

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

SECOND AMENDED INITIAL STATEMENT OF REASONS

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

Date of Second Amended Statement of Reasons: October 11, 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

I. Addendum

This Second Amended ISOR adds statements of necessity, other clarifying statements, and minor editorial changes. Pursuant to subsection (b) of section 11347.1 of the Government Code, and subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations, the Office of Spill Prevention and Response (OSPR) will provide public notice of the modified regulatory text, and the Second Amended ISOR for a minimum of 15 days prior to considering the proposed regulations for adoption.

II. 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.

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 rulemaking version that was done in 2015. 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The discussion below sets forth the rationale for each regulatory provision being added, amended, or repealed, and why these amendments are reasonably necessary to address the issue.

Section 791. Definitions.

Authority & Reference

A minor grammatical revision is made in the Authority citations eliminating a comma for uniformity with these and other OSPR regulations. Additionally, a revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

Section 791.6. Purpose and Scope.

Authority & Reference

A revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

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

Subsection (a)

In subsection (a)(1), the title of form DFW 1925 is revised again for accurate reflection of the name of the form; the text "...including Vessels Carrying Oil as Secondary Cargo" which was added during the first 15-day comment period (May 23, 2018 to June 6, 2018) is deleted as not true to the form's title. Instead, OSPR adds language, which is moved here from (a)(6), to guide operators or owners of vessels carrying oil as secondary cargo to which application is appropriate for use.

In subsection (a)(2), the title of form DFW 1972 is revised again for accurate reflection of the name of the form.

Subsection (h)

In subsection (h)(1)(A)2., subsection ‘(a)’ of section 8670.37.53 of the Government Code is deleted as unnecessary and to avoid confusion in the event of future changes to the statute.

In subsection (h)(1)(A)3., “of this section” is added to be consistent with other references to the reconsideration procedures.

In subsection (h)(1)(B)2., a revision is made to correct the cross-reference of another subsection.

In subsection (h)(1)(D)1., section 817.01 was stricken out during the first 15-day comment period. The accurate section should have read 817.03. It is corrected and stricken out now.

In subsection (h)(1)(E)2., “of this section” is added to be consistent with other references to the reconsideration procedures.

Subsection (h)(1)(G) was revised during the first 15-day comment period to allow the provision for facility owners and operators to reference the National Hydrography Dataset (NHD) in determining the applicability of OSPR’s oil spill planning requirements to a facility. In this 15-day comment period, a revision is made to eliminate the incorporation by reference. Since this on-line source is owned and managed by the U.S. Geological Survey, is live and constantly updated, OSPR is instead relying on the status conferred upon the U.S. Geological Survey to the designation of waterways.

In subsection (h)(1)(j)(3), revisions are made for consistency with the reconsideration procedures at subsection 796(c).

Authority & Reference

A minor grammatical revision is made in the Authority citations eliminating a comma for uniformity with these and other OSPR regulations.

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

In the title of this section, the “I” in “In” is underlined as a reflection of part of the revision made to the title during the first 15-day comment period.

Subsection (a)

Revisions are made for clarity and consistency with the use of terms throughout this chapter.

Subsection (b)

In subsection (b)(1), “notice of the transport” was added during the first 15-day comment period. It is revised here to “notice of intent to operate”, to be consistent with the revisions made in the first 15-day comment period in subsection (b). The method by which notice shall be delivered is also added.

Authority & Reference

Revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

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

Authority & Reference

A minor grammatical revision is made in the Reference citations eliminating a comma for uniformity with these and other OSPR regulations. Additionally, a revision is made to list out all relevant Government Code sections rather than a range.

Section 794. Multiple Vessels or Facilities Certification

Authority & Reference

Revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

Section 795. Evidence of Financial Responsibility

Subsection (a)

In subsections (a)(1)(B) and (a)(3)(B), during the initial 45-day comment period, reference in the text to FG OSPR Forms 1929 and 1930 were deleted. Additional clarification is provided in this amended ISOR that those forms are repealed and replaced with form DFW 1962, California Endorsement for Oil Spill Liabilities. The DFW 1962 can be used by either vessel, facility, or mobile transfer unit owners and operators. Only one form is needed. While form DFW 1962 was attached to the modified text, the repealed forms were not; they are attached now during this second 15-day comment period.

In subsection (a)(5), revisions are made to eliminate language that may be considered unclear or overly broad, and to update OSPR’s practices for what may have been considered in the past, but no longer going forward. Thus, the revisions make clear that OSPR will only accept insurance coverage by insurers licensed or approved by the

California Insurance Commissioner or those that are on the list of eligible surplus line insurers, and that have no less than an AM Best rating of A-.

Subsection (b)

In subsection (b)(2)(A)3., “and” is deleted at the end of the sentence as separate from subsection (b)(2)(B).

Subsection (c)

In subsection (c)(1), during the initial 45-day comment period, the word “section” was stricken out. The correct word in the Code of Regulations was “subsection”. OSPR is correcting that now and re-illustrating it as a strike out.

Also in subsection (c)(1), during the initial 45-day comment period, reference in the text to bond form number 44.2 titled “Surety Bond for Oil Spill Response and Damages” was deleted. No revisions are made, only additional clarification is provided in this amended ISOR that this form is repealed and replaced with form DFW 1948, Surety Bond for Oil Spill Response and Damages. While form DFW 1948 was attached to the modified text, the repealed form was not; it is attached now during this second 15-day comment period.

In subsection (c)(5), during the initial 45-day comment period, reference in the text to FG OSPR Form 1926, Trust Agreement was deleted. No revisions are made, only additional clarification is provided in this amended ISOR that this form is repealed and replaced with form DFW 1961, Trust Agreement. While form DFW 1961 was attached to the modified text, the repealed form was not; it is attached now during this second 15-day comment period.

Subsection (d)

In subsection (d)(3), during the initial 45-day comment period, reference in the text to FG OSPR Form 1926, Trust Agreement was deleted. No revisions are made, only additional clarification is provided in this amended ISOR that this form is repealed and replaced with form DFW 1961, Trust Agreement. While form DFW 1961 was attached to the modified text, the repealed form was not; it is attached now during this second 15-day comment period.

Subsection (e)

In subsection (e)(1), during the initial 45-day comment period, the date of 4/28/15 was stricken out. The correct date in the Code of Regulations was “1/08”. OSPR is correcting that now and re-illustrating it as a strike out.

In subsection (e)(1)(A), a non-substantive grammatical revision is made.

Subsections (e)(3) through (e)(6) are renumbered for accuracy.

In subsection (e)(6)(A), during the initial 45-day comment period, reference in the text to FG OSPR Form 1926, Trust Agreement was deleted. Additional clarification is provided in this amended ISOR that this form is repealed and replaced with form DFW 1961, Trust Agreement. While form DFW 1961 was attached to the modified text, the repealed form was not; it is attached now during this second 15-day comment period.

At subsection (f)(1)(B), a minor grammatical revision is made that was mistakenly left out during the first 15-day comment period.

At subsection (f)(2), the change in numbering from (f)(1) to (f)(2) is accurately illustrated here.

Section 796. Certificate Revocation.

Subsection (c)

In subsection (c)(1), (c)(2), and (c)(4), revisions are made to be consistent with the provisions in subsections 797(c), and language at subsection 797(e).

In subsection (c)(3), original content that was left out during the first 15-day comment period is added back in and stricken out, to accurately reflect the change(s).

Authority & Reference

Revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

Section 797. Reporting And Suspension.

Subsection (a)

A minor revision is made to eliminate an extra space in the word “include” in the third line.

Authority & Reference

Revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

Section 798. Severability.

Authority & Reference

A minor grammatical revision is made in the Authority citations eliminating a comma and adding the word “and”, for uniformity with these and other OSPR regulations. Additionally, a revision is made in the Reference citations to list out all relevant Government Code sections rather than a range.

Economic Impact Assessment

OSPR discovered a typographical error in the Economic Impact Assessment of the Amended ISOR. On page 22, the text illustrated in italics and parentheses should read as follows: *(Note: the 39 cents originally reflected here was a typo and is corrected now to **8** cents)*

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

None.

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

The proposed regulation changes for this second 15-day comment period do not duplicate or conflict with federal regulations.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory changes for this second 15-day comment period will not have negative impact on the environment; therefore no mitigation measures are needed.

END