

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

**ADDENDUM TO
INITIAL STATEMENT OF REASONS**

Title 14, California Code of Regulations
Amend Sections 791.7 and 793
to Financial Responsibility

Date of the Initial Statement of Reasons: December 29, 2020

Date of this Addendum Initial Statement of Reasons: August 12, 2021

The following sets forth a description of changes made to the originally proposed regulations, including changes to the Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels (DFW form 1972). Non-substantive edits to spelling or punctuation that do not change the meaning or intent of the regulations are not included here.

Section 791.7

Subsection (a)(2) has an edit to add 'Rev.' to the version date of the title of form 1972.

Subsection (b) is broken out to subsection (b)(1) consistent with the structure of the California Code of Regulations.

Subsection (g)(1)(B)1. is deleted as duplicative of (g)(1)(C)7.

At subsection (g)(1)(C)7., the word "oil" is changed to "fuel". This change was overlooked during the 45-day comment period. The change aligns with the same revisions made to the regulatory text in other subsections in this section as well as in section 870.17 of Title 14, California Code of Regulations. Further, this change is made to more accurately reflect that OSPR regulates the fuel in the tanks of non-tank vessels, not any oil products non-tank vessels may carry as cargo. [Government Code sections 8670.3 and 8670.28(a)(10)]

Studies, Reports, or Documents Relied Upon [Government Code section 11346.2(b)(3)]

The following technical, theoretical, and/or empirical study, reports, or document relied upon is added to the rulemaking file and is available from OSPR upon request.

- Fund Condition Statement, Fund 0320 Oil Spill Prevention and Administration Fund (July 2021)

Attachment to Addendum Initial Statement of Reasons
Purpose and Necessity Statement
for revisions to form DFW 1972
Application for Certificate of Financial Responsibility for
Owners or Operators of Nontank Vessels

Subsection 791.7(a)(2) incorporates by reference the Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels form DFW 1972. However, it was not discovered until recently that the form that was noticed for the 45-day comment period (January 8, 2021 – February 22, 2021) was not the last version filed with the Office of Administrative Law (OAL). While most of the changes are non-substantive (e.g., punctuation, typography), OSPR is required to re-notice the changes.

The following details only the revisions made to this form. Non-substantive edits such as to spelling, capitalization, or punctuation that do not change the meaning or intent are not included here but are illustrated in double underline and double strikeout on the form.

The content in the footer of each page is deleted since it is replaced at the top of the form in compliance with the State Administrative Manual and DGS policies and guidelines relevant to Department-created and approved forms.

Page 1 Introductory Content

The content at the top of the form includes the addition of the California Department of Fish and Wildlife logo, in compliance with the State Administrative Manual and DGS policies and guidelines relevant to Department-created and approved forms. The title of the form is revised consistent with the revisions in regulatory text at subsection 791.7(a)(2), Title 14, California Code of Regulations, and for consistent expression with section 790 of chapter 1 and throughout OSPR's regulations. Content is deleted in the 'WARNING' as unnecessary and to more accurately reflect OSPR's practice with regard to Zip files.

Page 1, Section A. General Information

In the title of Section A, the change in the font from lower case to upper case is re-illustrated accurately.

Under subtitle 'Applicant Information', "Telephone Number" and "Email address" are new but was not illustrated as new during the 45-day comment period. OSPR is now requiring these pieces of contact information because financial and legal documents are submitted in the process of obtaining a Certificate of Financial Responsibility. In order to verify all documentation, OSPR must have the legal name of the applicant. The request for telephone number and email address are necessary in the event there are questions related to the application as well as to communicate reminders about the renewal of the certificate.

Under subtitle "Certificate Delivery", OSPR is clarifying that "Address" refers to a "Mailing" Address.

Page 3, Section A. General Information (continued)

The fee block corrects the illustration of changes made during the 45-day comment period.

Page 3, Section B. Vessel Data

In the title of Section B, the change in the font from lower case to upper case is re-illustrated accurately. The content under the title is deleted as unnecessary; such instructions are provided in the 'Instructions' under Application Process.

Page 4, Section B. Vessel Data (continued)

At number 3., the request to identify 'Type' did not exist in the last version filed with OAL and therefore was not illustrated as new content during the 45-day comment period. That is being corrected here. Including the type of nontank vessel aides OSPR staff in processing the application, assessing appropriate financial responsibility and fees, and for data tracking purposes.

At number 4., the request to provide the fuel capacity did not exist in the last version field with OAL and therefore was not illustrated as new content during the 45-day comment period. That is being corrected here. Including fuel capacity assists the applicant with "showing their work" in calculating the appropriate amount of financial responsibility that must be demonstrated and helps OSPR staff verify same. OSPR is also clarifying that reference to "barrels" are to barrels "of fuel". This change is necessary to align with other similar types of changes being made throughout this rulemaking.

Page 4 and 5, Section C. Financial Responsibility Amounts

In paragraph 2., during the 45-day comment period, the word "oil" was changed to "fuel", however, consistent edits were overlooked in the five bullets following the paragraph. That oversight is being corrected here. As explained during the 45-day comment period, this change aligns with the same revisions made to the regulatory text concurrently at sections 791.7 and 870.17 of Title 14, California Code of Regulations. Further, this change is made to more accurately reflect that OSPR regulates the fuel in the tanks of non-tank vessels, not any oil products non-tank vessels may carry as cargo. [Government Code sections 8670.3 and 8670.28(a)(10)]

Page 5, Section D. Evidence of Financial Responsibility

Instructions to "provide name" of the Protection and Indemnity Cub are being repealed because the corresponding requirement was proposed for repeal in the originally proposed text.

The word "in" in "Proof of entry" is in the last version filed with OAL but was not included during the 45-day comment period; that copy-editing error is corrected here. Additionally, while stricken out during the 45-day comment period, the text in the 'Note' paragraph differed from that which is in the last version filed with OAL recently discovered, and what was noticed to the public. That language is corrected and accurately re-illustrated.

Page 6, Section D. Evidence of Financial Responsibility (continued)

At number 1. “Insurance”, at (B), the date format of form DFW 1962 is corrected.

Content that was included on the form during the 45-day comment period was not properly illustrated as new. The requirement for certificate holders demonstrating financial responsibility by method of insurance to submit proof of insurance annually within 30 days of expiration of their insurance policy is consistent with the regulations at subsection 795(a)(3)(A) of Title 14, California Code of Regulations. While certificates of financial responsibility are renewed every two years, insurance policies are typically written for terms of one year or less. Thus, the purpose for including it on the application form is to remind the applicant so as to avoid confusion. This information is provided to the applicant with the intention of improving compliancy with the financial responsibility renewal process for applicants who use insurance as demonstration of financial responsibility.

Page 8, Instructions

At instruction 2., in paragraphs (A), (B), and (C), edits are made changing the word “oil” to “fuel”. This change is made for clarity and to more accurately reflect that OSPR regulates the fuel in the tanks of non-tank vessels, not any oil products non-tank vessels may carry as cargo. [Government Code sections 8670.3 and 8670.28(a)(10)] This edit is also consistent with those made in subsections 791.7(g)(1)(C) and 870.17 of Title 14, California Code of Regulations.

At instruction 3., an update is made to the Department name; edits for the use of the acronym for California; an update to the email address of the Financial Responsibility Unit responsible for receiving and processing the form 1972; and an update of the acronym for the change in Department name.

Page 9, Instructions

At instruction 5., the last version of this form that was filed with OAL and recently discovered, states the time frame certificate renewal applications are sent to the applicant is seventy-five days. That was not illustrated during the 45-day comment period and is corrected here. Forty-five days aligns with existing regulatory provision at subsection 791.7(i) of Title 14, California Code of Regulations, which has been present since before the year 2013.

At instruction 6., the second line of the three lines in red font did not exist in the last version filed with OAL and therefore was not illustrated as new content during the 45-day comment period. The second line instructs applicants that they are responsible for all bank fees upfront and to discuss this with their banking representative. The missing text illustration is being corrected here.

Purpose: The purpose for the instruction with regard to payment of bank fees is to add further emphasis on the instruction in the line above it.

Necessity: While this added statement does appear to essentially restate that which is in the line above it, it is added to both provide further clarity and to accentuate the instruction above it. There is a consistent communication/activity breakdown occurring

on the front end of wire transfers. OSPR frequently experiences deductions from the non-tank vessel fee, those fees and charges assessed by applicants' financial institutions for the service of wiring the required funds to OSPR. The added provision is intended to mitigate further deficiencies and delays in processing the application.

Page 10, Instructions

Illustration corrections are made to correct that which did or did not exist in the last version filed with OAL.