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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 7.4. Oil Spill Response and Contingency Planning [8670.1 - 8670.73] (Chapter 7.4 added by Stats. 1990, Ch. 1248, Sec. 17.)

ARTICLE 3. Marine Safety [8670.16 - 8670.24] (Article 3 added by Stats. 1990, Ch. 1248, Sec. 17.)

8670.16. The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government that establish all of the following requirements:

(a) Each tank ship using ports in the state shall have alarms on the bridge that give warning any time an attempt is made to control the tank ship manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tank ship using ports in the state shall have in good working order, all of the following:

(1) Two "VHF" bridge-to-bridge radiotelephones.

(2) One single-side band radiotelephone.

(3) One satellite communication device.

(4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Each tank ship and tank barge shall use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallon Islands, and the North Coast.

(Amended by Stats. 2001, Ch. 748, Sec. 8. Effective January 1, 2002.)

8670.17. (a) The administrator shall adopt regulations regarding the equipment, personnel, and operation of vessels to and from marine terminals that are used to transfer oil.

(b) The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, both of the following:

(1) A requirement that the vessel has functional equipment that is compatible with any vessel traffic advisory control system that may be established along the California coast.

(2) A requirement that the vessel, while in marine waters, has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

(Amended by Stats. 2001, Ch. 748, Sec. 9. Effective January 1, 2002.)

8670.17.1. The administrator may, for purposes of efficiency, safety, or implementation consistency, provide for services to vessels, ports, and port users which are necessary to achieve requirements mandated pursuant to this article. The administrator may establish or authorize reimbursement for those services which do not exceed the reasonable costs incurred in implementing and administering the service.

(Added by Stats. 1993, Ch. 1190, Sec. 1. Effective October 11, 1993.)

8670.17.2. (a) The administrator shall adopt regulations governing tugboat escorts for tank ships and tank barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tank ships and tank barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations that differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations that require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (c).

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

(Amended by Stats. 2001, Ch. 748, Sec. 10. Effective January 1, 2002.)

8670.18. (a) The administrator may inspect or cause to be inspected on a regular basis all vessels.

(b) The administrator shall evaluate and periodically review the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:

- (1) The frequency and scope of inspections.
- (2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.
- (3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.
- (4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.
- (5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.

(c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy the deficiencies.

(d) If, within a reasonable time, the administrator cannot remedy deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections.

(e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.

(Amended by Stats. 2004, Ch. 796, Sec. 15. Effective January 1, 2005.)

8670.19. (a) The administrator shall periodically conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:

- (1) Segment the state into appropriate areas as necessary.
- (2) Evaluate the oil spill contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and any other area determined to be necessary, including those response resources properly authorized for cascading into the area, to ensure the best achievable protection of state waters from oil spills.

(b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the waters of the state are protected.

8670.20. (a) For the purposes of this section, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(b) Any party responsible for a vessel shall notify the Coast Guard within one hour of a disability if the disabled vessel is within 12 miles of the shore of this state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled vessel within 12 miles of the shore of this state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled vessels.

(c) Whenever the Office of Emergency Services receives notice of a disabled vessel, the office shall immediately notify the administrator. If the administrator receives notice from any other source regarding the presence of a disabled vessel within 12 miles of the shore of this state, the administrator shall immediately notify the Office of Emergency Services.

(d) For the purposes of this section, a vessel shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding that creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, "loss" means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but that creates the serious possibility of an oil spill or an occurrence that may result in an oil spill.

(e) For the purposes of this section, a tank barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the tank barge becomes disabled through occurrences specified in subdivision (d).

(Amended by Stats. 2013, Ch. 352, Sec. 181. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

8670.21. (a) As used in this section, the following terms have the following meanings:

(1) "Vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) "VTS system" means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors, or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic, to prevent collisions and groundings.

(c) A plan developed by the administrator, in consultation with the Coast Guard, shall provide for implementing and maintaining VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(d) (1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting tank barges and tank ships from accepting or unloading oil at marine terminals if a tank barge or tank ship is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant the money that is determined to be necessary for the purchase and installation of equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f) (1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development, implementation, and operation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced operation of a fully federally funded VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of "responsible party" pursuant to Section 8670.3 for purposes of this chapter.

(8) Upon request by the administrator, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange. Upon receiving the report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan. If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan, the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not complied with that order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code, a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

(Amended by Stats. 2004, Ch. 796, Sec. 17. Effective January 1, 2005.)

8670.22. Any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading, or unloading at any marine terminal in the state.

(Added by Stats. 1990, Ch. 1248, Sec. 17. Effective September 24, 1990.)

8670.23. (a) The administrator shall establish Harbor Safety Committees for harbors and adjacent regions of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco; and Humboldt Bay.

(b) The administrator shall determine the geographic area for each harbor safety committee.

(c) The administrator shall appoint to each harbor safety committee, for a term of three years, all of the following members, and their alternates:

(1) A designee of a port authority within the harbor.

(2) A representative of tank ship operators.

(3) A representative of the pilot organizations within the harbor.

(4) A representative of dry cargo vessel operators.

(5) A representative of commercial fishing operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A designee of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco Bay, the administrator shall appoint a designee of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A designee of the Captain of the Port from the United States Coast Guard, the United States Army Corps of Engineers, the National Oceanographic and Atmospheric Administration, and the United States Navy to the extent that each consents to participate on the committee.

(10) A representative of tug or tank barge operators, who is not also engaged in the business of operating either tank ships or dry cargo vessels.

(11) A representative of pleasure boat operators.

(12) A harbor safety committee may petition the administrator with a request for a new or additional membership position needed to conduct the harbor safety committee business and that reflects the makeup of the local maritime community. The approval of this petition shall be at the sole discretion of the administrator.

(13) A harbor safety committee may petition the administrator for the elimination of a new or additional membership position requested and approved pursuant to paragraph (12). The approval of this petition shall be at the sole discretion of the administrator.

(d) The members appointed from the categories listed in paragraphs (2), (3), (4), and (10) of subdivision (c) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(1) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(2) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(3) Has held or is presently holding a shoreside position with direct operational control of vessels.

(4) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities relating to the safe navigation of vessels.

(e) The administrator shall appoint a chairperson and vice chairperson for each harbor safety committee from the membership specified in subdivision (c). The administrator may withdraw such appointments at his or her sole discretion.

(f) Upon request of the harbor safety committee, the administrator may remove a member.

(g) Each member of a harbor safety committee may be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

(Amended by Stats. 2004, Ch. 796, Sec. 18. Effective January 1, 2005.)

8670.23.1. (a) Each harbor safety committee established pursuant to Section 8670.23 shall be responsible for planning for the safe navigation and operation of tank ships, tank barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor.

(b) The administrator shall adopt regulations for harbor safety committee membership positions required in addition to those specified in Section 8670.23 and for harbor safety plans in consultation with the committees of those harbors listed in Section 8670.23, and other affected parties. The regulations shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee.

(c) The regulations shall ensure that each harbor safety plan includes all of the following elements:

(1) A recommendation determining when tank vessels are required to be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbor. The Harbor Safety Committee for San Francisco shall give the highest priority to the continual review and evaluation of tugboat escort regulations. The administrator shall be guided by the recommendations of the harbor safety committee when adopting regulations pursuant to Section 8670.17.2.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

(A) Anchorage designations and sounding checks.

(B) Communications systems.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(d) Each harbor safety plan shall be submitted to the administrator. The administrator shall review and provide comment on the plan for consistency with the regulations.

(e) The administrator shall, in consultation with the harbor safety committees listed in Section 8670.23, implement the plans. The administrator shall adopt regulations necessary to implement the plans. When federal authority or action is required to implement a plan, the administrator shall petition the appropriate federal agency or the United States Congress, as may be necessary.

(f) On or before July 1 of each year, each harbor safety committee shall revise its respective harbor safety plan and report its findings and recommendations to the administrator.

(g) The administrator may direct a harbor safety committee to address any issue affecting maritime safety or security, as appropriate, and to report findings and recommendations on those issues. The administrator shall forward those findings and recommendations to the appropriate authority.

(Amended by Stats. 2004, Ch. 796, Sec. 19. Effective January 1, 2005.)

8670.23.2. (a) The Legislature hereby finds and declares that because the administrator must rely on the expertise provided by volunteer members of the harbor safety committees and be guided by their recommendations in making decisions that relate to the public safety, members of the harbor safety committees should be entitled to the same immunity from liability provided other public employees.

(b) Members of the harbor safety committees appointed pursuant to Section 8670.23, while performing duties required by this article or by the administrator, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the harbor safety committee.

(Added by Stats. 1995, Ch. 337, Sec. 7. Effective January 1, 1996.)

8670.24. (a) The administrator shall evaluate all pilotage areas in the state. This evaluation shall include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

(Amended by Stats. 2004, Ch. 796, Sec. 20. Effective January 1, 2005.)