

STATEMENT OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES

DIVISION 1. FISH AND GAME COMMISSION - DEPARTMENT OF FISH & WILDLIFE SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE

CHAPTER 2. OIL SPILL PREVENTION AND RESPONSE PLANNING SUBCHAPTER 1. CERTIFICATES OF FINANCIAL RESPONSIBILITY SECTIONS 791-798

SB 861 (Chapter 35, Committee on Budget and Fiscal Review, Statutes of 2014) signed by the Governor to go into effect on July 1, 2014, created a statewide oil spill prevention and response program. The bill added Government Code section 8670.7.5, which expressly authorized emergency regulations so the Administrator can implement this important program as soon as possible:

“(a) The administrator may adopt regulations to implement this chapter pursuant to the Administrative Procedures Act (Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3).

(b)(1) An emergency regulation adopted pursuant to amendments made to this chapter by Senate Bill 861 of the 2013–14 Regular Session shall be deemed an emergency and necessary to avoid serious harm to the public peace, health, safety, or general welfare for the purposes of sections 11346.1 and 11349.6, and the administrator is hereby exempt from the requirement that he or she describe facts showing the need for immediate action and from review by the Office of Administrative Law.”

Every attempt has been made to limit the emergency regulations for the purposes of the amendments made by SB 861. To implement a fully comprehensive Oil Spill Prevention and Response program for all waters of the state, provisions have been either added to existing regulations, or adopted as separate sections that mirror the Oil Spill Prevention and Response Program for marine waters. Additionally, language has been added or amended to make the provisions applicable to rail without triggering federal pre-emption issues.

DILIGENT ADOPTION OF PERMANENT REGULATIONS

As required for re-adoption of emergency regulations, the Office of Spill Prevention and Response (OSPR) has made substantial progress and is proceeding with diligence to comply with subdivision (e) of Government Code section 11346.1. (Cal. Code Regs., title 1, section 52(b)(1).) The following actions demonstrate OSPR’s progress toward the adoption of permanent regulations since the emergency regulations were enacted in September 2015:

- In November 2015 OSPR held a workshop in Bakersfield to seek comment regarding the emergency regulations and explain their implementation.
- From April 2016 through July 2016 OSPR has held six round table exercise meetings with the regulated community. The purpose was to explain exercise requirements to industry and get feedback. Those in attendance received credit.
- In May 2016 OSPR held two workshops, one in Playa Del Rey and one in Bakersfield, to seek comments on a draft of the proposed permanent regulations.
- In July 2016 a representative from OSPR spoke at the California Short Line Railroad Association annual meeting regarding the status of the draft regulations and took comments. Some attendees indicated they would provide additional written comments. After the meeting several short line railroads have offered to have OSPR staff observe their railroad operations; staff is currently coordinating these visits.
- In 2016 OSPR has received at least six written comment letters from industry.
- Since September 2015 staff from OSPR has met with industry representatives several times, at their request, to discuss the draft regulations.
- Staff has spent much time evaluating industry's comments, and is still analyzing a few key issues for resolution in the draft permanent language.
- The fiscal and economic impact assessments are close to complete. OSPR and the Department of Finance are meeting to discuss the analysis.
- The text of the regulations that will be submitted for formal comment and approval is very close to being finished. The Initial Statement of Reasons is concurrently being drafted.

A re-adoption of the emergency regulations will ensure that oil spill preparedness and response standards necessary to protect against a present threat to public health, safety and the environment, remain in effect while the OSPR works to complete the regular rulemaking process for permanent regulations.

There have been no changes to the text of the emergency regulation language.

As required for re-adoption of emergency regulations (Cal. Code Regs., title 1, section 52(b)(2)), there have been no material changes in emergency circumstances since the original emergency adoption of these regulations (OAL file number 2015-0825-03EFP).

Pursuant to Government Code section 11346.1(b)(2), following is the information required by Government Code section 11346.5(a)(3):

Informative Digest

OSPR is responsible for preventing, preparing for, and responding to oil spills. The program for oil spills in marine waters includes oil spill contingency planning, financial responsibility, drills and exercises, performing inspections and investigations, tracking spills, directing spill response and cleanup efforts, and determining appropriate restoration for injured wildlife and lost habitat. Current preparedness authority had been limited to activities in marine waters, and did not extend to inland preparedness activities. SB 861 (Chapter 35, Statutes of 2014) expanded OSPR's jurisdiction to all "waters of the state", and in doing so created a statewide oil spill prevention, preparedness, and response program.

This program covers all state surface waters at risk of oil spills from any source, including production facilities, pipelines and the increasing shipments of oil transported by railroads.

Among the program details that are included in emergency regulations for industry spill readiness are the following elements:

- Robust Contingency Plans
- Verification of Financial Responsibility
- Response Equipment & Capability Requirements
- Periodic Drills/Testing, to ensure readiness and competence
- Oiled Wildlife Care Network coverage for inland areas

Additionally, SB 861 deemed the adoption of regulations by the Administrator as an emergency for the purposes of the amendments made by this act (Government Code section 8670.7.5). The bill authorized the emergency regulations adopted by the Administrator to be in effect for 12 months or until the Administrator re-adopts those regulations, whichever is earlier.

Without the amendments proposed in this rulemaking, the Administrator would not be assured a company has the financial resources to pay and be adequately able to respond to an oil spill that could impact waters of the state. Therefore, the primary benefits of the proposed regulations contribute to the health and welfare of California residents, worker safety, and the State's environment, by ensuring that facilities and railroads are adequately prepared to respond an oil spill, which could potentially eliminate or mitigate the impacts of the spill on the environment.

There are no alternatives that would ensure protection of our valuable natural resources and meet the statutory requirements of Best Achievable Protection found in Government Code section 8670.3(b)(1).

The proposed emergency regulations do not differ substantially from existing comparable Federal regulations or statutes because there are no comparable federal regulations or statutes. California's requirements have more comprehensive

preparedness and oil spill response activities than the Federal government. OSPR conducted a gap analysis of the federal requirements and found shortfalls in the Federal government's requirements for sensitive site identification and protection, pre-identified and contracted/owned oil spill response equipment and personnel, Oil Spill Response Organization requirements and testing, financial responsibility requirements, and the requirements for drills and exercises.

The proposed emergency regulations are not inconsistent or incompatible with existing state regulations. State and federal agencies have regulations for prevention but very few have adequate regulations for preparedness and response.

Pursuant to Government Code section 11346.1(b)(2), the finding of emergency is based on the following:

This new statewide oil spill prevention and response program is needed because the significant increase in crude oil transport by rail is a new threat that must be addressed, but it is not the only threat. Spills also happen at all points in the lifecycle of oil – pipelines, production, trucks, and storage facilities. Inland oil spills comprise half of all pollution incidents in inland areas. In California, pipelines were responsible for 50% of all the crude oil spilled in inland areas from 2008-2013, based on data from the Office of Emergency Services. Production facilities were responsible for 41% of crude oil spilled over the same period. In California, there are more than 7,000 rail crossings and more than 5,000 pipeline crossings over waterways.

In 1990, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act) was established, and for 25 years there has been a well-developed program for preparedness for and response to marine oil spills. SB 861 (Chapter 35 of the 2013–14 Regular Session) has made this program a statewide program to protect all waters of the state. Some key elements are the establishment of minimum response times for response equipment, participation in oil spill drills and exercises, wildlife and environmental protection and restoration planning, cleanup contractor rating, and demonstration of the financial ability to pay for an oil spill.

Pursuant to Government Code section 11346.1(b)(2), the following is the reference to the authority under which the emergency regulations are proposed:

Authority: Sections 8670.7.5, 8670.37.51 through 8670.41 and 8670.58, Government Code.

Reference: Sections 8670.3 and 8670.37.51-8670.37.58 and 8670.41, Government Code.

Pursuant to 1 CCR § 20(c)(1), The following forms are incorporated by reference in these emergency regulations:

Application for Certificate of Financial Responsibility for Railroads, DFW Form 1931 (03/20/15); Application for Certificate of Financial Responsibility for Inland Facilities,

DFW Form 1932 (03/15); Surety Bond for Oil Spill Response and Damages, FG OSPR Form 1948 (3/15/15); Trust Agreement, FG OSPR Form 1961; Endorsement for Facilities- Oil Spill Liabilities, FG OSPR Form 1962 (3/16/15).

Pursuant to 1 CCR § 48, the email notice contained the following statement which is substantially similar:

Pursuant to Government Code section 11346.1, subdivision (a)(2), and California Code of Regulations, Title 1, section 52, at least five working days prior to submission of the proposed readoption to OAL, notice must be provided to every person who has filed a request for notice of regulatory action with OSPR. After submission of the proposed readoption to OAL, any interested person will have five (5) calendar days to submit related comments to OAL as set forth in Government Code section 11349.6. Also upon submission, OAL will have ten (10) calendar days within which to review and make a decision on the proposed readoption.

If you wish to comment on this proposed temporary readoption of these emergency regulations, you must submit the comment directly to OAL within five calendar days of OAL's posting of the proposed readoption on the OAL website. You may submit comments on the proposed readoption to OAL at:

Office of Administrative Law
OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
E-mail: staff@oal.ca.gov

When you submit a comment to OAL, you must also submit a copy of your comment simultaneously to OSPR:

Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, CA 95811
E-mail: OSPRRegulations@wildlife.ca.gov

OAL will confirm that OSPR has received the comment before considering it. Pursuant to California Code of Regulations, title 1, section 55, subdivision (b)(1) through (4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency.

Adoption of emergency regulations does not require response to submitted comments. Any response to comments from OSPR will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable.

Any questions regarding this proposed emergency regulatory action may be directed to OSPRRegulations@wildlife.ca.gov or by calling Christine Kluge at the Office of Spill Prevention and Response at (916) 327-0910.

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(4):

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(5):

The proposed regulations do not impose a mandate on any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)).

Pursuant to Government Code section 11346.1(b)(2), the following is the information required by Government Code section 11346.5(a)(6):

The proposed regulations do not impose any costs or generate any savings to any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4. There are no nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the state. The proposed regulations do not affect any state agency or program.

Pursuant to Government Code section 11349(f) and 1 CCR § 12, the following is the information required by 1 CCR § 12:

The proposed regulations duplicate and/or rephrase/ statute and existing rules to satisfy the clarity and consistency standards of the Administrative Procedures Act. Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Act. Where the statute is made specific or interpreted, an explanation regarding why the proposed rule is reasonably necessary to carry out the purpose and to address the problem for which is it proposed is provided.