795, 796, and 797  
Adopt new Section 798  
to  
Title 14, California Code of Regulations  
Regarding Oil Spill Financial Responsibility

Date of Initial Statement of Reasons: December 19, 2017

**Date of Amended Statement of Reasons: May 22, 2018**

**Dates and Locations of Hearings:**

**Public Hearing: Date: February 13, 2018**  
**Time: 9:00 a.m. – 12:00 p.m.**  
**Location: Natural Resources Building**  
**1416 Ninth Street, Sacramento, CA 95814**

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

For the 15-day public comment period, the new changes are indicated as:

- Added text is shown in **bold** and **double underline**.
- Deleted text is shown in ~~double strikethrough~~.

***I. Description of Regulatory Action***

***(a) General Background***

The California Department of Fish and Wildlife (Department), Office of Spill Prevention & Response (OSPR) is proposing to adopt through this regular rulemaking the requirements for inland facilities to prepare and submit proof of financial responsibility for oil spills to OSPR for approval, pursuant to statutory changes made by Senate Bill (SB) 861 in 2014.

In 2014, SB 861 was signed by the Governor and took effect immediately. It created a statewide oil spill prevention, preparedness, and response program by expanding the

long-standing marine program to apply to all surface waters of the state. The bill authorized the Administrator of OSPR to promulgate emergency regulations to implement this program to protect inland surface waters. SB 861 provided that the emergency regulations would be valid for 12 months.

An emergency rulemaking action for inland facility financial responsibility was approved by the Office of Administrative Law on September 3, 2015 (OAL # 2015-0825-03EFP). As emergency regulations, they did not go through the formal comment process. The emergency regulations were readopted in September 2016 and again in August 2017 (OAL #'s: 2016-0822-02EFP and 2017-0727-02EFP, respectively). OSPR is now initiating this regular rulemaking to make the general substance of the emergency regulations permanent, with additional relevant revisions to reflect lessons learned from implementation of the emergency regulations and from input obtained through additional OSPR outreach.

### *(b) Financial Responsibility Background*

Since 1991 the *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) has required operators of certain facilities, pipelines, and large vessels to demonstrate the ability to pay for cleanup and damages for potential oil spills to marine waters (tidally influenced); this is known as financial responsibility. An owner or operator must apply for and obtain a certificate of financial responsibility issued by the OSPR Administrator. A certificate of financial responsibility is conclusive evidence that the person or entity holding the certificate is the party responsible for the specified facility or vessel for purposes of determining liability for an oil spill. (Government Code §8670.37.51 through 8670.31.58.)

The Act requires the OSPR Administrator to adopt and implement regulations governing the adequacy of financial responsibility, which have been in place since the early 1990's (14 CCR 791 through 798). Government Code section 8670.56.5 describes the types of damages and liability that an owner or operator may incur.

### ***II. Problem the Regulatory Action Intends to Address*** [Gov. C. §11346.2(b)(1)]

SB 861 expanded the statutory requirements of the Act from marine areas to also apply to operators of inland facilities that pose an oil spill threat to inland surface waters. Thus, SB 861 created a statewide oil spill planning, preparedness, and response program. These inland operators generally consist of oil producers, oil pipelines, railroads transporting oil, and inland refineries.

Prior to the emergency rulemaking, the existing regulations only related to financial responsibility for oil spills into marine waters. Thus, the Administrator must promulgate these regulations for inland facilities that pose a risk to inland waterways.

To increase efficiency and ensure uniformity throughout implementation of the statewide program, the proposed amendments to the existing regulations are generally modeled

after the marine facility financial responsibility requirements. However, inland water environments do differ from the ocean and coastal shorelines. Inland waterways consist of lakes, rivers, streams, wetlands, and dry washes. The amount of water present greatly effects the extent of response operations and the type equipment needed to cleanup a spill. Thus, OSPR is proposing financial responsibility based on whether the inland facility is next to a waterway that is dry most of the year, or next to a waterway that has water in it most of the year.

### ***III. Addendum***

**In response to public comments, modifications to the proposed regulations have been made. Additionally, there are modifications to the Economic and Fiscal Impact Statement (form STD 399). This Amended ISOR adds statements of necessity, other clarifying statements, and minor editorial changes.**

The additions to this Amended ISOR are indicated in **bold, double underlined text**; deletions are indicated in ~~double-strikeout text~~. Minor punctuation edits, while illustrated similarly in the text, are not explained in this Amended ISOR.

**Pursuant to Government Code Section 11347.1, OSPR will provide public notice of the modified regulatory text, the Amended ISOR, and other associated documents, for a minimum of 15 days prior to considering the proposed regulations for adoption.**

### ***IV. Purpose, Rationale, and Necessity for the Amendment, Addition, or Repeal of the Regulations [Gov. C. §11346.2(b)(1)]***

Government Code sections 8670.37.53, 8670.37.54, and 8670.37.58 grant the Administrator of OSPR the authority to adopt regulations and guidelines regarding oil spill financial responsibility. The proposed regulations implement, interpret, and add specificity to the provisions of Government Code sections 8670.37.51 through 8670.37.58.

As mentioned above, the emergency regulations have been extended to August 2018. OSPR is initiating this regular rulemaking action to formally adopt the financial responsibility requirements for inland facilities and additional relevant revisions. This version of the financial responsibility regulations is different from the emergency regulations. OSPR has gained valuable feedback from industry and experience from implementing these new mandates, and has also taken the opportunity to cleanup and clarify existing language.

The discussion below sets forth the rationale for each regulatory provision being added, amended, or repealed, and why these amendments are reasonably necessary to address the issue. The proposed regulatory amendments are necessary to provide specificity not found in the Act, and will distinguish inland certificate of financial responsibility standards from marine standards.

Some general amendments include:

- Throughout, the word “section” and similar words have been changed to lowercase in accordance with the California Style Manual.
- Where “day” is referenced without stating whether it is business or calendar, this has been clarified.
- Capitalization is made consistent.
- Terms and phrasing usage is made consistent.
- Elimination of redundancy.
- Subsections and paragraphs are renumbered accordingly.
- Updated internal cross-references to reflect renumbered subsections.

These general amendments are referred to throughout at “edits for uniformity.” Additionally, the Authority and Reference portions of each regulation section have been updated to reflect the new statutory provisions as needed.

#### Subchapter Heading

Purpose: To identify the subchapter.

Necessity: The subchapter heading is removed as unnecessary and to avoid confusion; there are no other subchapters within chapter 2. All references to “this subchapter” have been changed to “this chapter.”

#### Section 791. Definitions

With these and other related proposed regulations, OSPR is trying to ensure that definitions that are widely referenced are only listed in section 790 and not duplicated elsewhere. This is necessary to avoid possible inconsistency resulting from the same term being accidentally defined differently in multiple sections. Unnecessary duplication potentially creates scenarios where a term might be updated in one section and accidentally not updated in another section, which would cause considerable confusion and inconsistency. Consolidation of commonly used definitions in one section will eliminate conflicting definitions. Only definitions that are truly unique to a particular chapter or subchapter will be included here.

Additionally, some edits in section 791 are non-substantive; some for style uniformity and conformity. Subsections are renumbered accordingly.

#### Subsection 791(a) - Applicant:

Purpose: Remove definition.

Necessity: Subsection 791(a) defining “applicant” is deleted as unnecessary. The word’s usage is sufficiently clear – one who submits an application. Furthermore, the concept of “conclusive presumption” of responsibility is restated in new subsection 791.6(e); and this language did not accurately reflect statutory language.

Former Subsection 791(b) - Certificant:

Purpose: Renumber and correct typographical error.

Necessity: Former subsection (b) is renumbered subsection (a). “Certificate” is corrected to “Certificant”; this term and definition refers to the owner or operator, not an actual document known as a Certificate of Financial Responsibility, which is defined in section 790.

Former Subsection 791(c) – Certificate of Financial Responsibility:

Purpose: Remove definition.

Necessity: Subsection 791(c) defining “Certificate of Financial Responsibility” is deleted here and is moved to section 790 to consolidate definitions.

Former Subsection 791(d) – Large Tank Barge:

Purpose: Renumber and make typographical changes.

Necessity: The subsection is renumbered, and there are edits for consistency of capitalization and terms. No substantive changes.

Former Subsection 791(e) – Proof of Entry:

Purpose: Remove definition.

Necessity: Former subsection 791(e), “proof of entry,” is deleted as unnecessary and unhelpful. The term is used in only one instance, at section 795(f), regarding coverage by a protection and indemnity (P&I) club. It is self-evident within 795(f) that some sort of documentation is needed to verify “proof of entry” into a P&I club. A separate definition for a single use of a term is superfluous to the text of 795(f).

Former Subsection 791(f) – Reasonable Worst Case Spill:

Purpose: Remove definition.

Necessity: “Reasonable Worst Case Oil Spill” is defined in section 790. It is deleted here as redundant and to avoid confusion.

Former Subsection 791(g) – Small Tank Barge:

Purpose: Renumber and make typographical changes.

Necessity: The subsection is renumbered, and there are edits for consistency of capitalization and terms. No substantive changes.

### Authority

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

### **Section 791.6. Purpose and Scope**

#### Subsection (a):

Purpose: The purpose of subsection 791.6(a) is to state the purpose of the chapter, i.e. to specify the procedures and timelines for obtaining and renewing a certificate of financial responsibility.

Necessity: Textual changes have been added to clarify this subsection. The word “managing” has been replaced with the phrase “obtaining and renewing a” to add simplicity to the process; “managing” was not accurate.

#### Subsection (b):

Purpose: The purpose of subsection 791.6(b) is to provide a general statement as to who is required to have a certificate of financial responsibility.

Necessity: The text of this subsection is revised to be clearer and to the point. This sentence was limited to marine operators and now needs to include inland facilities. The term “before operating in California” is removed because some operators and owners may already be operating in California at the time they need to begin compliance. Each type of entity that is required to comply is listed here consistent with Government Code sections 8670.28(d) and 8670.29(a). Paragraph (b)(2) is moved to subsection 791.7(c).

#### Subsection (c):

Purpose: The purpose of the newly added subsection (c) is to allow the Administrator to make a determination of applicability to a newly identified operator or previously exempt operator who now needs to comply.

Necessity: This section makes clear that operators who previously had not been required to comply, may be compelled to comply if their circumstances or situation change, based on the criteria for applicability or loss of an exemption.

#### Subsection (d):

Purpose: The purpose of the newly added subsection (d) is a statement that the amounts of required liability have no effect on other responsibilities or liability imposed.

Necessity: The content of new subsection (d) is moved here from subsection 792(c) with no substantive change. It is necessary to clarify this potential for overlapping financial obligations to the regulated public.

Subsection (e):

Purpose: The purpose of new subsection (e) is to identify that the party holding the certificate of financial responsibility is the responsible party for a spill involving the covered entity.

Necessity: This language is essentially the deleted definition of “Applicant” in section 791. It is more appropriate to be stated in the Purpose and Scope section. Government Code section 8670.37.52 establishes this purpose and effect of a certificate of financial responsibility; because of this importance it is being reiterated in the regulations.

Authority

The Authority cited is amended to include sections 8670.7.5 and 8670.37.53 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities, and which authorizes the financial responsibility amounts based on reasonable worst case spill volume.

**Section 791.7. Procedures for Application for California Certificate of Financial Responsibility**

Subsection (a):

Purpose: The purpose of subsection (a) is to list the forms used to obtain a certificate.

Necessity: Subsection (a) is amended to update the current form names, and to add forms for inland facilities.

In subsection (a)(6) the reference to vessels carrying oil as secondary cargo is deleted and moved to (a)(1), because the application form used for these vessels are the same application form used for tanker vessels. Subsection (6) now identifies the application form to use for inland facilities. Support for the use of this new form – Application for Certificate of Financial Responsibility for Inland Facilities, form DFW 1932 (NEW 06/21/17) – is provided as an attachment to this ISOR.

New subsection (b):

Former subsections (a)(7) and (8) are now renumbered collectively as subsection (b). These provisions are not actual forms, thus they were not appropriately included in the list of forms in subsection (a). These provisions also update the OSPR contact information regarding financial responsibility information, including the email addresses that should be used to submit facility, tank vessel, or nontank vessel forms.

Former Subsection (b):

Purpose: The purpose of subsection (b) was to explain an exemption process.

Necessity: Subsection (b) is deleted in its entirety. The exemption process is redundant to and contradictory of the exemption process for a contingency plan as outlined in section 817.04. If an owner or operator is exempt from needing a contingency plan, then they do not need to demonstrate financial responsibility. Thus, the exemption process in the contingency plan regulations will be the governing exemption process.

Subsection (c):

Purpose: The purpose of subsection (c) is to explain the application content and process.

Necessity: A number of textual changes are made for uniformity and other purposes, specifically:

- Subsection (c)(1) and (c)(2) – no changes.
- Subsection (c)(2) – non-substantive punctuation changes.
- Subsection (c)(3) clarifies the authorized representative is actually the authorized representative of the owner or operator.
- Subsection (c)(4) is clarified to be about an agent of the owner or operator rather than the agent of the applicant. It establishes that the Administrator may request proof that an agent for the owner or operator actually has the authority to act on behalf of the owner or operator. This ensures the agent has authority for the facility or vessel owner or operator.
- New subsection (c)(5) is moved here from subsection (7), to fit the flow of the application procedure. It also adds a requirement that the agent for service of process must be located within California. The California location requirement is common and is necessary for being able to readily serve process on behalf of the State. This location requirement has been required for marine contingency plan purposes for many years. (Sections 817.02(a)(3), 817.03(a)(3), 818.02(a)(3), 818.03(a)(3), and 827.02(a)(3).) Also, the California Corporations Code requires businesses to designate an agent who is located in California. (Corporations Code sections 202, 1502, 2105, and 2117.) This change will align with these other requirements.
- Subsection (c)(6), formerly subsection (c)(5) has been revised for readability and to clarify that the fee relates to each nontank vessel and is due at the time an application is received to ensure funding is received prior to starting application review, but otherwise the content has not substantively changed.
- Subsection (c)(7), formerly subsection (c)(6), changes business days to calendar days to consistently state that the application process is measured in same type of day – calendar days. Only the reconsideration process is stated in business days. This is to avoid unnecessary complication and confusion.
- Former subsection (c)(7) is deleted, and the content moved to (b)(5).



Subsection (d):

Purpose: The purpose of new subsection (d) is to set timelines for the submission of evidence of financial responsibility for vessels.

Necessity: The content of new subsection (d) is moved to here from subsection 791.6(b)(2), to better fit the flow of the process. It is limited to vessels because Government Code section 8670.37.58 requires a nontank vessel to provide proof of financial responsibility and submit a nontank vessel fee to the Administrator prior to entering waters of the state.

Former Subsection (d):

Purpose: The purpose of former subsection (d) was to describe the review process of financial responsibility applications for tankers, nontank vessels, large tank barges, and owners of oil.

Necessity: Former subsection (d) is renumbered as new subsection (g).

Subsection (e):

Purpose: The purpose of new subsection (e) is to describe the general review process of financial responsibility applications.

Necessity: New subsection (e) now consolidates the general application review process. The substance of subsections (e)(1), (2) and (3) is derived from former subsections (d)(1) and (3). The review and submission time frame has been changed to be aligned with the contingency plan review time frame in section 817.04. The review times for financial responsibility and contingency plans are being aligned for simplicity and to avoid confusion of differing review periods.

Former Subsection (e):

Purpose: The purpose of former subsection (e) was to further describe the review process of financial responsibility applications.

Necessity: Former subsection (e) is renumbered as new subsection (h).

Subsection (f):

Purpose: The purpose of new subsection (f) is to identify the term of various certificates issued.

Necessity: New subsection (f) consists of former subsections (d)(8) and (9), and the text is updated to be consistent with the statutory language in Government Code section 8670.37.57. Former provisions regarding the return of certificates are deleted because

these are outdated concepts. OSPR does not require the return of the paper certificates. OSPR field staff confirm with OSPR financial responsibility staff whether a particular vessel or facility has a certificate; field staff do not rely on the paper certificate in the possession of the operator. New subsection (f)(1) deletes the word “marine” in order to make this provision applicable statewide, consistent with the intent of SB 861. Subsection (2) is added to require that a certificate for a mobile transfer unit will expire no later than one year following its issuance date. This is necessary because mobile equipment may frequently change ownership or be rotated out of service for repair or replacement and the shorter term will ensure that the most current information for this equipment is on file.

Former Subsection (f):

Purpose: The purpose of former subsection (f) was to describe the application renewal process.

Necessity: This subsection is substantively renumbered as new subsection (i).

Subsection (g):

Purpose: Subsection (g) sets financial responsibility amounts for tank vessels, nontank vessels, large tank barges, and owners of oil.

Necessity: Subsection (g) is renumbered from subsection (d). The caption is revised to accurately describe the subject of this subsection. Subsections (g)(1) and (g)(3)(A) are deleted as redundant; the application process is explained in new subsection (e). The other edits to (g) are for uniformity and consistent use. In (g)(1)(C)5. the reference to cargo is deleted because the cargo of a nontank vessel is not relevant to its financial responsibility calculation; by definition a nontank vessel does not carry oil cargo. Only non-cargo oil is relevant, which usually means the fuel.

Former Subsection (g):

Purpose: Renumbered.

Necessity: This subsection is renumbered as new subsection (j).

Subsection (h):

Purpose: Renumber and make typographical and consistency edits. New subsection (h)(1)(G) addresses the financial responsibility amounts required for inland facilities, pursuant to the changes required by SB 861.

Necessity: New subsection (h) is renumbered from subsection (e). The caption is revised to accurately describe the subject of this subsection. Subsection (h)(1) is

deleted as redundant; the application process is explained in new subsection (e). Most edits to (h) are for uniformity.

In new (h)(1)(A) the reference to vessels carrying oil as secondary cargo is deleted to avoid confusion, because they are not small tank barges, and they are expressly discussed in (1)(F). Also, (h)(1)(A)2. is revised to include the actual dollar amount as referenced by section 8670.37.5 of the Government Code. This is for convenience so readers do not have to look up the statute.

Subsection (h)(1)(G) adds the financial responsibility demonstration required for inland facilities including railroads, to meet the new statutory requirements. The cost to address an oil spill to a dry waterway is less expensive than a spill to a flowing waterway. It is generally less challenging to access dry areas than it is to access on-water locations or locations such as large lakes or rivers, a tide pool, surf zone, or active shoreline. And, spills to dirt do not travel with winds, tides, or currents, thus they spread less and can be more easily contained than on-water spills.

Subsection (h)(1)(G) provides that where the inland facility poses a risk to an inland waterway that is designated as perennial~~measurably wetted more than half the year~~, then the financial responsibility to be demonstrated is the reasonable worst case spill volume multiplied by \$10,000 per barrel. Where the inland facility poses a risk to an inland waterway that is designated as intermittent or ephemeral~~measurably wetted less than half the year~~, then the financial responsibility to be demonstrated is the reasonable worst case spill volume multiplied by \$6,000 per barrel. This distinction is based on the premise that on-water cleanup is more costly than cleanup of a dry waterway or where there is little water. Please see Exhibit A for a detailed analysis establishing these amounts.

**Revisions are made to the regulatory text at subsection (h)(1)(G). The previous defining characteristics of inland waters that are “measurably wetted more than half the year” and “measurably wetted less than half the year” have been revised to designations recognized by the U.S. Geological Survey’s National Hydrography Dataset (NHD) as “perennial”, and “intermittent” or “ephemeral”, respectively. The NHD is a digital dataset representing the water drainage network of the United States with features such as rivers, streams, canals, lakes, ponds, coastline, dams, and streamgages. It is the most up-to-date and detailed hydrography dataset for the nation and is managed by the United States Geological Survey. These criteria are revised throughout the companion statewide regulations.**

**The NHD is housed within the Environmental Response Management Application, commonly referred to as ERMA, which is a web-based Geographic Information System (GIS) tool that assists both emergency responders and environmental resource managers in dealing with incidents that may adversely impact the**

**environment. ERMA integrates and synthesizes various real-time and static datasets into a single interactive map, thus provides fast visualization of the situation and improves communication and coordination among responders and environmental stakeholders.**

In subsection (h)(1)(G)3 inland facility financial responsibility is capped at \$100 million. This is a reduction from \$300 million in the emergency regulations. This is considered a reasonable amount that sufficiently allows for financial coverage, without being excessive. Please see Exhibit B for a detailed analysis establishing this amount. Former subsections (e)(3), (4), and (5) are deleted as redundant; the application process is explained in new subsection (e).

**Subsection (i):**

Purpose: Renumber, and make typographical and consistency edits.

Necessity: Subsection (i) is renumbered from (f). Most textual edits are for uniformity. In (i)(1) the edits clarify that failure to receive a renewal notice does not relieve the certificant of the obligation to renew the certificate by the expiration date. In (i)(1) the word “calendar” is added because there was no denomination of whether the 45 day period was business days or calendar days. This is for consistency with the other dates specified in this chapter, to avoid confusion, and maintain uniformity.

In (i)(2) the edits specify that required notices must go the Administrator rather than to OSPR generally, to ensure that notices are properly received and processed. Also in (i)(2) the change is from business days to calendar days. All days in this chapter are made uniform as calendar days, except for the reconsideration process, which is business days. This is to avoid unnecessary complication and confusion.

**Subsection (j):**

Purpose: Renumber and make typographical and consistency edits.

Necessity: Subsection (j) is renumbered from (g). Textual edits for uniformity are made. The edits in (j)(1) make clear that an owner or operator who has been issued a certificate can also request a reconsideration of the amount; this is the intent, and removes any uncertainty. Also in (j)(1) language regarding exemptions is deleted because exemptions are being addressed in the exemption process provided for in the contingency plan regulations, as explained above regarding former subsection (b) of section 791.6. Additionally in (j)(1), the amount of days allowed to submit a request for reconsideration is increased from 10 to 15. These time frames are consistent with other reconsideration time frames in this subdivision.

In (j)(2) the phrases are rearranged and clarified. The word “exemption” is deleted because exemptions are handled through the contingency plan process.

Subsection (j)(3) is deleted as an unnecessary step and is inconsistent with the reconsideration procedures throughout the subdivision.

In subsection (j)(4) calendar days is changed to business days, to be consistent with the rest of subsection (j), which uses business days.

Authority

The Authority cited is amended to include sections 8670.7.5 and 8670.37.53 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities, and which authorizes the financial responsibility amounts based on reasonable worst case spill volume.

**Section 792. In Lieu of Reliance on the Certificate: Tankers, Nontank Vessels, Large Tank Barges, and Owners of Oil.**

Purpose: To properly identify the subject of this section.

Necessity: The title of this section is revised to accurately indicate the subject matter. It is not about “certification requirements”; it is about a vessel owner or operator relying on a certificate issued to the owner of the oil on the vessel.

Former Subsections (a), (b), and (c):

Purpose: Deleted. The purpose of former subsections (a), (b), and (c) was to describe certification requirements.

Necessity: These subsections are deleted as unnecessary and redundant because they merely restate the need to have a certificate of financial responsibility. This subject is covered by subsection 791.6(b).

Subsection (a):

Purpose: Renumber and make typographical and consistency edits.

Necessity: Subsection (a) is renumbered from (d). There are edits for typographical consistency. No substantive changes.

Subsection (b):

Purpose: Renumber and make typographical and consistency edits.

Necessity: Subsection (b) is renumbered from (e). There are edits for typographical consistency. Also, adapt reference of the marine environment to “waters of the state”, because the mandates are now statewide.

Subsection (c):

Purpose: Renumber and make typographical and consistency edits.

Necessity: Subsection (c) is renumbered from (f). There are edits for typographical consistency. No substantive changes.

Subsection (d):

Purpose: Renumber and make typographical and consistency edits.

Necessity: Subsection (d) is renumbered from (g). There are edits for typographical consistency. No substantive changes.

Authority

Authority for section 792 is amended to include Government Code section 8670.37.56, which is authority for suspending a certificate of financial responsibility if the validity of that demonstration is called into question.

**Section 793. Certificate Requirements for Oil Transfers at Marine Terminals and Active Offshore Marine Facilities.**

Purpose: To properly identify the subject of this section.

Necessity: The title of this section is revised to accurately indicate the subject matter. It is not exclusively about “certification requirements”; it is more specifically about marine terminals ensuring that the transferring vessel has a certificate of financial responsibility.

Former Subsections (a) and (b):

Purpose: Deleted. The purpose of former subsections (a) and (b) described the certification requirement for various operators and owners.

Necessity: These subsections are deleted as they are unnecessary and redundant because they merely restate the need to have a certificate of financial responsibility, which is conceptually addressed in subsection 791.6(b).

New Subsection (a):

Purpose: The purpose of subsection (a) describes the statutory requirement that operators of marine terminals may only transfer oil to an entity with a valid certificate.

Necessity: Newly numbered subsection (a), formerly subsection (c), is revised to more accurately reflect the statutory requirement of Government Code section 8670.37.51(b), such as adding “tank” vessel and “vessel carrying oil as secondary cargo”, and also

referring to the “owner or operator” rather than just the operator of the vessel, since a certificate may be issued to either the owner or the operator.

*New Subsection (b):*

Purpose: The purpose of subsection (b) addresses further requirement for the transfer of oil at a marine terminal.

Necessity: Newly numbered subsection (b), formerly subsection (d), is revised to more accurately reflect the statutory requirements of Government Code section 8670.37.51(c). The requirements only apply to the operator of the marine terminal, and for any oil cargo that will be transferred during a transfer operation. The difference between new subsection (a) and new subsection (b) are also based on statute – subsection (a) applies to tank vessels and vessels carrying oil as secondary cargo, and subsection (b) applies to any vessel.

Also, the concept of transferring “from” a vessel is added. It is important for the marine terminal operator to verify the certificate of financial responsibility regardless of whether the operation involves loading or offloading. This makes (b) consistent with (a), which covers both transfers “to” and “from”.

*Former Subsection (e):*

Purpose: Subsection (e) identified the requirement that marine terminal operators had to verify the certificates of all vessels involved if a transfer to a marine terminal involved more than one vessel.

Necessity: Subsection (e) is deleted as it is merely a restatement of new subsection (a) except it is stated in the past tense “has been” and “from” a vessel. The statute uses both present tense and past tense with “is or is intended to be” and “to or from.” Thus, with the edits to new (b), former (e) is no longer necessary and eliminates any confusion. There is no substantive change.

*New Subsection (c):*

Purpose: The purpose of subsection (c) is to define the verification requirements of the marine terminal operator.

Necessity: Newly numbered subsection (c), formerly subsection (f), has edits for uniformity.

*New Subsection (d):*

Purpose: Subsection (d) requires the operator to hold copies of certificates for not less than one year.

Necessity: Newly numbered subsection (d), formerly subsection (g), has edits for uniformity.

*New Subsection (e):*

Purpose: The purpose of subsection (e) is to identify the special procedures required for offshore marine terminals engaged in drilling operations.

Necessity: Newly numbered subsection (e), formerly subsection (j), has an edit for uniformity.

*Former Subsections (f) and (g):*

Subsection (f) is renumbered to (c), and subsection (g) is renumbered to (d).

*Former Subsections (h) and (i):*

These subsections are deleted as redundant and are now covered in section 791.6.

*Former Subsection (j):*

Renumbered to (e). Has one edit for uniformity.

*Former Subsection (k):*

Renumbered to (f).

*Authority*

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities; section 8670.37.56 which is authority for suspending a certificate of financial responsibility if the validity of that demonstration is called into question; and section 8670.37.58 which gives the Administrator the authority to require a nontank vessel to provide proof of financial responsibility and submit a fee prior to entering waters of the state.

***Section 794. Multiple Vessels or Facilities Certification***

Purpose: The purpose of section 794 is to address situations where the regulated entity has multiple vessels of facilities that require certificates.

Necessity: Textual edits throughout this section are made for uniformity and typographical consistency with the other regulations.



Subsection (a) is changed to indicate that a single certificate will be issued for multiple facilities or vessels. This is consistent with Government Code section 8670.37.55(a).

Subsection (b) is revised for clarity. Inland facilities are added to this list because the financial responsibility requirements now apply to inland facilities. Nontank vessels is relocated within the sentence for clarity. Tankers and large tank barges are not mentioned because their financial responsibility is set at \$1 billion.

In subsection (c) the phrase “certificate holder” is changed to the defined term “certificant”; this is not a substantive change. Subsection (c) is revised to be more clear, with less words, without substantive change.

Subsection (d) is revised to be more clear, with less words, without substantive change. Vessels carrying oil as secondary cargo is added to this list; this type of vessel had been inadvertently left out. This aligns with subsection (a), and is consistent with existing process.

#### Authority and Reference

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities; section 8670.37.53 which authorizes the financial responsibility amounts based on reasonable worst case spill volume; and section 8670.37.56 which is authority for suspending a certificate of financial responsibility if the validity of the demonstration of which is called into question. The Reference is amended to include sections 8670.37.54 through 8670.37.56 to which the proposed regulations implement, interpret, and add specificity.

#### **Section 795. Evidence of Financial Responsibility**

Purpose: The purpose of this section is to describe the various ways an entity may prove sufficient financial responsibility.

Necessity: Textual edits made for uniformity and typographical consistency with other relevant regulations and to reflect statutory changes, including referencing inland facilities pursuant to the statutory changes of SB 861. Language is also generally cleaned up for clarity.

**In subsection (a)(1)(A)6, “discharge” is changed to “a spill” for uniformity with the regulations as a whole, as well as defined terms within section 790.**

In subsection (a)(1)(A)7, edits make clear which subsection (D) is referenced.

In subsection (a)(1)(A)10, the word “calendar” is added to the time frame, since neither calendar days or business days was previously indicated. Calendar days is consistent with the other time frames in this chapter.

In subsection (a)(1)(B), there are edits for uniformity. Also, the reference to Form 1962 is updated for a new version of the form. This form is updated to reflect statutory changes by SB 861, so that the form is applicable to inland facilities. Support for the use of this revised form – California Endorsement for Oil Spill Liabilities, form DFW 1962 (06/21/17) – is provided as an attachment to this ISOR.

In subsection (a)(1)(D) the reference to broker's cover note is deleted. OSPR does not accept broker cover notes because they are not the actual policy. These notes are temporary, indicating proof of purchase of the policy and the policy itself has not been issued yet but is forthcoming, and that the insured can cancel the policy before insured receive the policy.

In subsection (a)(1)(D)3. is deleted is deleted because it is not needed, and is vague. OSPR does not accept broker cover notes. And, staff experience is that each excess policy follows the P&I Policy or the primary policy, there is no one excess policy underwriter that sets terms or conditions for the other excess policies.

In (b)(1) language has been clearly require a parent entity to comply with the self-insurance tests, given often convoluted corporate structuring. Often a parent entity provides the financial responsibility for its subsidiary entity operating in California. When self-insurance is offered by the parent entity, OSPR is now clarifying that the parent entity must satisfy the self-insurance requirements just as the subsidiary would have to if the subsidiary were doing its own financial demonstration.

In (b)(2)(A), like (b)(1), language is added to require a parent company or other entity providing the financial responsibility to also satisfy the self-insurance provisions. Without this assurance, there would be a loophole in the regulations where OSPR would not know if the parent company is sufficiently solvent to provide the financial coverage.

In subsection (b)(2)(B), there are edits for uniformity. Also, the reference to Form 1962 is updated for a new version of the form. This form is updated to reflect statutory changes by SB 861, so that the form is applicable to inland facilities. Support for the use of this revised form – Guaranty of Financial Responsibility for Oil Spill Response and Damages, form DFW 1928 (06/21/17) – is provided as an attachment to this ISOR.

In subsection (b)(2)(E) an option is being added for companies to provide the Administrator with a fixed date for when their certified financial statements will be provided to the Administrator. OSPR has heard from some companies that their certified public accountants cannot or do not produce certified audited financial statements within the first 90 calendar days after close of the company's fiscal year. OSPR intends that if such a date is agreed to, it will be a date that is actionable for a penalty if the certified audited financial statements are not provided by that date regardless of fault or responsibility for failing to provide the documents by that date. Calendar days is used for consistency with the rest of this chapter for submitting documents and responding. Calendar days are used to be consistent with the other regulations, and (b)(2)(B) is

discussing a length of time from a the close of a fiscal year; it would not make sense to measure this in “business days” after the close of a fiscal year.

In subsection (c)(1), DFW Form 1948 is added. Support for the use of this new form – Surety Bond for Oil Spill Response and Damages, form DFW 1948 (06/21/17) – is provided as an attachment to this ISOR.

In subsection (c)(5), DFW Form 1961 is updated to reflect statutory changes by SB 861. Support for the use of this revised form – Trust Agreement, form DFW 1961 (06/21/17) – is provided as an attachment to this ISOR.

In subsection (d)(1)(B) language is added that the Irrevocable Letter of Credit must be subject to and governed by the laws of California; the state will not be governed by other state laws.

In subsection (d)(3), DFW Form 1961 is updated to reflect statutory changes by SB 861, as discussed above.

In subsection (e)(1), DFW Form 1961 is updated to reflect statutory changes by SB 861, as discussed above.

In subsection (e)(2), OSPR is trying to ensure that guaranties clearly indicate when they terminate. OSPR needs this information to determine the period for which there is financial coverage. The guarantor also must designate an agent for service of process in case action needs to be taken against the guarantor in the name of the responsible party. As discussed above regarding 791.7(c)(5), this person must be located in California, which is consistent with the agent requirements for contingency plans and the California Corporations Code requirement for businesses to designate an agent who is located in California. In addition, the guarantee must be subject to and governed by the laws of California; the state will not be governed by other state laws.

In subsection (e)(6)(A), DFW Form 1961 is updated to reflect statutory changes by SB 861, as discussed above.

**At subsection (f)(3), subheading “(A)” is eliminated as unnecessary, but the content remains. This is a non-substantive change.**

#### Authority

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

#### **Section 796. Certificate Revocation**

Purpose: The purpose of this section is to define the certificate revocation process.

Necessity: This section has edits for uniformity and to adapt marine-specific language to a statewide program (e.g., changing “nontank vessels or marine facility” to “vessel or facility.”). In subsection (c)(1) the amount of days permitted to submit a request for reconsideration is increased from 10 to 15. These time frames are consistent with other reconsideration time frames in this subdivision. Subsection (c)(3) is deleted as an unnecessary step and is inconsistent with the reconsideration procedures throughout the subdivision. In subsection (c)(3), which is renumbered from (c)(4), calendar days is changed to business days to be consistent with the rest of the section and to provide sufficient opportunity for the activity.

#### Authority

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities; and section 8670.37.53 which authorizes the financial responsibility amounts based on reasonable worst case spill volume.

#### **Section 797. Reporting and Suspension**

Purpose: The purpose of this section is to identify the reporting requirements of certificants and to describe the certificate suspension process.

Necessity: This section has edits for uniformity.

In subsections 797(a) and (c), business days is switched to calendar days, to be consistent with other submission and reporting requirements in this chapter. It is important that OSPR receive notice of changes in the status of financial responsibility promptly, to ensure there will be funds to pay cleanup and damages. In some circumstances 10 business days can be equal to 13 calendar days with holidays, would not be reasonable.

#### Authority

The Authority cited is amended to include section 8670.7.5 of the Government Code, which authorized emergency regulations to implement provisions regarding oil spills from inland facilities; and section 8670.37.53 which authorizes the financial responsibility amounts based on reasonable worst case spill volume. At section 8670.37.54, subsection (b) is removed as unnecessary and to avoid confusion in the event of future changes to the statute.

#### **Section 798. Severability**

Purpose: The purpose of this new section is to add a severability clause to this chapter.

Necessity: Severability clauses are common and provide certainty to both OSPR and to the regulated community. The addition of this section is necessary to provide guidance

to a Court that may be asked to review the validity of provisions of this chapter. If a Court were to find that a provision or the application of a provision of this chapter is invalid, the intent of this section is to preserve the implementation and enforceability of any remaining provisions of this chapter. Without such guidance, the Court may feel it must rule against the entire chapter even for provisions not in question. This could result in facilities not being required to have any amount of financial resources to adequately pay for response and cleanup, depending upon the scope a Court ruling. This could result in facilities not being required to have any amount of financial resources to pay for response and cleanup, depending upon the scope of a Court ruling.

Government Code section 8670.5.5 provides a severability clause for the entire “chapter” that is the authority for this rulemaking. It expressly states: “If any provision of this chapter or the application thereof to any person or circumstances is held invalid....” It is reasonable to interpret section 8670.5.5 as expressing the Legislature’s intent that these regulations also be severable. These regulations are an “application” of the “chapter”. It would be illogical to reason that the statutes are severable, but the implementing regulations could not be. Thus, the severability clause furthers the Legislature’s intent. This section functions as a restatement of statute, necessary to provide clarity that the severability section may be relied upon.

#### Authority and Reference

The Authority cited includes section 8670.5.5 of the Government Code, which provides a severability clause; and section 8670.7.5 which authorized emergency regulations to implement provisions regarding oil spills from inland facilities. The References cited includes sections 8670.37.51 through 8670.37.58 to which the proposed regulations implement, interpret, and add specificity.

#### **V. Economic Impact Assessment** [Gov. C. §11346.2(b)(2)(A),(5); 11346.3(a)]

**No changes were made to the overall estimate of economic impact. However, in response to requests made of smaller oil producers during the 45-day comment period, an additional analysis was added, investigating the incidence of the economic impacts. Incidence refers to who bears the cost. The original economic analysis assumed that all of the regulatory compliance costs would be passed on to consumers, and thus estimated that cost to consumers in terms of the increased expense of gasoline for a typical year of driving. The revised economic impact analysis retains that analysis but adds another, investigating regulatory compliance costs in the event they are born entirely by oil producers and cannot be passed on to others. These costs are compared to the producers’ estimated total revenues from oil production.**

(a) *What is the evidence supporting a finding of No Significant Statewide Adverse Economic Impact directly affecting business, including the ability of California businesses to compete with businesses in other states?*

These regulations will not have a significant statewide adverse economic impact. Based on OSPR's experience implementing the emergency regulations in 2015, about 45 companies are subject to these inland requirements. They will incur some costs of compliance, described in detail below. Across all four of the related regulations, these costs are estimated at \$4 million in the first year (which has already occurred as a result of the emergency regulations) and \$2 million annually thereafter. Because oil demand is highly inelastic, ~~nearly all of these costs are expected to~~ **most costs will likely** be passed on to consumers. Because there are millions of oil consumers in California, these costs will be spread so thinly across all of them that they will hardly be noticed. For example, the gasoline costs to operate a vehicle for a year is expected to increase ~~398~~ **39** cents **as a result of these regulations. (Note: the 39 cents originally reflected here was a typo and is corrected now to 6 cents)** **Should costs be born by producers, the total costs of implementing the regulations are expected to be far less than 1% of total revenues for most producers, thus not impacting economic decisions.**

These are not considered "major regulations" because the economic impact assessment concludes that the impacts, summing both costs and benefits, will be considerably less than \$50 million dollars annually.

#### Costs

OSPR charges no fee for a certificate of financial responsibility (COFR). The costs related to obtaining a COFR, therefore, 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. The latter depends on the operator's reasonable worst case spill (RWCS) volume at the facility. There are two formulas proposed for determining the financial responsibility (FR) of an inland facility:

$$\begin{aligned} \text{FR}_{\text{Inland Facility Dry}} &= \text{RWCS} \times \$6,000 \\ \text{FR}_{\text{Inland Facility Wet}} &= \text{RWCS} \times \$10,000 \end{aligned}$$

OSPR's regulations describe five methods for demonstrating financial responsibility. Only three of those methods have been utilized to comply with the inland emergency regulations: surety bonds, insurance, and self-insurance.

While facilities do inform OSPR if they are using a surety bond, insurance, or self-insurance, they are not required to inform OSPR of the cost they pay for such services. The following cost information was obtained by conversations between OSPR staff and industry representatives; however, there is some reluctance by industry to publicly disclose their costs. On June 29, 2016, OSPR requested COFR cost data from 21 of the 41 companies who submitted applications for a COFR, and received responses from nine of those. A cost range for obtaining a COFR was determined from that data, which was then used to estimate the total cost across the regulated community.

### *Surety Bond*

From the survey, OSPR is informed that the cost of a surety bond is typically 1-15% of the face value of the bond. Several applicants commented that 100% collateralization was also required due to their credit history and the risk involved. OSPR did not receive any actual data on the cost of a surety bond used to satisfy the FR for an inland facility, but a marine facility operator indicated they had paid \$588,000 for a \$65M surety bond in 2013 (slightly less than 1% of the value of the bond).

The cost of a surety bond, coupled with high collateral requirements, seem to make them a less desirable method to demonstrate financial responsibility. Surety bonds were used by only 3 of the 41 companies who applied for a COFR pursuant to the emergency regulations to demonstrate their financial responsibility.

### *Insurance*

From the survey, OSPR was informed that the cost of insurance is similar to the cost of a surety bond but generally does not require collateral. It is the second-most used method to demonstrate FR and was used by 18 of the 41 companies who applied for a COFR pursuant to the emergency regulations.

The cost of several accepted policies with and without the added cost of an “oil spill” endorsement is listed in Table 1 below.

**Table 1: Estimated Cost of Insurance from OSPR Survey**

Annual Policy Premium (dollars)	Coverage Amount (dollars)	Endorsement (Y/N)
\$6,600	\$2,000,000	N
\$7,500	\$10,000,000	N
\$12,000	\$5,000,000	Y
\$50,000	\$65,000,000	Y

As noted above, OSPR sent a survey to 21 companies and received nine responses. Three applicants already had acceptable policies on file for existing marine COFRs. One of these applicants indicated they were not charged additional premiums to add a lower risk facility to its existing policy.

### *Self-Insurance*

Self-insurance is the least expensive method of demonstrating financial responsibility. However, the emergency regulations required that such companies demonstrate that their financial net worth exceeds \$20 million. The cost to demonstrate this, and thus qualify as a self-insurer, ranged from one day of ‘staff time’ to over \$15,000 for one global company who hired a consultant and incurred logistical costs for meetings with

OSPR staff. To qualify as a self-insurer, the applicant is required to submit a self-insurance worksheet and independently audited financials that demonstrate they meet the criteria specified in the worksheet. One large national company indicated there were no additional costs associated with providing the audited financials.

The \$20 million minimum net worth requirement means only mid-size to large companies can use self-insurance, yet it was used by 20 of the 41 companies who applied for a COFR pursuant to the emergency regulations (Ref. Table 3).

*Total Cost Estimate*

To understand how these costs impact industry, the regulated community was divided into three categories based on their reported reasonable worst case spill (RWCS) volume.

The first category consists of all those companies whose facilities reported a RWCS of <100 barrels, the second category is for facilities with a RWCS of <10,000 barrels, and the third category for facilities with a RWCS of < 1,000,000 barrels.

**Table 2: RWCS Volume vs Facility Type**

Category	RWCS Volume (bbls)	# COFR Applicants	Percent of total	Highest reported Cost of COFR (\$)	Facility Type			
					Production	Pipeline	Terminal/Refinery	Railroad
1	<100	19	46	\$8,900	18	1		
2	<10,000	8	20	\$50,000	2	2	2	2
3	<1,000,000	14	34	\$15,000		7	4	3
<b>Total</b>		<b>41</b>	<b>100</b>		<b>20</b>	<b>10</b>	<b>6</b>	<b>5</b>

**Table 3: RWCS Volume vs Method of Financial Responsibility**

Category	RWCS Volume (bbls)	# COFR Applicants	Percent of total	Highest reported Cost of COFR (\$)	Method of Financial Responsibility		
					Insurance	Self-Insurance	Surety Bond
1	<100	19	46	\$8,900	9	7	3
2	<10,001	8	20	\$50,000	7	1	
3	<1,000,000	14	34	\$15,000	2	12	
<b>Total</b>		<b>41</b>	<b>100</b>		<b>18</b>	<b>20</b>	<b>3</b>



The RWCS Categories are correlated with company size, but there are exceptions. In general, the Category 1 companies (with RWCS volume <100 bbls) are smaller production companies (Table 2) that rely on insurance or surety bonds to demonstrate their FR, while larger companies primarily rely on self-insurance (Table 3).

The highest reported cost for a Category 1 applicant to comply with COFR requirements was \$8,900 in the first year. This is expected to increase slightly (around \$3,000) if the OSPR Administrator requires operators relying on insurance to submit an endorsement or other approved type of policy rather than the applicants existing commercial liability policy.

Category 2 companies (with a RWCS volume between 100 bbls and 10,000 bbls) are larger pipeline, terminal/refinery, or railroad owners or operators (Table 2). Seven out of eight of these used insurance to demonstrate their financial responsibility (Table 3). The highest reported cost for a Category 2 applicant to comply with COFR requirements was \$50,000 in the first year. The cost is expected to remain stable since these owners and operators are already required to submit approved endorsements or policies when insurance is used.

Category 3 companies (with a RWCS volume between 10,000 bbls and 1,000,000 bbls) are mostly large pipeline, terminal/refinery, or railroad owners or operators (Table 2). All but two of these companies utilize self-insurance to demonstrate their financial responsibility (Table 3). The highest reported cost for a Category 3 applicant to comply with COFR requirements was \$15,000 in the first year. This cost is expected to be much less in future years, as much of this cost was for consultants to travel to meet with OSPR staff for the purpose of understanding the requirements. In future years, updating information on self-insurance should cost no more than one day of staff time per year, or less than \$1,000 per year.

To estimate the total costs of demonstrating financial responsibility, Table 4 extrapolates the highest reported cost within each facility category to all of the facilities in that category. While it is possible that some companies have incurred more expenses than the highest reported costs here (but did not participate in OSPR's survey), the pool of survey respondents suggest that that most paid less. Thus, the total estimated cost across all industry, \$779,100, is likely a high estimate for the first year. As described above, some costs will slightly increase in future years, while others will decrease substantially. Overall, the total cost is expected to decline in future years.

Category	# of companies	Estimated cost/company	Total cost
<100 bbls	19	\$8,900	\$169,100
<10,001 bbls	8	\$50,000	\$400,000
<1,000,000 bbls	14	\$15,000	\$210,000
<b>Total</b>	<b>41</b>		<b>\$779,100</b>

For the purposes of this analysis, we adjust all industry totals assuming there will be 45 plan holders (not 41 as there were when we conducted our inquiry). Normalizing to 45 plan holders, the total estimated annual cost is \$855,110.

*Cumulative Impact*

At this time, OSPR is also promulgating regulations for inland facilities regarding: 1) oil spill contingency planning, 2) oil spill drill and exercise requirements, and 3) ratings of oil spill response organizations. The economic impact assessment for each of those requirements is addressed in the Initial Statement of Reasons (ISOR) for each of those rulemakings. Collectively, looking at the costs to comply with all aspects of these three rulemakings (contingency planning, drills and exercises, financial responsibility, and oil spill response organization ratings) across all the affected operators (about 45 facilities), the total cost for industry-wide compliance is expected be about \$4 million (Figure 1) in the first year, and \$2 million annually in future years. For reasons described in this and other ISORs, this is a high estimate.

**Figure 1: Total Cost of All New Oil Spill Preparedness Regulations**



*Summary of Costs*

The estimated costs of all the regulations are described in detail in each of the respective ISOR's, but are presented here for summary purposes:

- Contingency plans: \$2.7 million in the first year; \$617,000/yr annually
- Drills and exercises: \$573,000 annually
- Financial responsibility: \$855,000 annually

- Oil spill response organizations: zero (captured under contingency plan analysis)

Total expected cost of the four packages combined: \$4 million in the first year; \$2 million/year thereafter.

Based on this analysis, the proposed regulations collectively will not have a significant adverse economic impact on businesses in California or their ability to compete with out-of-state businesses. The impacted companies are involved in oil production, oil transport, oil refining, and oil distribution within the state. California receives about two-thirds of its oil from out of state (mostly via tankers coming from Alaska or overseas) and a third of its oil from domestic production within California. Most of the domestic production is from inland locations. Nearly all of the oil consumed in California is refined in the state. All of it is then distributed for sale throughout 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. However, because they are located locally, they 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 ~~preparing and maintaining contingency plans~~ **all four of the regulatory packages** incurred by these companies is unlikely to affect their ability to compete with businesses from outside the state. While OSPR does not have data at the individual company level, we can examine the impact across the industry as a whole. Annual California inland production is approximately 170 million barrels. (California Department of Conservation Monthly Oil and Gas Production and Injection Report (October 2016)) Assuming a market value of ~~\$50~~**55**/barrel, the value of this annual production is ~~\$8.5~~**9.4** billion. The estimated total cost of complying with these regulations, across all facilities and companies, is ~~\$855,110~~**2,045,417** annually. Assuming these costs are all incurred in one year (which is unlikely), this is ~~0.010~~**0.022**% of the total revenues of oil production. If applied to the cost of production, these costs would add ~~\$0.005~~**0.012** (half of ~~about~~ **about** a penny) to the price of a barrel of oil, ~~and this would only be in the first year.~~ Given the normal variability in the price of oil, and the transport price advantage that producers in California have over their overseas competitors (several dollars per barrel), the cost of demonstrating financial responsibility is unlikely to affect their ability to compete with other producers from out of state.

Note that, due to the promulgation of the emergency regulations, the first two years of compliance with these regulations have already occurred. OSPR is not aware that compliance with this caused any effects on the ability of companies to compete with businesses from out of state.

**The question of who bears the increased cost of production – and how much is passed on to consumers – is a function of the supply and demand curves, which vary at different places in the supply chain. Moreover, both supply and demand**

are more elastic over time, as producers and consumer have time to modify their practices according to new price signals. This analysis evaluates two scenarios: 1) increased costs fully passed on to consumers; and 2) increased costs by smaller producers not passed on to consumer.

First, we examine the scenario where all costs are passed on to consumers. ~~Because the demand for gasoline and other oil products is highly inelastic in the short run, it is likely that nearly all of this cost would be passed on to consumers.~~ Thus, the \$4 million born by 45 companies in the first year, and \$2 million annually after that, ~~would be~~ are passed down to California’s millions of households and business. Here we examine the likely increased cost of driving a car for a year.

The total high end estimated cost for all of the new regulations in the first year is \$4,090,297 across all affected companies. This is ~~0.048~~ 0.044% (less than five-hundredths of one percent) of the total revenues of oil production. If applied to the cost of oil production, these costs would add \$0.0241 (a little more than ~~two~~ two cents) to the price of a barrel of oil, and this would be only in the first year (which has already occurred under the emergency regulations) (Table 3). In future years, the cost would be less than half of that.

Again, the benefit to the State by having facilities with spill contingency plans should result in less damage to the environment and reduced response costs overall.

Regulation	Cost	% of value of Inland oil production in California	Potential addition to price of a barrel of oil
Contingency Plans (mostly upfront costs)	\$2,661,973	<del>0.031</del> <u>0.028</u> %	\$0.0157
Drills and Exercises (annual costs)	\$573,214	<del>0.007</del> <u>0.006</u> %	\$0.0034
Financial Responsibility (annual costs)	\$855,110	<del>0.010</del> <u>0.009</u> %	\$0.0050
<b>TOTAL</b>	<b>\$4,090,297</b>	<del>0.048</del> <u>0.044</u> %	<b>\$0.0241</b>

To apply this total (an increase of \$0.0241/barrel) to the annual cost of driving a car, we assume a vehicle is driven 12,000 miles/year, gets 17.5 miles per gallon, and thus requires 686 gallons of gasoline/year. A price increase of \$0.0241/barrel translates to \$0.00057/gallon (1 barrel = 42 gallons). Applied to the 686 gallons needed to drive for a year, this would add \$0.39 (or 39 cents) to the annual gas budget for the vehicle.

Given the normal variation in gas prices at the pump, it is unlikely that this change would be noticed by consumers, nor impact their economic decisions.

Next, we examine the scenario in which smaller producers are unable to pass on their costs to consumer and instead bear all the costs themselves. Because small producers sell to larger producers, pipelines, and refineries, they may have a limited ability to pass on the increased costs associated with regulatory requirements, at least in the short run.

For this evaluation, OSPR assumed that small producers are those inland facility plan holders not affiliated with companies that own pipelines or refineries. There are 20 of these. While we have no information on their costs of production, we can estimate their gross revenues by multiplying their annual production of crude oil by the price of crude oil. We then assumed that all of the costs of the regulations are born by each company and not passed on. We compared that cost to their estimated annual revenues to provide a measure of the economic burden of complying with the regulations.

Across the 20 inland producers, crude oil production ranged from 61 to 65,000 bbls/day. Assuming a value of \$55/bbl, all but three of the plan holders likely have annual gross revenues greater than \$10 million/year. All exceed \$1 million/year. For costs, we used the highest estimate of annual costs for contingency planning (\$1,667/year), insurance premiums (\$8,900 to \$50,000, depending on size of operation), participation in drills and exercises (\$5,000/ year), and retaining an OSRO (\$5,000/year). For all but the smallest plan holder, the maximum estimated cost of regulatory compliance was less than 1% of total revenues. For the smallest plan holder, the maximum cost of compliance was 1.7% of total revenues. For most, the costs were much smaller relative to revenues. For all but three plan holders, the costs were less than 0.5% of revenues.

We also compared this to the natural volatility in the market that oil producers experience. For all plan holders, the effect of a \$1/bbl change in the price of crude oil (e.g. from \$55/bbl to \$54/bbl) would have a greater impact than the total maximum estimate of the costs of regulatory compliance. For all but six plan holders, the cost of regulatory compliance was equal to or smaller than the impact of a seven-cent drop in the price of a barrel of crude oil. This is well within the daily average variability in the price of crude oil and thus unlikely to affect business decisions. The costs for most plan holders are probably less than that described here, as this analysis used only the high-end cost estimates.

*(b) Will there be any effects of the regulation on the creation or elimination of jobs within the State?*

Because these regulations may result in additional business activity (e.g. the purchase of insurance), it is possible that insurance companies may hire additional staff to meet the demand. This effect, however, is likely to be very small (not exceeding a few individuals), given the small number of companies affected and new policies needed.

*(c) Will there be any effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State?*

See the discussion to the previous question in (b) regarding the insurance industry.

*(d) Will there be any effects of the regulation on the expansion of businesses currently doing business within the State?*

See the discussion to the previous question in (b) regarding the insurance industry.

*(e) Will there be any other benefits of the regulations?*

A certificate of financial responsibility for an owner or operator ensures a base amount of funding to cover costs associated with an oil spill into state surface waters.

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. 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. The economic benefits from reduced oil spills and reduced volume spilled, as has already been experienced since the implementation of the emergency regulations, is described in detail here.

These regulations regarding financial responsibility are part of a larger package of regulations that build upon OSPR's marine oil spill preparedness and response program to cover inland facilities that pose a threat to inland surface waters. Together, they are part of a four-pronged approach to improve preparedness and response capabilities across the inland oil production and transport industry. The following four components are new regulations for inland facilities with regard to:

1. Financial responsibility
2. Contingency plans
3. Drills and exercises
4. Rating of oil spill response organizations

While it is difficult to examine the economic benefits of any one component, we examined the overall benefit of the suite of the new regulations by focusing on the ultimate measure of program success: the number and volume of oil spills over time.

#### *Cumulative Impact*

To examine the benefits of these regulations, we considered three factors:

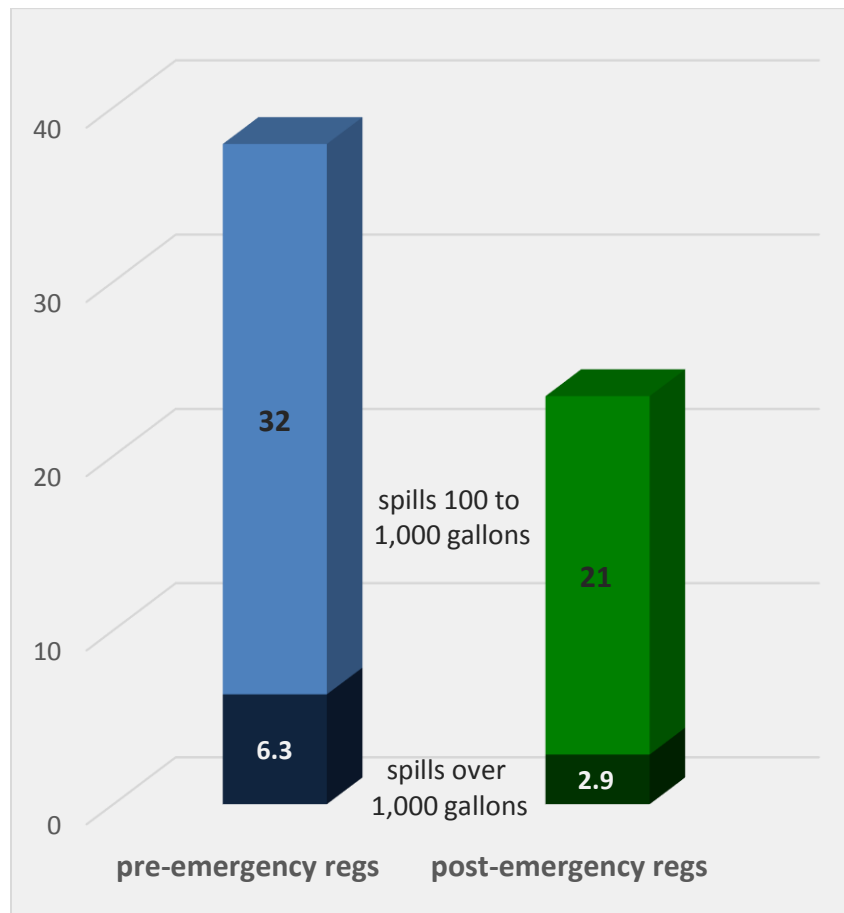
1. The reduction in small and medium-sized spills since the implementation of the emergency regulations.
2. The reduction in the risk of large spills.
3. The added risk of an oil spill due to an increase in the transport of crude by rail.

## Reduction in Small and Medium-sized Spills

OSPR has a database of spills, based on reports from the Office of Emergency Services. Smaller spills happen on a regular basis, allowing us to compare spill data since the initiation of the emergency regulations in September 2015. Here, we examined data regarding inland oil spills to water, comparing 21 recent months (September 2015 thru April 2017) under the emergency regulations to the previous 38 months (July 2012 thru August 2015) before the expansion to a statewide program. We include all spills of 10 gallons or more. There are hundreds of spills under 10 gallons but, for most of these, the response costs were negligible.

Normalizing to a 12-month period to use comparable annual figures, the total number of inland oil spills to water (of 10 gallons or more) has stayed about the same (123/year before the emergency regulations went into effect and 135/year after). However, the spills are now smaller than previously. The number of spills from 100 to 999 gallons fell a third (from 32 to 21/year), while the number of spills of 1,000 gallons or more dropped in half (from 6.3 to 2.9/year) and (Figure 2).

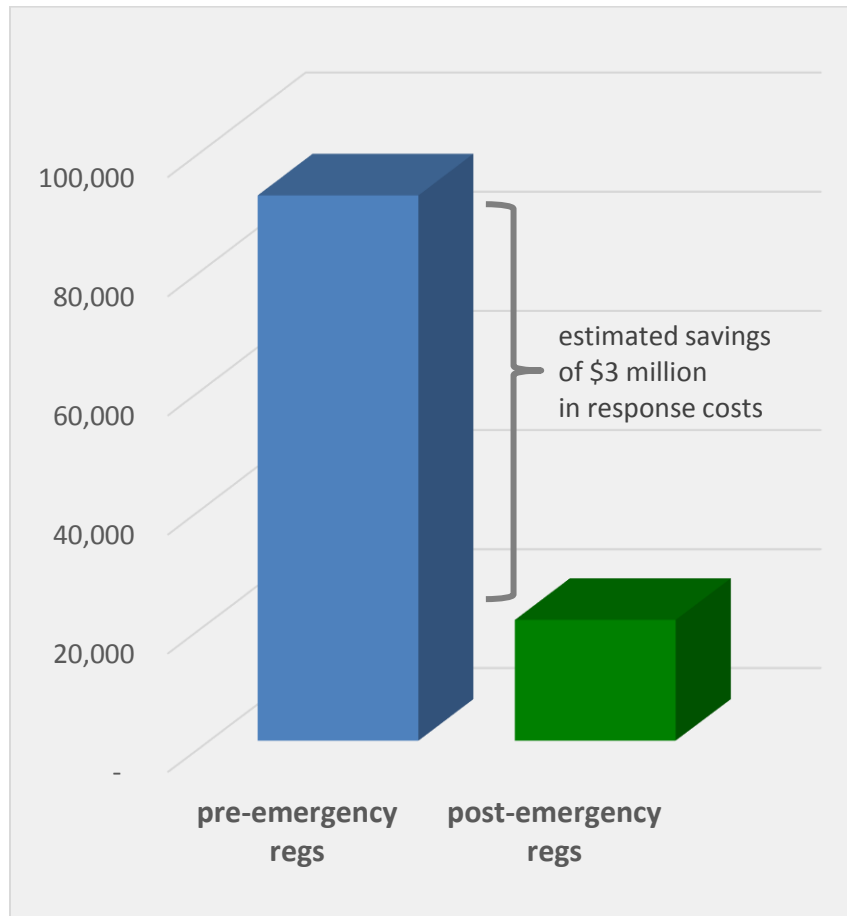
**Figure 2: Number of Inland Oil Spills to Water**



More significantly, the volume of oil spilled declined dramatically, from about 90,000 gallons/year before the establishment of the emergency regulations, to 20,000

gallons/year after (Figure 3). Based on an average response cost of \$1,779/barrel, or about \$42/gallon), this represents an annual savings of just over \$3 million/year. This response cost, provided to OSPR by a group of inland oil facilities who conducted their own internal survey, is intended to include cleanup costs as well as third party claims and natural resource damages.

**Figure 3: Gallons Spilled/Year (Inland Oil Spills to Water)**



An important caveat to this analysis is that significant oil spills are rare events, and large oil spills are even rarer, thus requiring long time frames to ensure enough data to paint a realistic picture. Furthermore, one large spill within the time period under examination can strongly bias results. In this instance, there were no exceptionally costly spills during the months under examination. Removing the largest spills from the 2012-2017 data would not meaningfully change the results presented above.

#### *Risk of a Large Spill*

Large spills are rare, occurring once every few years. Yet, because of their potential harm, preparing for them is one of the primary goals of OSPR. It is possible that the new planning regulations and increased attention, in the long run, will prevent a large spill, not yet detected in the data above. To assess the potential benefit of this, we can



examine the likely cost of such a spill, its annual probability, and the degree to which the new regulations will lower that probability. The result will be an expected benefit, measured in terms of reduced annual expected costs. The following equation describes this analysis:

$$\text{Benefits/yr} = \text{cost} * \text{probability of a large inland spill/yr} * \text{reduction in probability}$$

In recent decades, there have been two large inland oil spills to water in California, the 1991 ExxonMobil spill and the 1994 ARCO spill, both pipeline breaks affecting the Santa Clara River. The response costs (including third party claims and natural resource damages) for these events were \$25 million and \$51 million respectively. These spills rank among the most expensive inland spills in United States history. For the sake of this analysis, we assume the cost of a large inland spill would be \$100 million and the probability has been once every 13 years (based on these two spills occurring in the past 26 years). This is an annual probability of 0.077.

The remaining question is how much the new regulations will reduce this probability. To answer that, we looked to OSPR's history with regard to its marine program. Before the beginning of OSPR's marine program in 1991, there were four large marine oil spills between 1986 and 1990 (four in five years). Since then, there have been 11 large spills (or 11 in 26 years). Thus, the annual probability of a large marine spill declined from 0.80 to 0.42. This reduction, by 47%, is similar to the reduction recently documented with regard to smaller inland spills. For the purposes of this exercise, we assume that these regulations will reduce the risk of a large inland spill by 47%. The expected annual benefit, with regard to reducing the probability of a large inland spill, are:

$$\text{Benefits/yr} = \text{cost} * \text{probability of a large inland spill/yr} * \text{reduction in probability}$$

$$\$3,624,260 = \$100,000,000 * 0.077 * 0.47$$

In summary, the new inland regulations should cut the probability of a large inland oil spill roughly in half. This will lower the risk of such an incident from once every 13 years to once every 26 years. The benefit of preventing such an event is \$100 million. The annual expected benefit, taking into the account the reduced probability, is over \$3.6 million.

#### *Risk of a Crude by Rail Spill*

Because the new inland regulations apply to railroads transporting oil, an additional benefit will be a reduction in the risk of spills by rail. This is not captured in the data analyzed above, as crude-by-rail has played a small part in the supply of California's oil historically. However, if market conditions change in the future, crude-by-rail could grow significantly. This section discusses that potential growth and the additional spill risk it brings, and thus the additional potential benefits of the proposed regulations in minimizing that risk.

Historically, crude-by-rail in California has been limited to a twice-a-week, 300-mile run from the San Ardo oil field to the Los Angeles area. There have been no significant spills associated with this. This train transports about 5 million barrels per year.

In recent years, crude-by-rail has been used to import oil into California from Canada, North Dakota, Wyoming, New Mexico, and several other production areas. This peaked in 2013 at just over 6 million barrels per year. There were plans to build crude-by-rail terminals to receive over 150 million barrels per year, but most of these were not built due to a combination of local opposition and market conditions. The only new rail terminals have been in the Bakersfield area. When the price of oil fell dramatically from around \$100/bbl to \$50/bbl in the second half of 2014, transporting crude-by-rail to California became less attractive. Since then, crude-by-rail imports into the state have stayed below 2 million barrels per year.

For this analysis, we assume that 50 million barrels of crude could be transported each year by rail into California in the future, assuming that economic conditions change. This figure represents the likely rail terminal capacity in the Bakersfield area in the future and would represent approximately 9% of California's oil supply.

Based on an analysis of crude-by-rail nationwide in 2013, approximately 131 barrels (or 5,502 gallons) were spilled per million barrels transported. Thus, for the 50 million barrels potentially transported to California, about 275,000 gallons would be spilled. Since about 20% of the route lies within the state, about 55,000 of those gallons would be spilled in California. Assuming the same rate of reduction in spills as applied above for large spills (47%), about 26,000 of those gallons would not be spilled as a result of OSPR's program. Using the \$42/gallons cost estimate described above, this would imply a benefit of almost \$1.1 million per year.

### *Summary of Benefits*

The combined benefits of the regulations regarding financial responsibility, contingency plans, drills and exercises, and oil spill response organizations are considered jointly and summarized here:

- Expected annual benefit by reducing small and medium-sized spills: \$3 million
- Expected annual benefit by reducing large spills: \$3.6 million
- Expected annual benefit by reducing crude-by-rail spills: \$1.1 million

Total expected benefit for all regulations: \$7.7 million/year.

*(f) Will there be any benefits to the health and welfare of California residents?*

These regulations are implementing the financial responsibility requirements. The initial burden for spill cleanup funding comes from the responsible party. The benefit is when there is a spill there will be a minimum 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.

*(g) Will there be any benefits of the regulation to worker safety?*

Not directly.

*(h) Will there be any benefits of the regulation to the State's environment?*

These regulations will require that 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 of cleanup activities and more effective control of an oil spill, thereby minimizing impacts to the environment.

**VI. Studies, Reports, or Documents Relied Upon** [Gov. C. §11346.2(b)(3)]

- California Department of Conservation Monthly Oil and Gas Production and Injection Report (October 2016) (the most recent available as of this writing): [ftp://ftp.consrv.ca.gov/pub/oil/monthly\\_production\\_reports/2016/10\\_2016.pdf](ftp://ftp.consrv.ca.gov/pub/oil/monthly_production_reports/2016/10_2016.pdf)
- Etkin, D.S. 1999. *Estimating cleanup costs for oil spills*. 1999 International Oil Spill Conference. Paper #168.
- Helton, D. and T. Penn. 1999. *Putting response and natural resource damage costs in perspective*. 1999 International Oil Spill Conference. Paper #114.
- Mercer Management Consulting. 1993. *Analysis of Oil Spill Costs and Financial Responsibility Requirements*.

**VII. Reasonable Alternatives to Regulatory Action** [Gov. C. §11346.2(b)(4)(A)(B)]

The requirement to demonstrate financial responsibility for an oil spill is required by statute, and must be implemented by OSPR. Thus, there are no reasonable alternatives to regulatory action.

**VIII. Specific Technology or Equipment Required by Regulatory Adoption** [Gov. C. §11346.2(b)(1)]

None.

**IX. Duplication or Conflict with Federal Regulations** [Gov. C. §11346.2(b)(6)]

The proposed regulations do not duplicate or conflict with federal regulations. There are federal regulations about financial responsibility for oil spills. However, OSPR's amounts are generally higher than the federal requirements.

Also, the liability provisions of the California Government Code section 8670.56.5 are broader than the liability provisions of the federal laws. 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 the federal requirements call for.

***X. Mitigation Measures Required by Regulatory Action***

The proposed regulatory action will not have negative impact on the environment; therefore no mitigation measures are needed.

END