

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

**TITLE 14. CALIFORNIA CODE OF REGULATIONS
DEFINITIONS & ABBREVIATIONS
and
INLAND FACILITY OIL SPILL CONTINGENCY PLANS
Section 790
Section 817.04**

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 regulations to amend section 790 and adopt section 817.04 in subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to the General Definitions and Abbreviations as well as the Oil Spill Contingency Plans for Inland Facilities. 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 the 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 sections 8670.7.5, 8670.28 and 8670.29 directs the Administrator of OSPR to adopt regulations and guidelines for the proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.7, 8670.7.5, 8670.10, 8670.13.1, 8670.13.2, 8670.17.2, 8670.23.1, 8670.28, 8670.29, 8670.30, 8670.31, and 8670.35.

INFORMATIVE DIGEST

Summary: The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) of 1990 requires operators of certain facilities and large vessels to have an oil spill contingency plan for potential oil spill threats they pose to the marine waters.

In 2014, Senate Bill 861 was signed by the Governor and took effect immediately. The bill expanded OSPR's marine oil spill preparedness and response program to cover all state surface waters, thus expanding the contingency plan 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 #: 2015-0825-05EFP). These regulations were readopted on September 1, 2016, and again on August 7, 2017 (OAL #'s: 2016-0822-03EFP and 2017-0727-04EFP, respectively). OSPR is initiating this regular rulemaking action to formally adopt amendments to the definitions section and to promulgate a contingency plan regulation for inland facilities.

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 Certificates of Financial Responsibility (14 CCR §791-798); for Inland Facility Drills and Exercises (14 CCR §820.02); and Inland Ratings of Oil Spill Response Organizations (14 CCR §819-819.07). These other packages are also implementing legislative changes by Senate Bill 861.

POLICY STATEMENT OVERVIEW

Adoption of these regulations will implement, interpret, and provide specificity not found in the Act, will distinguish inland planning standards from marine standards, and provide much needed cleanup and clarification.

General Definitions and Abbreviations (section 790)

The definitions section was first enacted in 1991. The amendments to the definitions in Section 790 are included in this rulemaking to avoid the definitions being their own separate rulemaking and are combined with the contingency plan changes simply for efficiency. Adoption of the proposed amendments to the definitions regulations will generally:

- Delete unnecessary terms.
- Move definitions from other sections to consolidate them into section 790
- Cleanup terms for clarity, consistency, and uniformity (e.g. capitalization, punctuation, consistent use of terms or phrases, etc.).

Inland Facility Oil Spill Contingency Plans (section 817.04)

This new section for contingency plan requirements for inland facilities is modeled from the current contingency plan requirements for marine facilities and vessels. Adoption of the proposed inland contingency plan regulations will generally:

- Describe the scope and purpose of the inland oil spill contingency plan requirements for inland operators. This is necessary because this is a new mandate.
- Specify which operators are required to comply, and which are not.
- Provide exemptions for those operators for whom these requirements would otherwise apply.
- Allow an operator with multiple facilities to submit a single contingency plan that covers all operations, commonly referred to as a “blanket plan”.

- Describe in detail the content of the plan, and the required timeframes for spill response resources to arrive.
- Clarify spill reporting requirements.
- Describe the requirements for handling oiled wildlife.
- Clarify the requirement of the use of the incident command system, the use of federal area contingency plans, and geographic response plans.
- Provide that plan holders must participate in oil spill exercises and drills.
- Describe enforcement and compliance options available to the if the contingency plan requirements are not followed. This provides due process to the plan holder.

ANTICIPATED BENEFITS OF THE PROPOSED ACTION

General Definitions and Abbreviations (section 790)

The benefit of amending this section is primarily to consolidate all definitions that are widely used in subdivision 4 into one section and to clean up terms for clarity, consistency, and uniformity (e.g., capitalization, punctuation, consistent use of terms or phrases, etc.). This also eliminates the duplication of terms in multiple sections potentially creating scenarios where a term in one section might be updated, but unintentionally overlooked in another section, which would cause considerable confusion.

Oil Spill Contingency Plans (section 817.04)

Government Code sections 8670.28 and 8670.29 direct the OSPR Administrator to adopt regulations regarding oil spill contingency plans, providing for the best achievable protection of waters and natural resources of the state. In enacting this program, the Legislature found that each year billions of gallons of crude oil and petroleum products are transported by vessel, railroad, truck, or pipeline over, across, under, and through the waters of this state. Oil spill accidents can be a significant threat to the environment of sensitive areas. California's lakes, rivers, other inland waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill. A major oil spill in state waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage. These regulations ensure oil spill contingency plans are in place to facilitate quicker, more efficient response to oil spills into inland waters.

Evaluation of Inconsistency or Incompatibility with Existing Regulations

The proposed regulations are not inconsistent or incompatible with existing state regulations. OSPR has the most robust requirements for oil spill response planning, preparedness, and actual response.

There are federal regulations about contingency plans for oil spills. However, the California requirements are not preempted by federal law. And the California requirements are different from the federal law, such as reliance on an oil spill response organization that has been rated by OSPR and exercise of the plan through OSPR-specific exercise objectives. OSPR is not preempted from promulgating these regulations.

Some state and federal agencies have regulations for prevention of spills, but OSPR does not regulate prevention of spills from facilities.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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:* The proposed action will not have a significant statewide adverse economic impact directly affecting business, or affect the ability of California businesses to compete with businesses in other states.

(h) *Cost a representative private person or business would necessarily incur in reasonable compliance:* 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.

(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

No, this is not a major regulation.

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

These regulations may result in additional business activity (e.g. the use of contractors). Planning consultants, oil spill response organizations, and spill management teams may hire additional staff in order to assist the operators who must comply with these regulations. This effect, however, is likely to be very small given the small number of companies affected.

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

See the response to the previous question regarding the creation or elimination of jobs.

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

Planning consultants that prepare contingency plans, oil spill response organizations that respond to oil spills, and spill management teams that oversee oil spill response may expand in order to assist the operators who must comply with these regulations.

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

These regulations ensure a minimum level of resources will be used to cleanup oil spills in inland waterways, thus benefiting the communities affected by a spill.

- Benefits of the regulation to worker safety

Oil spill contingency plans must include an organizational structure to safely manage response to oil spills thereby enhancing worker safety.

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

Oil spill contingency plans ensure that the operators have pre-identified a competent cleanup contractor and a spill management team to promptly respond to an oil spill. The regulations establish planning standards for a minimum amount of equipment to arrive on-scene by a certain time. Plans must also identify response strategies for the waterways they pose a risk to. Thus, these regulations protect the environment by promoting a pre-planned response to an oil spill.

- *Business Reporting Requirement*

OSPR finds that it is necessary for the health, safety, or welfare of the people of this state that proposed section 817.04 which requires a report, apply to businesses.

- *Effect on small business:*

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 oil spill contingency plan requirements are created by statute, and are required to be implemented by OSPR. There are no reasonable alternatives. 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. As of the publication date of this notice, the rulemaking file consists of this notice, the proposed text of the regulations, 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/Contingency-Plans>

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.