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

INITIAL STATEMENT OF REASONS Including ECONOMIC IMPACT ASSESSMENT

Title 14, California Code of Regulations
Repeal of Section 870.15 and
Amend Section 870.17

Pertaining to the
Oil Spill Prevention and Administration Fund Per-Barrel Fee

Date of this Initial Statement of Reasons: October 19, 2021

I. Description of Regulatory Action

(a) General Background

The California Department of Fish and Wildlife (Department), Office of Spill Prevention and Response (OSPR) is proposing to adopt through this regular rulemaking a repeal of section 870.15 and amendment of section 870.17 of Title 14 of the California Code of Regulations.

(b) Background

The Oil Spill Prevention and Administration Fund (Fund) was established in 1990 by Senate Bill 2040. (Government Code sections 8670.38, *et. seq.*) Since 1991, the Fund has been funded by a per-barrel fee on barrels of crude oil and petroleum products received at marine terminals and refineries. OSPR has had regulations regarding the per-barrel fee since 1993. Since 2014, the fee has been $0.065 cents per-barrel, as allowed by statute.

Additionally, since 2003 the Fund has received a biennial fee paid by nontank vessels based on the volume of the nontank vessel’s largest fuel tank.

II. Problem the Regulatory Action Intends to Address [Government Code section 11346.2(b)(1)]

In 2021, Assembly Bill 148 (Chapter 115, Stats. of 2021) was the 2021 public resources budget bill. Assembly Bill 148 covered *many* topics. As relevant here, the bill significantly amended the statute regarding the per-barrel fee – Government Code section 8670.40. [see bill sections 11-13, 65, and 83-96] The bill increased the per-barrel fee to $0.085 cents starting October 1, 2021. Additionally, beginning January 1, 2022, the per-barrel fee is also to be collected on barrels of renewable fuel received at marine terminals, refineries, renewable fuel receiving facilities, and shipped from renewable fuel production facilities. The fee has never been imposed on renewable fuels until now.

Beginning July 1, 2023, and each year thereafter, the per-barrel fee is administratively adjusted annually based on the California Consumer Price Index (CCPI) issued by the Department of Industrial Relations. The per-barrel fee has never had this type of administrative annual adjustment before.

III. Purpose, Rationale, and Necessity for the Amendment, Addition, or Repeal of the Regulations [Government Code section 11346.2(b)(1)]

This rulemaking repeals and amends the long-standing fee regulations to account for the statutory changes by Assembly Bill 148 and to simplify the text.

Government Code sections 8670.7.5 and 8670.39 grant the Administrator of OSPR the authority to adopt regulations and guidelines regarding the Fund and fees. The proposed regulations implement, interpret, and add specificity to the provisions of Government Code section 8670.40.

The following sets forth a discussion of the specific purpose for each regulatory provision to be adopted, amended, or repealed, including explanation as to why each regulatory provision being adopted, amended or repealed is reasonably necessary to carry out the purpose and addresses the problem for which it is proposed.

Repeal Section 870.15 – Definitions

This section is being repealed; it is not needed. Coupled with the revisions to section 870.17 herein, this chapter is being significantly scaled down. The provisions of sections 870.15 and 870.17 do not meaningly build upon the statutory text of Government Code section 8670.40. To avoid mere redundancy of the statute, section 870.15 is being repealed.

Amend Section 870.17 – Oil Spill Prevention and Administration Fund Fees

The amendments to this section are to conform with statutory changes by Assembly Bill 148, to eliminate redundancy, and remove unnecessary verbiage.

Coupled with the repeal of section 870.15 herein, this chapter is being significantly scaled down. The provisions of sections 870.15 and 870.17 do not meaningly build upon the statutory text of Government Code section 8670.40. To avoid mere redundancy of the statute, section 870.17 is being amended.

Subsection (a) - No change.

Subsection (b)

Purpose: The amendments to this subsection are to conform with statutory changes by Assembly Bill 148 and to simplify the text.

Necessity: Most of existing subdivision (b) is unnecessary and redundant. The provisions of the per-barrel fee are sufficiently contained in the statutory text of Government Code section 8670.40. The essence of the definition of “Barrel Fee” is being moved from subsection 870.15(a) to subsection 870.17(b). These revisions also reflect that Government Code section 8670.40 now applies to renewable fuels. The reader is specifically directed to that code section for the specific provisions about the fee.

Subsection (b)(1)

Purpose: Delete this subsection.

Necessity: This subsection is no longer consistent with Government Code section 8670.40. Subsection (b)(1) merely stated that the per-barrel fee had a limit, established a rounding limit, and redundantly repeated the essence of section 870.15(a).

As stated above, Assembly Bill 148 increased the base per-barrel fee; there is no need to repeat the statute here. Barrels of renewable fuels are now subject to the fee. The rounding limit is codified in the statute; there is no need to restate it here. And the prior text regarding where the fee is collected and the mode of transport has also expanded with Assembly Bill 148; there is no need to restate it here.

All of these new details are sufficiently explained in subdivisions (b)(1), (2), and (3) of Government Code section 8670.40, and would be redundant to state here. Thus, subsection 870.17(b)(1) is being deleted.

Subsection (b)(2)

Purpose: Delete this subsection.

Necessity: This subsection is no longer consistent with Government Code section 8670.40. Subsection (b)(2) merely stated that the fee was set at its maximum amount allowed at the time - $0.065 cents.

Assembly Bill 148 increased the base per-barrel fee, as stated above. And in the future, the fee will be administratively adjusted annually based on the consumer price index. Thus, subsection (b)(2) is not accurate now and would otherwise need constant revision each year if it were maintained here in regulation.

All of these new details are sufficiently explained in subdivisions (b)(1), (2), and (3) of Government Code section 8670.40, and would be redundant to state here. Thus, subsection (b)(2) is being deleted.

Subsection (b)(3)(A)

Purpose: Delete this subsection.

Necessity: Subsection (b)(3)(A) regarding the California Tax and Fee Administration [formerly the Board of Equalization] collection of the per-barrel fee is not needed. Provisions regarding collection of the per-barrel fee are sufficiently stated in Government Code section 8670.40 and are redundant to state here.

Subsection (b)(3)(B)

Purpose: Delete this subsection.

Necessity: Subsection (b)(3)(B) is no longer consistent with the changes by Assembly Bill 148. The fee adjustment process and coordination between OSPR and the Department of Tax and Fee Administration is sufficiently stated in subdivisions (b)(9)(A) and (b)(9)(B) of Government Code section 8670.40 and are redundant to state here.

Subsection (b)(4)

Purpose: Delete this subsection.

Necessity: Subsection (b)(4) is deleted because it is redundant to subdivision (b)(7) of Government Code section 8670.40. That the per-barrel fee shall only be collected once on each barrel is sufficiently stated in the Government Code and does not need to be repeated here.

Subsection (b)(5)

Purpose: Delete this subsection.

Necessity: Subsection (b)(5) is deleted because it is redundant to subdivisions (b)(6) and (b)(8) of Government Code section 8670.40 and section 46101 of the Revenue and Taxation Code. That operators are required to register with the California Tax and Fee Administration for purposes of paying the fee is sufficiently stated in the Government Code.

Subsection (c)

Purpose: Amend this subsection to avoid redundancy and confusion and to add further clarity.

Necessity: The amounts of the nontank vessel fee are stated both in subsection (c) and in section 791.7 of chapter 2, of subdivision 4, of Title 14 of the California Code of Regulations. These amounts do not need to be stated in both locations; doing so increases the risk that the provisions could get out of sync and be contradictory or confusing.

Subsection (c)(1)

Purpose: Subsection (c)(1) is revised to restate the definition of the nontank vessel fee from section 870.15, reiterate that the fee is collected at the time a certificate of financial responsibility is applied for, and then point the reader to subsection 791.7(c) for the various fee amounts and process.

Necessity: Because operators must submit the fee along with the application for a certificate of financial responsibility, for the benefit of a reader, we are retaining the fee amounts in the text in section 791.7 and eliminating duplication of it in this subsection.

Subsections (c)(2)(A), (B), (C), (D), and (E)

Purpose: Delete these subsections.

Necessity: Concurrent with the changes to subsection (c)(1), subsections (c)(2)(A), (B), (C), (D), and (E) are deleted because they are redundant to subsections (c)(6)(A), (B), (C) of section 791.7. The fee amounts do not need to be stated in both locations; doing so increases the risk that the provisions could get out of sync and be contradictory or confusing.

Subsection (c)(3)

Purpose: Delete this subsection.

Necessity: Concurrent with the change to subsection (c)(1), subsection (c)(3) is deleted because it is redundant to subdivision (c)(6) of section 791.7. The directive to submit the fee does not need to be stated in both locations; doing so increases the risk that the provisions could get out of sync and be contradictory or confusing.

Subsection (c)(4)

Purpose: Delete this subsection.

Necessity: Concurrent with the change to subsection (c)(1), subsection (c)(4) is deleted because it is redundant to subdivision (c)(6) of section 791.7. The directive to not deduct processing charges does not need to be stated in both locations; doing so increases the risk that the provisions could get out of sync and be contradictory or confusing.

IV. Economic Impact Assessment *[Government Code sections 11346.2(b)(2)(A), (5); 11346.3(a)]*

(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?

This rulemaking is simplifying the regulatory text, is conforming with a statutory amendment (AB 148), and is otherwise making non-substantive changes. Any economic impact on businesses is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.

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

These regulations will not create or eliminate jobs.

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

These regulations will not create or eliminate business.

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

These regulations will not expand or limit expansion of business.

(e) Will there be any benefits to the health and welfare of California residents, worker safety, and the State's environment?

This rulemaking does not relate to public health or welfare or worker safety, nor does it directly relate to the environment.

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

No other benefits are expected.

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

None.

VI. Reasonable Alternatives to Regulatory Action *[Government Code section 11346.2(b)(4)(A)(B)]*

None. The barrel fee is set by statute – Government Code section 8670.40. There is no reasonable alternative for this rulemaking. This rulemaking is simplifying the regulatory text, is conforming with a statutory change (AB 148), and is otherwise making non-substantive changes.

VII. Duplication or Conflict with Federal Regulations *[Government Code section 11346.2(b)(6)]*

There is no duplication or conflict with federal regulations.

END