

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

**TITLE 14. CALIFORNIA CODE OF REGULATIONS
OIL SPILL CONTINGENCY PLANS
Drills and Exercises – Inland Facilities
Section 820.02**

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) proposes to adopt section 820.02 of subdivision 4 of title 14 of the California Code of Regulations. This section pertains to the Drills and Exercise Requirements for Inland Facility Oil Spill Contingency Plans. OSPR invites interested persons to present comments, statements, or arguments with respect to the regulations at the scheduled hearings or during the written comment period.

PUBLIC HEARINGS

OSPR will hold two public hearings **at the following designated dates, times and locations**. These facilities are wheelchair accessible. At the public hearings, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. OSPR requests, but does not require that persons who make oral comments at the hearings also submit a written copy of their testimony at the hearings.

Date: Tuesday, February 13, 2018
Time: 9:00 a.m. – 12:00 p.m.
Location: Natural Resources Building Auditorium
1416 9th Street
Sacramento, CA 95814

Date: Thursday, February 22, 2018
Time: 1:30 p.m. – 4:30 p.m.
Location: Associated Builders & Contractors
19466 Flight Path Way
Bakersfield, CA 93308

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 5:00 p.m. on February 22, 2018. All written comments must be received by OSPR by then in order to be considered. Written comments may be submitted at either of the hearings or by mail, fax, or e-mail, as follows:

Department of Fish and Wildlife
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, California 95811
Fax: (916) 324-5662
E-mail: OSPRRegulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Government Code section 8670.10 and 8670.29 grants the Administrator of OSPR the authority to adopt regulations and guidelines for the proposed regulations and the authority to carry out announced and unannounced drills and exercises to test the elements of an oil spill contingency plan. The proposed regulations implement, interpret and make specific Government Code sections 8670.10, 8670.28, 8670.29, 8670.30, and 8670.31.

INFORMATIVE DIGEST and POLICY STATEMENT OVERVIEW

Summary: The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) of 1990 requires every owner or operator of a facility or vessel with an oil spill contingency plan to participate in tabletop exercises and equipment deployment drills to test the elements of their oil spill contingency plan. (Government Code section 8670.29(b)(9)) These exercises and drills prepare them for response to oil spill threats they potentially pose to marine waters. OSPR currently has requirements for tabletop exercises and equipment deployment drills for marine facilities and vessels. (Title 14, CCR section 820.01)

In 2014, Senate Bill 861 was signed by the Governor and took effect immediately. The bill expanded the OSPR marine oil spill preparedness and response program to cover all state surface waters, thus expanding the drills and exercise requirements to also apply to operators of facilities that pose an oil spill threat to *inland* surface waters. These inland operators generally consist of production facilities and oil wells, pipelines, terminals, railroads, and inland refineries.

Pursuant to Senate Bill 861, OSPR initiated emergency rulemaking approved on September 3, 2015 (OAL #: 2015-0825-04EFP). These regulations were readopted on September 1, 2016, and again on August 7, 2017 (OAL #'s: 2016-0822-01EFP and 2017-0727-05EFP, respectively). OSPR is initiating this regular rulemaking action to formally adopt the requirements for inland facilities to initiate and participate in tabletop

exercises and equipment deployment drills to prepare for and respond to oil spills into inland waterways.

OSPR is also initiating regular rulemaking on regulations significantly interrelated to this rulemaking. Those proposed regulations were also emergency rulemakings approved in the fall of 2015, and readopted in 2016 and 2017. They are for Oil Spill Contingency Plans and Definitions & Abbreviations; for Certificates of Financial Responsibility; and for Inland Ratings of Oil Spill Response Organizations. These other packages are also implementing legislative changes by Senate Bill 861.

Policy Statement Overview and Anticipated Benefits of the Proposed Action:

Adoption of these regulations will implement, interpret, and add specificity not found in the Act, as it relates to the drills and exercises requirements of inland facilities that pose a threat of an oil spill to inland waters of the state.

The proposed regulations ensure that inland facility owners and operators are adequately trained and prepared to respond an oil spill in waters of the state, which could potentially eliminate or mitigate the impacts of the spill on the environment. This helps ensure that OSPR is meeting the statutory requirements of Best Achievable Protection found in Government Code section 8670.3(b)(1) and further strengthens the immediate and ongoing protective standards for California's inland natural resources in response to threats of oil spills to inland surface waters.

The proposed regulations will distinguish inland facility drills and exercise standards from marine standards. It would also identify the inland riparian environments (which differ from the ocean and coastal shorelines) that are now part of OSPR's statewide oil spill planning, preparedness and response program. Examples of such inland waterways consist of lakes, rivers, streams, wetlands, but also dry washes. As a result, these regulations differ in discrete ways from the preexisting regulations for the marine environment.

Evaluation of Inconsistency or Incompatibility with Existing Regulations

The proposed regulations are not inconsistent or incompatible with existing state regulations. No other state agency has equipment deployment drill or tabletop exercise requirements to prepare for oil spill response.

The proposed regulations are similar to but do not conflict with federal regulations. The National Preparedness for Response Exercise Program (NPREP) was developed in 1990 to establish an exercise program for spill response preparedness pursuant to Section 1321(j)(6) and (7) of Title 33 of the United States Code. However, states are not preempted from building upon NPREP, which OSPR has done since the mid-1990's. OSPR's requirements generally are more thorough than the federal requirements.

OSPR works closely with federal counterparts, such as the U.S. Coast Guard, the U.S. Environmental Protection Agency (EPA), and the U.S. Bureau of Safety and Environmental Enforcement. OSPR, the U.S. Coast Guard, and U.S. EPA conduct tabletop exercises and equipment deployment drills with plan holders on average several times a month.

DOCUMENTS INCORPORATED BY REFERENCE

The following forms, hereby incorporated by reference, are available on OSPR's website and upon request.

- Request for Drill/Exercise Credit – Inland Facilities Form (DFW 1973) 06/05/17

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 or school districts which must be reimbursed in accordance with part 7, division 4 (commencing with section 17500) of the Government Code: None

(d) Other non-discretionary costs or savings imposed upon local agencies: None

(e) Costs or savings in federal funding to the state: None

(f) Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None

(g) Cost impacts on representative private persons or businesses: 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.

(h) Effect on small business: None

(i) Significant effect on housing costs: None

(j) Business Reporting Requirement: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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*

No, this is not a major regulation.

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

While there may be a slight increase in jobs for providers of services for oil spill planning, spill management, exercise planning, and spill cleanup, OSPR does not anticipate this regulation will result in significant creation or elimination of jobs within the State of California.

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

Will not result in the creation of new businesses or the elimination of existing businesses within the State of California.

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

Response planning consultants, spill management teams, and oil spill response companies may expand in order to assist the operators who must comply with these regulations, however, there is no foreseeable significant expansion of businesses currently doing business within the State of California.

- *Benefits of the regulation to the health and welfare of California residents, worker safety, and the State’s environment*

Will provide benefits to the health and welfare of California residents, worker safety, and the state's environment by ensuring that there is pre-identified equipment, adequately trained and prepared staff to respond to an oil spill in all waters of the state, which could potentially eliminate or mitigate the impacts of the spill on the environment. Additionally, being prepared with the knowledge of environmentally

sensitive areas identified through the process of drills and exercises leads to implementing protection strategies more quickly during a spill.

- Effect on small business

None, as none of the businesses affected are small businesses as described and defined by sections 11346.3(b)(4)(A) or 11342.610 of the Government Code.

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.

The requirement to initiate and participate in tabletop exercises and equipment deployment drills for a potential oil spill into surface waters within California is required by statute. Thus, there are no reasonable alternatives to this regulatory action.

OSPR invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearings or 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. As of the publication date of this notice, the rulemaking file consists of this notice, the proposed text of the regulations, any forms incorporated by reference, and/or documents relied upon, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statement (STD Form 399). Please direct requests for copies of the rulemaking file to the following:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Christine Kluge
1700 K Street, Suite 250
Sacramento, California 95811
Phone: (916) 327-0910
Email: Christine.Kluge@wildlife.ca.gov

The backup contact person is:

Department of Fish and Wildlife
Office of Spill Prevention and Response
Attention: Dan Warren
1700 K Street, Suite 250
Sacramento, California 95811
Phone: (916) 324-0173
Email: Daniel.Warren@wildlife.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The entire rulemaking file can be accessed at:

<http://www.wildlife.ca.gov/OSPR/Legal/Proposed-Regulations/Drills-Exercises>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings 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, it will make the modified text (with the changes clearly indicated) 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 and copies may be requested from the contact person named in this notice, or may be accessed on OSPR's website indicated above.

END