

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

Title 14, California Code of Regulations  
Amend Section 870.17 regarding Fund Administration and  
Sections 791.7 and 793 regarding Financial Responsibility

**FINAL STATEMENT OF REASONS**

**I. Date of Initial Statement of Reasons: December 29, 2020**

**Date of Addendum to Initial Statement of Reasons: August 12, 2021**

**Date of Final Statement of Reasons: September 1, 2021**

**II. Update to the Initial Statement of Reasons:**

The California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) has adopted revisions to regulations to increase the fee assessed against non-tank vessels when applying for or renewing a certificate of financial responsibility. The amended regulations include sections 791.7, 793, and 870.17 of Title 14, California Code of Regulations. Additionally, OSPR has made related amendments to the application form (DFW form 1972).

*Public Comment Periods*

The proposed amendments were noticed for a 45-day public comment period starting January 8, 2021 and ending February 22, 2021 (California Regulatory Notice Register No. Z2020-1229-05). No public hearings were held nor requested.

During the 45-day comment period it was discovered that a technological error occurred whereby the hyperlinks in the electronic communication noticing the rulemaking action and associated documents were rendered inactive. In the interest of transparency and good faith, OSPR extended the comment period an additional 27 days, equivalent to the time frame the failure occurred. The extension of the public comment period commenced February 25, 2021 and ended March 23, 2021. No changes were made to the originally noticed text or associated rulemaking documents, nor were any documents added to the rulemaking file.

Following Office of Administrative Law initial review, modifications were made and OSPR noticed the public with an additional 15-day public comment period starting August 13, 2021 and ending August 27, 2021.

*Summary and Responses to Public Comments*

A summary of the comments and responses from the public comment periods is included as Attachment A to this Final Statement of Reasons. No comments were received from the

27-day extension of public comment period, nor the subsequent 15-day public comment period.

#### *Documents Incorporated by Reference*

Documents incorporated by reference included in the rulemaking file are as follows:

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

This document was reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during both comment periods and thereafter. This document will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

#### ***15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulation, Document Incorporated by Reference, and Addition of Document Relied Upon***

Modifications were made to the express terms of the regulations, the document incorporated by reference [Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels (DFW Form 1972)], and documents relied upon ((1) the Fund Condition Statement, Fund 0320 Oil Spill Prevention and Administration Fund (July 2021), and (2) an Addendum to the Initial Statement of Reasons) were added to the rulemaking file. The necessity for the changes and identification of the additional documents relied upon are outlined in the Notice of 15-Day Comment Period and the Addendum to the Initial Statement of Reasons, hereby incorporated by reference.

OSPR also made the following changes to the proposed regulations:

- Subsection (h)(1)(G)1. and 2. of section 791.7 have corrections to citations consistent with existing regulations.
- Subsection (i)(4) of section 791.7 has a correction to a citation consistent with existing regulations.

### **III. Reasonable Alternatives to the Proposed Regulation and Reasons for Rejecting Those Alternatives:**

No alternative considered by OSPR 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 regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The nontank vessel fee is part of an existing program. The proposed adjustment of the fee for inflation allows OSPR to meet the statutory requirements for administering the program pursuant to Government Code sections 8670.40 and 8670.41

**IV. Local Agency or School District Mandate Determination:**

The proposed regulations do not impose any mandate on local agencies or school districts.

**V. Small Business Impact:**

OSPR has determined that the proposed regulations have no substantial effect to small business. No alternatives were proposed that would lessen any adverse economic impact on small businesses.

## **ATTACHMENT A**

### **Consideration of Public Comments**

Proposed Amendments to Financial Responsibility (14 CCR 791.7 and 793), and Fund Administration (14 CCR 870.17).

The Department of Fish and Wildlife's, Office of Spill Prevention and Response (OSPR) thanks all those who provided insight and submitted comments during the rulemaking process.

The following provides a summary of the comments received during two public comment periods and OSPR's responses to same. The first comment period (45-day) was held from January 8, 2021 through February 22, 2021. Due to technological errors, the rulemaking documents were rendered inaccessible for twenty-seven days of the 45-day comment period. As such, OSPR held an additional 27-day public comment period from February 25, 2021 through March 23, 2021. Comments were received during the 45-day period; no comments were received during the subsequent 27-day comment period. No comments were received from any comment period relevant to the proposed amendments to the Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels (DFW form 1972).

The following summaries and responses are organized by the subsection the commenter identified. Where the section or subsection is unspecified by the commenter, OSPR made every effort to catalog the comment and response where it felt it most applied. Comments from multiple commenters on the same subsection or topic are consolidated and summarized. Comments to other associated rulemaking documents, general non-specific comments, and irrelevant and untimely comments are aggregated in separate tables at the end of each comment period.

A list is provided of the people or organizations who submitted written comments. Each is assigned a two-digit identifier. At the end of each comment is one or more comment keys in brackets. These comment keys correspond to the two-digit commenter identifier followed by a number corresponding to the number marked (by OSPR) on the copies of the written comment letters.

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## I. List of Commenters

The following provided written comments during the 45-day comment period (January 8, 2021 through February 22, 2021).

Identifier	Commenter
1	American Waterways Operators (AWO), letter 2/22/21
2	Pacific Merchant Shipping Association (PMSA), letter 2/22/21

No comments were received during the 27-day comment period (February 25, 2021 through March 23, 2021).

No comments were received during the 15-day comment period (August 13, 2021 through August 27, 2021)

## II. Comments

Comments received are summarized and responded to below.

### First Comment Period

The following consist of comments received during the 45-day comment period, January 8, 2021 through February 22, 2021.

#### *Section 791.7 – Procedures for Application for California Certificate of Financial Responsibility*

No comments were received specific to the amendments made to this section.

#### *Section 793 – Certificate Requirements For Oil Transfers At Marine Terminals And Active Offshore Marine Facilities*

No comments were received specific to the amendments made to this section.

#### *Section 870.17 – Oil Spill Prevention and Administration Fund Fees*

No comments were received specific to the amendments made to this section.

### General/Non-Specific Comments

AWO objects to the fee increase for non-tank vessels as we believe that these vessels represent no increase in spill risk, and it is inappropriate to increase the burden on this industry segment. AWO believes that OSPR, as a state oil spill risk management agency, should seek revenues from sectors presenting increased risks of oil spills. Marine oil spills have decreased since OSPR's establishment in 1991. Additionally, significant improvements in vessel equipment, inspection regulations, standards of care, crew training, and safety management advancements have continued to drive risk down. [Commenter 1(b)]

*OSPR Response: OSPR rejects this comment. Since 1999 the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act has applied to nontank vessels. Specifically, the Act places mandates on the Office to implement a program regarding spill planning, financial responsibility, and exercises related to nontank vessels. The nontank vessel fee has been required since 2003; and was last increased in 2012. This proposed fee increase accounts for inflation and increased costs of implementation. Only the Legislature can make the changes the commenter seeks. No changes are made in response to this comment.*

### Irrelevant Comments

The following comments are considered irrelevant as they are not germane to the proposed regulations or procedures. As such, OSPR rejects these comments.

As OSPR now spends more resources responding to spills from trucks, rail, and pipelines, we would ask that you look to those other sources when deciding how to further fund

OSPR's mission. We ask that you consider fees on the other sources of spill risk in California, ensuring that they bear an equitable share of the funding burden. OSPR's funding streams should be reviewed to ensure that those activities that are a significant source for risk of spills be considered for revenue streams contributing to the state's program, and ensure that those risk categories also have "skin in the game." [Commenters 1(c.1, c.2); 2(d)]

*OSPR Response: OSPR rejects this comment. The per-barrel fee presently collected covers risks by rail and pipelines, as suggested: oil received at refineries and marine terminals, regardless of mode of delivery. The Legislature added the nontank vessel fee for the very purpose the commenters raise – to include a segment of industry that poses a large risk (nontank vessels) yet at the time in the 1990's it was not subject to the per-barrel fee. Only the Legislature can make the changes the commenters seek; a statutory change would be needed to collect a new revenue stream from other entities. No changes are made in response to this comment.*

The scope of OSPR's activities have increased significantly since the expansion of the program beyond the marine environment to cover spills impacting inland waters of the state. OSPR now spends more resources on responding to spill events not related to commercial marine transportation. We believe state resources can be better allocated to those areas of responsibility that the state has assumed in the expansion of its program to inland waters of the state; activities that do not benefit from the mature and efficient federal oversight that the U.S. Coast Guard provides. [Commenter 2(b)]

*OSPR Response: OSPR rejects this comment. This fee increase accounts for inflation and increased costs of implementation related to nontank vessels, since the last fee increase in 2012. PMSA's March 2021 'West Coast Trade Report' states that vessel arrivals are increasing, e.g. "... at the Port of Long Beach, this year's second month was its busiest February ever...". Nontank vessels continue to pose a risk. Additionally, OSPR is not free to ignore statutory mandates to implement this program regarding nontank vessels. No changes are made in response to this comment.*

Because most of the activities related to spill prevention and response in the commercial marine sector is regulated, inspected and responded to by the U.S. Coast Guard, OSPR should reevaluate what overlap exists between the federal and state programs and assess what efficiencies can be achieved to reduce redundancies. OSPR should also consider ways to increase programmatic efficiencies. [Commenters 1(d); 2(c)]

*OSPR Response: OSPR rejects this comment. OSPR works closely with the U.S. Coast Guard and other federal partners to coordinate activities. OSPR's financial responsibility, contingency planning, and exercises regarding nontank vessels are often more protective than federal requirements and are focused on conditions relevant in California. For example, the financial responsibility requirement in California for nontank vessels is much more protective than the federal requirement. (\$300,000,000 vs. \$300 x gross tonnage) Additionally, OSPR is not free to ignore statutory mandates to implement this program regarding nontank vessels. No changes are made in response to this comment.*

The consumption of petroleum products in California and the nation has been on a downward trajectory for several years, and that downward trajectory is expected to only



increase. Likewise, marine fuel alternatives are under development which will lead to reduced use of petroleum-based fuels for ships, or as we are already witnessing, the expanded use of gaseous fuels (LNG) that do not carry the same spill risk profile as traditional marine fuels. As demand for petroleum products declines, so too will risk of spills along with OSPR's traditional funding streams. Because of this changing dynamic and the program's dependency on revenue derived from the consumption of petroleum, we believe it is essential for the state to proactively assess its oil spill program and adapt to this new reality, both in terms of its programmatic activities and the fund streams to support them. We ask that you consider how best to refine your mission to increase efficiency and position OSPR to continue the important work of mitigating oil spill risk and supporting effective oil spill response. [Commenters 1(a.1, a.2); 2(a)]

*OSPR Response: OSPR rejects this comment. Nontank vessels pose a risk based on their fuel, they are not a risk based on general consumer consumption of petroleum products. Thus, the number of nontank vessel arrivals, departures, and transits is the relevant context. PMSA's March 2021 'West Coast Trade Report' states that vessel arrivals are increasing, e.g. "... at the Port of Long Beach, this year's second month was its busiest February ever...". Nontank vessel risk will decrease if there are less nontank vessels calling on California or if nontank vessels switch to a non-petroleum-based fuel such as LNG. In either case, there would be a reduction in program size and a reduction in the fee collected. Until such time, nontank vessels continue to pose a risk. OSPR is aware renewable fuel use is increasing, and is evaluating this development accordingly. No changes are made in response to this comment.*

## **Comments on Associated Rulemaking Documents**

No comments were received from the first comment period relevant to the proposed amendments to the Application for Certificate of Financial Responsibility for Owners or Operators of Nontank Vessels (DFW form 1972), nor to any other associated rulemaking documents.

### **Second Comment Period**

Due to technological errors, the rulemaking documents were rendered inaccessible for twenty-seven days of the 45-day comment period. As such, OSPR held an additional 27-day public comment period from February 25, 2021 through March 23, 2021. No changes were made to the originally proposed text or other associated rulemaking documents.

No comments were received during the subsequent 27-day comment period.

### **Third Comment Period**

OSPR made modifications to the proposed regulations text and added a document relied upon; therefore OSPR noticed an additional public comment period from August 13, 2021 through August 27, 2021.

No comments were received during the 15-day comment period.