

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

**TITLE 14. CALIFORNIA CODE OF REGULATIONS  
OIL SPILL RESPONSE ORGANIZATION RATINGS  
Sections 819 – 819.07**

**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 819, 819.01, 819.02, 819.03, 819.04, 819.05, 819.06, and 819.07 of subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to the ratings of Oil Spill Response Organizations. 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 hearing also submit a written copy of their testimony at the hearing.

Date: Tuesday, February 13, 2018  
Time: 9:00 a.m. – 12:00 p.m.  
Location: Natural Resources Building Auditorium  
1416 9<sup>th</sup> 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](mailto:OSPRRegulations@wildlife.ca.gov)

### **AUTHORITY AND REFERENCE**

Government Code sections 8670.7.5, 8670.28, 8670.30 grants the Administrator of OSPR the authority to adopt regulations and guidelines for these proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.7.5, 8670.28, 8670.30, and 8670.56.6.

### **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. These plan holders must identify a cleanup contractor; the contractors are known as oil spill response organizations (OSRO). In 2001, Assembly Bill 715 was enacted to give the OSPR Administrator authority to directly regulate the capabilities of cleanup contractors for oil spill response. (Government Code section 8670.30) The plan holders then became required to contract with an OSRO that had been rated by the Administrator of OSPR. (Government Code section 8670.29(b)(6))

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 OSRO rating program to protect inland surface waters from potential oil spills. The existing OSRO rating system establishes minimum equipment and response times for responding to an oil spill in marine waters. However, inland waterways, consisting of lakes, rivers, streams, wetlands, and dry washes, are very different from the ocean and coastal shorelines. These regulations would establish ratings within the newly developed Response Planning Areas, and establish a “terrestrial” rating for addressing spills to waterways that are dry most of the time, such as dry washes.

Pursuant to Senate Bill 861, OSPR initiated emergency rulemaking approved on October 12, 2015 (OAL #: 2015-1002-05EFP). These regulations were readopted on October 4, 2016, and again on August 7, 2017 (OAL #'s: 2016-0927-03EFP and 2017-0727-06EFP, respectively). OSPR is initiating this regular rulemaking action to formally adopt amendments to implement the OSRO rating provisions of Senate Bill 861.

OSPR is also initiating regular rulemaking on regulations significantly interrelated to this rulemaking. Those proposed regulations were also emergency rulemakings approved in September 2015, and readopted in 2016 and 2017. They are for Oil Spill Contingency Plans and Definitions & Abbreviations (14 CCR §817.04 and §790); Inland Facility Drills and Exercises (14 CCR §820.02); and Certificates of Financial Responsibility (14 CCR §791-798). These other regulatory 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 provide specificity not found in the Act, and will distinguish inland response planning standards from marine standards, and provide much needed cleanup and clarification.

Building upon OSPR's existing marine OSRO rating program, these regulations will establish minimum equipment and response capability guidelines for oil spill response organizations for responding to an oil spill in the inland dry and wet terrain and would establish a "terrestrial" rating system, which is necessary for plan holders who pose a risk to waterways which are dry most of the year.

The benefits of the proposed regulations ensures there are oil spill cleanup contractors with the knowledge and skills to be ready for fast, effective response inland surface waters. Ultimately, these regulations will protect the state from incurring greater environmental damage, than if this program did not exist.

### **Evaluation Of Incompatibility With Existing Regulations**

The proposed regulations are not inconsistent or incompatible with existing state regulations. OSPR is the only California state agency implementing an oil spill response organization rating program. The proposed regulations do not duplicate or conflict with federal regulations. The U.S. Coast Guard has recently started administering a similar program to "classify" oil spill response organizations. However, the U.S. Coast Guard's program is different; OSPR's regulations generally are more comprehensive or protective than the federal requirements. Further, OSPR is not preempted from promulgating these regulations.

## **DETERMINATIONS REGARDING THE PROPOSED ACTION**

OSPR has made the following determinations, as required by Government Code §11346.5(a)(5), (6), (7), (9) and State Administrative Manual §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) Significant effect on housing costs:** None

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

Pursuant to Government Code §11346.2 and §11346.3, and State Administrative Manual §6601, with regard to the proposed regulations, OSPR determines the following:

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

By creating a certification regime through the rating of OSROs, OSPR is creating a stable market opportunity in which companies may participate and provide a service defined and approved by OSPR. This will likely lead to more OSROs, and more associated jobs, than without the regulations.

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

See the answer above. By creating an OSRO rating system, OSPR is defining a service that business may provide, in turn likely leading to the creation of more business than would otherwise exist without the regulations.

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

By expanding from a pre-existing OSRO rating system in the marine environment, OSPR is aware of some OSROs expanding inland, obtaining an inland rating, and thus expanding their business.

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

Having requirements for ratings, which include resources and timelines, will ensure that OSRO's contracted for inland oil spill response are capable of providing appropriate and timely response to oil spills that could impact waters of the state. Therefore, by ensuring that OSRO's are adequately prepared, potentially eliminates or mitigates the impacts of the spill on the environment, in turn, benefits the health and welfare of California residents, worker safety, and the state's environment.

- *Small business determination*

OSPR anticipates no effect on small businesses, as defined by Government Code section 11342.610.

### **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.

Statute requires an oil spill contingency plan to list at least one rated OSRO. Cleanup companies voluntarily submit to the program to be rated. OSPR is required to develop and implement the rating program. There are no regulatory 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 1700 K Street, Sacramento, CA 95811. 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](mailto: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](mailto:Daniel.Warren@wildlife.ca.gov)

## **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 below.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The entire rulemaking file can be accessed at:

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

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