

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

TITLE 14. CALIFORNIA CODE OF REGULATIONS

Fund Administration
(Section 870.17)

Financial Responsibility
(Sections 791.7, 793)

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) proposes to amend sections 870.17, 791.7, and 793, within subdivision 4 of title 14 of the California Code of Regulations, pertaining to the fee assessed against non-tank vessels. OSPR invites interested persons to present comments, statements, or arguments with respect to the proposed rulemaking during the written comment period.

PUBLIC HEARING

As a result of the coronavirus pandemic and the Executive Order of the Governor of California to protect public health by limiting public gatherings and requiring physical distancing, OSPR has not scheduled a public hearing on this proposed action.

Pursuant to Government Code section 11346.8, OSPR will hold a virtual public hearing via electronic communication if a written request is received at the address below from any interested person or his or her authorized representative no later than fifteen (15) calendar days before the end of the 45-day comment period.

SUBMISSION OF WRITTEN COMMENTS

Any interested person or his or her authorized representative may submit to OSPR written comments relevant to the proposed regulatory action. **The written comment period closes at 11:59 p.m. (Pacific Standard Time) on Monday, February 22, 2021.** All written comments must be received by OSPR by then in order to be considered. Written comments may be submitted by mail or e-mail, as follows:

Department of Fish and Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
E-mail: OSPRRegulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Government Code sections 8670.37.58, 8670.39, and 8670.41 grant the Administrator of OSPR the authority to adopt regulations and guidelines for the proposed regulations.

The proposed regulations implement, interpret and make specific Government Code sections 8670.37.54, 8670.39, 8670.40, and 8670.41.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Existing Law

The *Lempert-Keene-Seastrand Oil Spill Prevention and Response Act* (Act) of 1990 created a comprehensive state program for the protection of waters of the state from spills of oil and other deleterious materials. The Act provides, in part, for the development of oil spill contingency plans and a demonstration of financial responsibility by vessels arriving in California. Further, among its many provisions, the Act created the Oil Spill Prevention and Administration Fund (OSPAF), funded by fees paid by such vessels.

Under existing law (Government Code section 8670.41), the Administrator for oil spill response shall charge a non-tank vessel owner or operator a reasonable fee based upon the Administrator's costs to carry out the purposes of the Act. This fee is collected at the time an application for financial responsibility is submitted. A reduced fee for non-tank vessels which pose a reduced risk of pollution may be charged.

Policy Statement Overview and Anticipated Benefits of the Proposed Action

These regulatory amendments are necessary to increase the non-tank vessel fee and to make corresponding changes to the non-tank vessel application for certificate of financial responsibility. OSPR believes that the additional revenue generated from this fee increase would more appropriately approximate OSPR's costs to continue to manage a comprehensive non-tank vessel program, which includes field monitoring and support of non-tank vessels, a drills and exercise program, financial responsibility program, a contingency planning program, and an accounting element to track and audit receipts. Benefits include additional funding to support governmental entities including public and local that depend upon OSPAFA-supported programs such as the Oiled Wildlife Care Network, State Lands Commission, the San Francisco Bay Conservation and Development Commission, and the Office of Environmental Health Hazard Assessment to name a few. Non-monetary benefits include the protection of the environment through this increased funding.

Evaluation of Inconsistency or Incompatibility with Existing Regulations

The proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that relate to fees assessed against non-tank vessels, OSPR has concluded none exist in California.

Document(s) Incorporated by Reference

The following revised form is incorporated by reference in the Financial Responsibility regulations and is available on OSPR's [website](#) and upon request.

- Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels, form DFW 1972 (Rev. 07/21).

DETERMINATIONS REGARDING THE PROPOSED ACTION

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

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

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

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

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

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

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

(g) Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:

The proposed fee increase would not significantly impact non-tank vessel owners or operators as it is an adjustment for inflation that has occurred since the fee was last increased in 2012. See analysis in the Economic and Fiscal Impact Statement (Form STD 399) and its attachment.

(h) Cost a representative private person or business would necessarily incur in reasonable compliance:

The cost a representative private person or business would incur with these proposed regulations is minor. The vessels that pay the largest fee are those vessels that have the largest carrying capacity and would experience a \$500 fee increase every other year.

(i) Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

- *Whether this is a “major regulation”, having an economic impact on businesses and individuals exceeding \$50,000,000 in any 12-month period between the date the*

regulation is estimated to be filed with the Secretary of the State through 12 months after the regulation is fully implemented.

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.

- *Effects of the regulation on the creation or elimination of jobs within the State of California.* None.
- *Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State of California.* None.
- *Effects of the regulation on the expansion of businesses currently doing business within the State of California.* None.
- *Benefits of the regulation to the health and welfare of California residents, worker safety, and the State’s environment.*

The fee funds the non-tank vessel program, which supports the protection of the environment and the public from the potential damages from spills by ensuring that non-tank vessels develop oil spill contingency plans, demonstrate financial responsibility, and participate in oil spill response drills and exercises.

- *Business Reporting Requirement.* None.
- *Effect on small business*

This regulatory action will not affect small business. None of the businesses affected are small businesses as described and defined by sections 11346.3(b)(4)A) or 11342.610 of the Government Code.

CONSIDERATION OF ALTERNATIVES

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

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

AVAILABILITY OF DOCUMENTS / OSPR CONTACT PERSON

OSPR will have the entire rulemaking file available for inspection and copying by appointment only. As of the date this notice is published in the California Notice

Register, the rulemaking file consists of this notice, the modified text of the regulations, the Initial Statement of Reasons, the Economic and Fiscal Impact Statement (Form STD 399), any other information upon which the rulemaking is based. For inquiries concerning the regulatory process or to request an appointment to view and/or copy the rulemaking documents identified above, please contact:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Christine Kluge
1010 Riverside Parkway
West Sacramento, California 95605
Phone: (916) 375-4676
Email: Christine.Kluge@wildlife.ca.gov

The backup contact person is: Ryan Todd at (916) 375-2077, or
Ryan.Todd@wildlife.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice and related rulemaking documents identified above can be accessed online on the [Non-Tank Vessel Fee webpage](#) on OSPR's website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

At the close of the 45-day comment period, and considering all timely and relevant comments received, OSPR may adopt the proposed regulations substantially as described in this notice. If OSPR makes modifications which are sufficiently related to the originally proposed text, the modified text (with the changes clearly indicated) will be made available to the public for at least 15 days prior to the date of adoption. Any such modifications will also be posted on OSPR's website identified above. Please send requests for copies of any modified regulations to the attention of the contact person(s) as indicated above. OSPR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

END