

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

**TITLE 14. CALIFORNIA CODE OF REGULATIONS
FUND ADMINISTRATION
(Sections 870.15 and 870.17)**

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 870.15 and 870.17 of subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to the fees collected for the OSPR program. OSPR invites interested persons to present comments, statements, or arguments with respect to the regulations during the written comment period.

PUBLIC HEARING

OSPR has not scheduled a public hearing on this proposed action. However, pursuant to Government Code section 11346.8, OSPR will hold a public hearing 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, December 13, 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, CA 94244-2090
E-mail: OSPRRegulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Government Code section 8670.39 grants the Administrator of OSPR the authority to adopt regulations and guidelines for proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.38, 8670.39, 8670.40, and 8670.41.

INFORMATIVE DIGEST

Existing Law

The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act (LKS Act) of 1990* requires owners of crude oil and petroleum products to pay a per-barrel fee upon delivery of the oil to a marine terminal or refinery. In 2021, Assembly Bill 148 (AB 148), among other things, raised the fee from \$0.065 cents per barrel to \$0.085 cents per barrel effective October 1, 2021, and made renewable fuels subject to this fee beginning January 1, 2022. AB 148 also established a process for the fee to be annually adjusted administratively based on the consumer price index. [see bill Sections 11-13, 65, and 83-96]

This rulemaking revises the regulations text regarding the per-barrel fee. This rulemaking repeals unnecessary text that is redundant to the statute, and instead refers back to the statutory provisions. These changes align the text with the changes made by AB 148 without merely repeating the statutory text.

This rulemaking also revises the text regarding OSPR's nontank vessel fee by repealing unnecessary, redundant, potentially contradictory text. There is no substantive change.

Policy Statement Overview and Anticipated Benefits of the Proposed Action

Adoption of these regulations accomplish cleanup of long-standing regulatory text. These changes simplify the text.

These proposed regulations eliminate possible confusion or contradiction by simplifying the text and referring the reader to the primary source on the topic.

Evaluation of Inconsistency or Incompatibility with Existing Regulations

After conducting a review for any state or federal regulations or statutes that would relate to or affect this area, OSPR has determined that this proposed regulation is not inconsistent or incompatible with existing state or federal regulations or statutes. The California Department of Tax and Fee Administration (CDTFA) has extensive regulations regarding the process and logistics of collecting the per-barrel fee. This rulemaking in no way touches upon the provision of CDTFA's regulations. [Ref. Revenue & Taxation Code §§ 46001-46751, and Title 18 Code of Regulations §§ 2240, 2241, 2242, 2250-2257]

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:* None. Any economic impact on a person or business is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.
- (h) *Cost a representative private person or business would necessarily incur in reasonable compliance:* None. OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Any economic impact on a person or business is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.
- (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.*

This is not a “major regulation”. 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.

- *Effects of the regulation on the creation or elimination of jobs within the State of California.*

None. This rulemaking is simplifying the regulatory text, is conforming with a statutory amendment (AB 148), and is otherwise making non-substantive changes. Any effect on jobs is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.

- *Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State of California.*

None. This rulemaking is simplifying the regulatory text, is conforming with a statutory amendment (AB 148), and is otherwise making non-substantive changes. Any effect on the creation or elimination of businesses is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.

- *Effects of the regulation on the expansion of businesses currently doing business within the State of California.*

None. This rulemaking is simplifying the regulatory text, is conforming with a statutory amendment (AB 148), and is otherwise making non-substantive changes. Any effect on the expansion of businesses is the result of the statutory amendments to Government Code section 8670.40; not this rulemaking.

- *Benefits of the regulation to the health and welfare of California residents.*

This rulemaking does not relate to public health or welfare.

- *Benefits of the regulation to worker safety.*

This rulemaking does not relate to worker safety.

- *Benefits of the regulation to the State's environment*

This rulemaking does not directly relate to the environment. But the per-barrel fee funds the state's oil spill prevention, preparedness, and response program. (OSPR)

- *Business Reporting Requirement*

This rulemaking does not require any reports to be created, maintained, or submitted.

- *Effect on small business*

None. This rulemaking is simplifying the regulatory text, is conforming with a statutory amendment (AB 148), and is otherwise making non-substantive changes. Any effect on small businesses is the result of the statutory amendments to Government Code section 8670.40, not this rulemaking.

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.

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. However, 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 at its office at the address below by appointment only. As of the date this notice is published in the California Notice Register, the rulemaking file consists of this notice, the proposed modified text (“express terms”) of the regulations, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statement (Form STD 399). Please direct inquiries concerning the regulatory process or requests for copies of the proposed modified text (“express terms”) of the regulations, the Initial Statement of Reasons, or other information upon which the rulemaking is based to the following:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Christine Kluge
1010 Riverside Parkway
West Sacramento, CA 95605
Phone: (916) 827-6553
Email: Christine.Kluge@wildlife.ca.gov

The backup contact person is Ryan Todd at the same address, or by email at Ryan.Todd@wildlife.ca.gov, or by phone at (916) 698-0036

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice and related rulemaking documents identified above can be accessed on OSPR’s website at www.wildlife.ca.gov/OSPR/Legal/Rulemakings/OSPAF.

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) shall

be made available to the public for at least 15 days before OSPR adopts the regulations as revised. Any such modifications will also be posted on OSPR's website. 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.

###