

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

**INITIAL STATEMENT OF REASONS
Including
ECONOMIC IMPACT ASSESSMENT
to
Amend Sections 819 - 819.07
to
Title 14, California Code of Regulations
Regarding Oil Spill Response Organization Ratings**

Date of this Initial Statement of Reasons: December 19, 2017

I. Description of Regulatory Action

(a) General Background

The California Department of Fish and Wildlife (Department), Office of Spill Prevention & Response (OSPR) is proposing to adopt through this regular rulemaking the criteria for oil spill cleanup contractors to be rated by the Administrator of OSPR for providing oil spill cleanup capabilities in all surface waters, not just marine waters. This is to implement statutory changes made in 2014.

In 2014, Senate Bill 861 was signed by the Governor and took effect immediately. It created a statewide oil spill prevention, preparedness, and response program by expanding the long-standing marine program to apply to all surface waters of the state. This bill authorized the Administrator of OSPR to promulgate emergency regulations to implement this program to protect inland surface waters. Senate Bill 861 provided that the emergency regulations would be valid for 12 months.

An emergency rulemaking action for oil spill response organization (OSRO) ratings was approved by the Office of Administrative Law on October 12, 2015 (OAL #: 2015-1002-05), which amended title 14, sections 819.01 through 819.07, of the California Code of Regulations. As emergency regulations, they did not go through the formal comment process. These emergency regulations were readopted on October 4, 2016 (OAL #: 2016-0927-03EFP), and again on August 7, 2017 (OAL #: 2017-0727-06). OSPR is initiating this regular rulemaking action to formally adopt these regulations.

(b) Background of Rating the Capabilities of OSROs

In 1991, the *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) was enacted. It required operators of certain facilities and large vessels to have an oil spill contingency plan for potential oil spills to marine waters (e.g. ocean and tidally

influenced waters). Since the early 1990's OSPR has had regulations implementing these requirements. These plan holders have been required to identify a cleanup contractor in their contingency plans. In those early years the capabilities of the cleanup contractors varied by company; their availability to participate in equipment deployment drills, tabletop exercises, and actual spills was uncertain.

In 2001, Assembly Bill 715 was enacted giving the OSPR Administrator authority to directly regulate the capabilities of cleanup contractors for oil spill response; these contractors are known as oil spill response organizations (OSRO). (Government Code section 8670.30) Plan holders are required to contract with an OSRO that has been rated by the Administrator of OSPR. (Government Code section 8670.29(b)(6)) As a coastal program at the time, the ratings focused on cleanup capabilities in marine waters.

With the passage of Senate Bill 861 in 2014, the OSRO rating regulations need revision to expand ratings for cleanup capabilities of OSRO's operating in inland waterways.

II. Problem the Regulatory Action Intends to Address [Gov. C. §11346.2(b)(1)]

The existing OSRO rating system only establishes minimum equipment and response times for responding to an oil spill in marine waters. The Administrator must promulgate these regulations to establish OSRO ratings for equipment and response times for inland dry and wet waterways.

The proposed regulations build upon the existing OSRO rating regulations. However, inland waters are very different from the ocean and coastal shorelines. Inland waterways consist of lakes, rivers, streams, wetlands, and dry washes. Also, the terrain in the interior part of the state ranges from flat dry areas like the Central Valley and Mojave Desert, mountainous areas like the Sierra Nevada range, and several key rivers such as the Sacramento River, the Feather River, and the Colorado River. Thus, these regulations establish ratings for 6, 12, and 24 hours 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.

This package is also an opportunity to perform much needed cleanup and clarification of these sections.

This regulations package should be read in context with two other concurrent regulation packages: Contingency Plans and Definitions (OAL readopt #: 2017-0727-04EFP), and Equipment Deployment Drills & Table Top Exercises (OAL readopt #: 2017-0727-05EFP). These other packages are also implementing legislative changes by Senate Bill 861.

III. Purpose, Rationale, and Necessity for the Amendment, Addition, or Repeal of the Regulations [Gov. C. §11346.2(b)(1)]

Government Code section 8670.30(k) directs the OSPR Administrator to adopt regulations to establish minimum requirements for OSROs. The proposed regulations implement, interpret, and make specific Government Code section 8670.30 as relevant to inland facilities that could impact inland waters. The proposed amendments to existing regulations are necessary to provide specificity not found in the Act, and to distinguish inland planning standards from marine standards. However, it is anticipated that in a year or two the marine planning regulations and the inland planning regulations will be consolidated for increased consistency.

As mentioned above, OSPR is initiating this regular rulemaking action to formally adopt the OSRO rating amendments. This version of sections 819 through 819.07 is different from the emergency regulation version. OSPR has gained valuable feedback from industry and staff experience from implementing these new mandates.

The sections below set forth a discussion of the specific purpose for the amendments to sections 819 through 819.07 and why each amendment is reasonably necessary to carry out the purpose and address the problem for which it is proposed. (Refer to the text of the proposed regulations)

New Subchapter – *Subchapter 3.5. Oil Spill Response Organization Ratings*

These sections would be designated as a new subchapter 3.5. The content of the rating program is distinct from contingency plan requirements. OSROs are a segment of the private sector distinct from the actual plan holders (who are vessel and facility owners and operators).

General Changes

- Revisions for grammar, readability, brevity.
- Capitalization – some words or phrases have been changed to lower case for consistency.
- Acronyms generally have been spelled out.
- The term “response resources” has replaced some word or phrases, because it is a defined term referring to equipment and personnel. This is for consistency.
- The term “discharge” changed to “spill” for consistency; they have the same meaning.

Section 819. Purpose & Scope

Previously this section had no content. It now is about purpose and scope. The content of subsections (a) and (b) is derived from section 819.01.

Subsection (a)

Subsection (a) explains what the rating program is about.

The essence of subsection is moved here from section 819.01, and is revised to state that ratings are about the capability of cleanup companies. This states the unstated – the purpose of the OSRO rating program has always been to provide critical evaluation of the ability of a cleanup company to do what it asserts it can do at an oil spill.

Subsection (b)

Subsection (b) explains how a plan holder may rely on a rated OSRO to meet contingency plan requirements.

The essence of the last two sentences of subsection 819.01(a) are incorporated here in (b). This subsection explains that plan holders can rely on rated OSROs instead of acquiring and owning their own equipment or having their own responders. And this lets the OSRO know that they are expected to accomplish what the plan holder would otherwise have to accomplish. The concept of “containment” is used instead of “booming”, because stopping the flow of oil may be accomplished by methods other than booming, such as building a berm. The concept of “recovery” encompasses recovery from either spills to land, such as in a dry wash, as well as is “on-water” spills.

Section 819.01. Oil Spill Response Organization (OSRO) Ratings.

Much of subsections (a) and (b) have been moved to section 819 for better organization, and is deleted as unnecessary or redundant. The remaining subsections, have been renumbered accordingly, and include new subsections relocated here from other sections within this subchapter for better organization.

New subsection (a)

Subsection (a) specifies that an OSRO may seek a rating, and the types of ratings for which an OSRO may apply.

New subsection (a) explains the categories for which ratings will be issued. In reality, this is simply articulating what has been occurring for years regarding marine ratings, but had not been quite so expressly stated in the regulations. This subsection also explains there is a rating category for “terrestrial” cleanup, which is relevant to plan holders who pose a risk to inland waterways that are dry most of the year, and a rating for inland on-water recovery. Both of these are new since 2014.

New subsection (b)

Subsection (b) explains that ratings are location based and environment based. New subsection (b) is moved here from the second half of section 819.02(a) for better organization.

Statutory provisions require the Administrator to establish response times and equipment types (Government Code section 8670.28(a)(6)). Ratings are issued based on services within an area contingency plan or the newly developed response planning area. The response planning area is a new planning concept created for non-marine planning and OSRO ratings, and is defined in section 790.

This subsection also provides the four environments for which ratings are issued, two of which are new for inland plan holders. California's physical geography is diverse, ranging from the dry flat oil field regions of the southern San Joaquin Valley, to the steep and narrow Feather River Canyon, to snow covered frozen areas like Donner Lake and the Truckee River, to 3,000+ miles of coastline (according to the National Oceanic and Atmospheric Administration). Thus, there is a need to distinguish requirements for cleaning up spills primarily to dirt (i.e. dry waterways), versus on-water cleanup in rivers, lakes, and the ocean, versus protecting specific environmentally sensitive sites in shoreline or riparian habitat.

Because oil spilled on dry land spreads slower than on water and is much easier to cleanup, it is reasonable to require facilities that pose a risk to waterways that are "dry" most of the year to have lesser equipment requirements. This is referred to as terrestrial cleanup capability. Thus, an OSRO can request a rating to provide terrestrial services, and can develop their capabilities and services based on the location of the plan holders for whom the OSRO wants to provide services.

The distinction regarding inland water at a depth of at least three inches was developed for contingency plan holders. Three inches was chosen as the minimum depth because common containment boom with the shortest skirt is three inches. Water that is less than three inches deep would not support traditional on-water cleanup equipment such as containment boom, skimmers, and boats. However, regardless of this planning requirement, any facility that spills into a waterway that has on-water impacts will be responsible for accomplishing on-water cleanup even if on-water recovery was not part of their plan.

A half-year division (182 days) is a distinct, reasonable, and clear way of indicating which inland facilities need to plan for on-water cleanup and which facilities only need to plan for terrestrial cleanup. Plan holders that pose a threat to waterways that are dry most of the year (e.g. dry washes) only need capabilities to address cleanup in a dry environment; plan holders that pose a threat to waterways that are wet most of the year will have different requirements.

There have not been terrestrial cleanup planning standards for marine facilities and vessels because the main threat of a marine oil spill is a release directly into ocean waters, such as by shore-to-vessel oil transfers or spills from vessels at sea. However, terrestrial planning concepts are modeled from the core marine elements for minimum containment, recovery, and storage equipment and response times. Although the ocean and a dry wash are different habitat types, the core response elements are the same.

New subsection (c)

New subsection (c) allow as an OSRO with a current on-water rating to add a terrestrial rating, or vice versa.

This makes clear that an OSRO can be rated for either or both on-water and terrestrial ratings.

New subsection (d)

New subsection (d) establishes the soonest time that an rated OSRO may start providing rated services for a plan holder. This is from former subsection 819.02(a); it is moved here for better organization. Substantively, this is not new.

Subsection (d) indicates when an OSRO without a rating needs to submit an application for a rating in order for plan holders to list the OSRO as providing services. Calendar days is chosen for consistency with other application timeframes in OSPR's regulations. Ninety days will give OSPR staff a reasonable amount of time to review the application, conduct inspections if warranted, and conduct an unannounced equipment deployment drill on the OSRO.

New subsection (e) / formerly subsection (c)

Former subsection (c) is renumbered to (e) and clarified.

Substantively this subsection is not changed. This subsection is clarified to better explain that in anticipation of circumstances where the Administrator would need to hire a contractor to perform cleanup, only rated OSRO's will be considered for pre-spill call-out agreements. Previously, this information would only have been known by referring to the Government Code section that is referenced in this subsection.

New Subsection (f)

New subsection (f) states how long a rating is valid for. This is from subsection 819.02(a). It is moved here for better organization. Substantively, this is not new.

Subsection (f) indicates how long a rating lasts before it expires and must be renewed. For clarity it is necessary to state the expiration date of a rating. The three year period is set by Government Code section 8670.30(d).

New subsection (g) / formerly subsection (b)

Prior subsection (b) is renumbered to (g). No substantive revisions.

Authority

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities. Subsections (j)(1) of section 8670.56.6 are removed from both the Authority and Reference as unnecessary and to avoid confusion in the event of future changes to the statute.

Section 819.02. Oil Spill Response Organization Rating Application Content.

This section is about the information that must be submitted to apply for a rating.

The revisions to the section remove extraneous provisions in order to narrow its focus to be about the application itself.

Subsection (a)

Subsection (a) simply provides the application must be written, and how it shall be delivered.

This provides the options for an OSRO to submit an application. Also, much of the initial text of (a) has been moved to section 819.01 for better organization.

New Subsection (b)

New subsection (b) is created out of (a) because the provisions are distinct from the purpose of (a). The text has been updated for capitalization; and terms have been updated for consistency. These changes are non-substantive.

Subsection (b) indicates the basic information that must be in a rating application in order for the application to be ready for consideration by the Administrator. The requirement for an email address is that email seems to be the preferred mode for communication and exchange of documents.

Renumbered subsection (c) / Formerly (b)

Subsection (b) is renumbered to (c). Substantively, most of (c) is not new; it has largely been revised for grammatical reasons.

The initial paragraph is revised to include the new Response Planning Areas with Area Contingency Plans; each of these “areas” has different requirements. As stated above, ratings are issued by area. The phrases “response equipment and personnel” and “company owned/employee” are replaced with the defined terms.

The provisions about dedicated resources within the first six hours are deleted because they are redundant; resource dedication is covered in section 819.04(a)(1)(A)(B)(C) and (2) [former section 819.04(b)].

The subsection also distinguishes between the need for dedicated resources for on-water ratings, but not for a terrestrial rating. Terrestrial equipment does not need to be

dedicated because it likely is already on the property, spills to ground generally are slower moving, and the equipment can arrive within six hours.

The term “response resources” is replacing “equipment and personnel” because it is a defined term that includes equipment and personnel.

The numbered subsections are corrected for capitalization, consistency, and clarity.

Subsection (c)(2) is about the skimming system. The concept of “system” has been required for years as described in detail at (e)(3), formerly (d), and is required by Government Code section 8670.13(b)(2). Edits regarding vessels focus on skimming capability built into a vessel, and deletes information about the vessel itself because that is redundant to (c)(3). Paragraph (L) is added to collect information about vacuum trucks because they are a form of skimming capability; information about vacuum trucks has been collected in the past but is being formalized here.

Subsection (c)(3) is about vessels used for response. It has edits for capitalization, spelling out acronyms, and grammar. The registration number and International Maritime Organization (IMO) numbers are needed for OSPR staff to track which pieces of equipment (i.e. vessels) have been inspected or drilled in an equipment deployment drill. Former (D) is deleted as unnecessary – OSPR does not need registration records with the application; retention of registration records is addressed at 819.03(b)(1). Edits at new (D) add the intended use or purpose for the response vessel in the designated environments; this helps determine whether the appropriate equipment has been identified for the task. At (F) the ability to tow is re-characterized as capability and capacity to tow, as more useful indicators of how a vessel will be used. Paragraph (H) is added to capture the volume of liquid that can be stored on-board; plan holders need to hire OSROs that can bring the minimum required storage amounts.

Subsection (c)(4) has historically been about barges and onboard tanks; these revisions are making that clear. This information has information has been collected in the past but is being formalized here. Paragraph (E) is deleted as unnecessary, OSPR does not need registration records with the application; retention of registration records is addressed at 819.03(b)(1).

New subsection (c)(5) details the information required for a terrestrial rating. This is new for purposes of implementing SB 861. It provides examples of the types of equipment that would be appropriate for cleaning up oil spilled within a dry waterway.

New subsection (c)(6) details the information required for a shoreline protection rating. The substance of (6) is not new; it is stated here for consistency. Shoreline protection as a service is discussed in section new 819.04(e)/former 819.04(d)(4)(A)(4). OSPR would have required this information prior to issuing a shoreline protection rating.

New subsection (c)(7) / Formerly (c)(5)

Subsection (c)(5) is renumbered to (c)(7). The number 3 is spelled out. The acronym “OSPR” is eliminated and spelled out.

New subsection (c)(8) / Formerly (c)(6)

Subsection (c)(6) is renumbered to (c)(8). The phrase “Geographic Region” is replaced with “area contingency plan or response planning area” for consistency.

This paragraph deletes the term “Geographic Region,” which was an incomplete concept, and adds response planning area to comply with SB 861.

New subsection (c)(9) / Formerly (c)(7)

Subsection (c)(7) is renumbered to (c)(9), and has a non-substantive grammatical edit.

New subsection (c)(10) / Formerly (c)(8)

Subsection (c)(8) is renumbered to (c)(10). Grammatical and consistency edits.

The phrase “Geographic Region” is replaced with “area contingency plan or response planning area” for consistency and to comply with SB 861. This paragraph is revised to clearly provide that response personnel must be identified based upon location within an area contingency plan area or the new response planning areas. This is not a substantive change to existing practice. In subsection (c)(10)(A), the phrase “response activities” is replaced with the term “response efforts” which is defined at Government Code 8670.3 and in section 790; this is not a substantive change. In (c)(10)(A), (B), and (C) there are edits for capitalization. Subsection (c)(10)(C)6. is renumbered as subsection (c)(10)(D) to be distinct, and not part of the requirements listed under (C).

Renumbered subsection (d) / Formerly (c)

Subsection (c) is renumbered to (d), regarding subcontracted response resources. The edits here are primarily grammatical, typographical, or have conforming edits for consistency.

Subsection (d)(1) replaces the term “on-site” for the common industry term “on-scene,” and again replaces the imprecise phrase “geographic region” with “area contingency plan or response planning area”. The acknowledgement statement called for by (d)(2)(E) clarifies that the California Code of Regulations is the proper reference and source, not “this subchapter”.

Subsection (d)(3) has a conforming edit for consistency.

Subsection (d)(4) is deleted and replaced with new text. The former text regarding having twice the resources if the subcontracted resources are not dedicated did not reflect reality. In OSPR’s experience all the rated OSROs that have a 0 to 6 hour rating accomplish this by owning their own equipment and any subcontracted resources they rely upon are dedicated. The new text of (4) clarifies existing practice, that all response

resources used during the first six hours must be dedicated, even subcontracted resources. OSPR has had this requirement for years, this is not new for industry.

Renumbered subsection (e) / Formerly (d)

Subsection (d) is renumbered to (e), regarding service-specific information.

Subsection (e)(1) is revised to properly refer to the new response planning areas, in addition to the area contingency plans. Subsections (A), (B), (C), and (D) at (e)(1) are revised for capitalization, clarity, and accuracy.

Subsection (e)(2) clarifies the expectations for the plan of operations or narrative that is required for explaining how response resources will be mobilized within each area. The current phrase “plan of operations” generally is a narrative, which existing OSROs have been providing. The specific response times are deleted because this is redundant to section 819.04(a), and is not a complete list. The description must address reasonably predictable conditions that could be a hindrance, such as snow in the winter and heat in the summer, or seasonal road closures, etc..

The second paragraph regarding acquisition of resources beyond the time frames is cast as a permissive component of an application. OSPR does not rate OSROs beyond 24 hours. And, the OSRO is not required to provide resources beyond their rating. Also, the last phrase of the sentence regarding small, medium, and large sized spills is deleted because it is not functional – some OSROs will be providing services that are for spills smaller than these sizes, particularly for inland spills.

Subsection (e)(3) and subsections (A) through (D) are revised for capitalization, grammar, and consistency. Vacuum trucks are added to (3)(B) because they are a type of skimmer system that are commonly used. This will not be new for industry. Subsection (3)(E) is added for describing how heavy equipment is transported and deployed; this would primarily be relevant to terrestrial oil spill services. Examples, would be loaders, back-hoes, excavators, bulldozers, etc.. This type of equipment needs to be trailered or trucked from one location to another; the OSRO must describe its ability to move the equipment to a spill site.

In subsection (e)(4) the caption is revised for simplicity. Subsection (e)(A) is deleted because it is redundant to section 819.04(a)(2).

Subsection (e)(4)(A) regarding “alternatives” is deleted because it is not appropriate to be in regulation; protection strategies are developed at the U.S. Coast Guard Area Contingency Plan committee meetings. Alternative strategies are discussed in that forum.

Subsection (e)(4)(B) is renumbered as (4)(A) and has clarifying edits, without substantive changes. (A)(1) now asks for the site information for a site specifically identified by a plan holder.

Subsection (e)(4)(A)2. is clarified to expressly call for the protect-by-hour; this is what is meant by “expected time of impact”. This is not a substantive change.

Subsection (e)(4)(A)4. has revisions for clarity and consistent use of terms in the Shoreline Protection Table. This is non-substantive, and is consistent with existing practice.

Subsection (e)(4)(A)5. is deleted as unnecessary; the OSRO decides what sites and “protect by hour” they want to apply for. OSPR has not been asked to issue a shoreline protection rating for a site past the first six hours. The OSRO would be held to whatever requirements are in the Shoreline Protection Table past six hours.

New Subsection (e)(4)(A)5. is added to be consistent with the other equipment listings stated above, to provide a transportation and deployment description.

Subsection (e)(4)(C) is deleted and moved to section 819.04(a)(2)(D) for better organization, without substantive changes.

Former subsection (e)(4)(D) is deleted as redundant to (A).

Former subsection (e)(4)(E) and the table are deleted and moved to section 819.04(a)(2)(B), for better organization.

Former subsection (e)(4)(F)1., 2., and 3. are deleted and moved to section 819.04(a)(2)(C) for better organization. Also, the sentence regarding vessels over 300 gross tons is deleted because it is redundant to language in the definition shoreline protection in section 790.

Paragraph 4. is deleted because it is out of place; it is a plan holder requirement and is already stated at 818.03(f)(1)(D) and 827.02(i)(2)(D). Paragraph 5 is deleted because it does not belong here; protection strategies are developed at U.S. Coast Guard Area Contingency Plan committee meetings. Alternative strategies are discussed in that forum. Paragraph 6 is renumbered to 4.

Paragraph 6. is deleted and moved to 819.04(a)(2)(C)4. without substantive change.

Renumbered subsection (f) / Formerly (e)

The attestation requirement is clarified to mean the attestation statement must come from a representative of the OSRO.

The attestation statement itself is clarified to expressly allow the implied but unstated consent to inspect equipment. The statement also deletes “subchapter,” and makes clear section 819.03 is a reference to Title 14 of the California Code of Regulations.

Renumbered subsection (g) / Formerly (f)

Subsection (g) is revised to require the OSRO to clearly articulate why it thinks information in the application should be confidential. This section also has edits for typography and consistency.

Subsection (g)(1) is simplified in stating that the OSRO may designate information as confidential and not for public disclosure. The last sentence of (g)(1) is moved to (g)(2) for better organization.

Subsection (g)(2) is revised to require specific justification for each item of information the OSRO believes should be designated as confidential. Unsupported, non-specific assertions will not be accepted. Documents within the possession of an agency are presumed public records unless there is a reason for withholding them from public view. The burden is on the OSRO applicant to properly identify and support a claim of confidentiality. The Administrator's determination as to what information may be considered confidential and is entitled to be withheld from public inspection will be based on a compliance with the Public Records Act (Government Code section 6250, et. seq.), clear designation or delineation of confidentiality per subsection (g)(1), and whether the cited legal authority justifies withholding.

Subsection (g)(3)(B) is clarifying the information designated as confidential must be redacted, not removed, from the confidential application.

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

Section 819.03. Application Review, Verification and Drills.

Subsection (a)

This is about the rating application process. The terms "application" and "rating" are added to more accurately identify the terms used in the OSRO evaluation process.

Subsection (1) clarifies that the time frame for reviewing a rating application begins when the application is complete. Incomplete applications are not required to be reviewed. The 90 day review period begins when OSPR has received all of the required information for review.

Subsection (2) has edits for consistency.

New Subsection (3) is moved out of subsection (2) to set apart the requirement for successful completion of an equipment deployment drill; substantively there is no change.

Renumbered Subsection (4), formerly (3) has grammatical revisions; these are not substantive. Denial of a rating relates to ratings that are still under review; modification applies to a rating that has been issued.

New paragraph (5) provides information about the content of the rating letter once an OSRO satisfactorily meets the requirements to receive a rating. This is moved here from 819.04(b)(1) for better organization, with no substantive change.

Paragraph (6) provides that a rating cannot be assigned, transferred or assumed to or by another OSRO. This is moved here from 819.04(b)(1) for better organization, with no substantive change.

Subsection (b)

This subsection provides minimum standards for review.

This subsection has edits for consistency, typography. In paragraph (1) registration records and inspection records are added here from 819.02(c)(3)(D) and (c)(4)(E) for better organization. This subsection is revised to require the documents to be available for review, OSPR does not need copies of such records to be submitted. In paragraph (3) the word “training” is deleted because it is already covered by paragraph (1).

Subsection (c)

Subsection (c) elaborates on the inspection and verification of response resources. It has edits for typography and consistency, and is amended to include information about terrestrial service ratings.

This subsection provides information about OSPR’s authority to access and verify the response resources listed in the OSRO’s application. OSPR is required to verify the OSRO’s continued readiness for spill response even after they have been rated.

Paragraph (1) regarding inspections has been split into new (A), (B) and (C). Paragraph (A) consists of existing language. New (B) explains the number of equipment inspections an OSRO may be subject to if applying for a terrestrial service rating. As a new requirement, staff believes one scheduled inspection will be reasonable. OSPR may conduct additional inspections if it seems appropriate. Such circumstances would include, for example, a situation where the OSRO appears to have financial difficulties, or OSPR staff have been advised the OSRO is selling off equipment without informing OSPR, or some other instance that would call into question the validity of their current rating capability. OSPR would have an obligation to follow-up upon receipt of such information. Paragraph (C) consists of existing language.

Paragraph (2) has edits for typography and consistency. The first sentence is revised to better explain that submitting a rating application grants OSPR staff the ability to perform inspections, but this is not new. Paragraphs (A) through (D) have edits for typography and consistency.

Paragraph (3) has edits for typography and consistency.

Paragraph (4) has edits for consistency.

New subsection (d)

Former paragraph (5) is renumbered as (d), and all the subsections are renumbered accordingly. This is renumbered as (d) to accentuate that these provisions are about equipment deployment drills, but this is not a substantive change. Although the word “inspection” has appeared in these provisions, substantively these provisions have been about drills. Subsection (c) is and has been about inspections.

The subparagraphs have edits for typography and consistency. The word “exercise” is replaced with “drill” to correct any confusion; exercise refers to “tabletop” exercises, which do not involve equipment deployment.

In subsection (d)(1) the subparagraphs are renumbered.

Subsection (d)(1)(A) has non-substantive clean-up such as removal of acronyms; percentages are spelled out; and terms are updated for consistency with section 790.

Subsection (d)(1)(A)2. had no text. It is deleted and the remaining paragraphs renumbered.

Subsection (d)(1)(B) has non-substantive clean-up edits such as removal of acronyms; and terms are updated for consistency with section 790.

Subsection (d)(1)(C) explains how drills are to be documented. Non-substantive clean-up such as removal of acronyms; capitalization; corrected citations; and terms are updated for consistency with section 790.

Subsection (d)(1)(D) has non-substantive clean-up such as removal of acronyms; and terms are updated for consistency with section 790.

Subsection (d)(2) regarding unannounced drills has non-substantive clean-up such as removal of acronyms; and terms are updated for consistency with section 790.

Subsection (d)(2)(A) specifies the number of unannounced drills per year an OSRO is subject to. The term “response planning area” is added; these are non-coastal regions and OSPR is now issuing OSRO ratings for non-coastal areas of the state. The second sentence is deleted as redundant to the first sentence; there can be at least one drill in each area for which a rating is issued.

Subsection (d)(2)(A)1. clarifies the word “services” to mean containment, recovery, and storage; this is consistent with existing practice and industry understanding. This paragraph has non-substantive clean-up for renumbering and removal of acronyms. The

second sentence is deleted because it is out of place; this relates to plan holders and does not belong here.

Subsection (d)(2)(A)2. clarifies that shoreline protection services may be drilled within an area contingency plan or a geographic response plan. This is consistent with existing practice and industry understanding. This paragraph has non-substantive clean-up for renumbering and removal of acronyms. The second sentence is deleted because it is out of place; this relates to plan holders and does not belong here.

New subsection (d)(2)(B) explains when terrestrial services response resources may or may not be required to be mobilized. Terrestrial ratings are new, so this provision puts the OSRO on notice about mobilization.

A terrestrial rating is essentially for cleanup of predominantly dry waterways (e.g. “dry washes”), it is not for on-water capability. Terrestrial OSRO equipment generally is earthmoving-type equipment, such as shovels, bobcats, backhoes, etc. Terrestrial equipment deployment is generally not required within a single response planning area, as a “drill”. By comparison, practicing an on-water strategy on a waterway does not involve physical changes to the water itself, unlike moving soil which is an actual change to the ground. Excavating and earth-moving, especially in a dry streambed, is an environmental impact even without oil present, so this is not a preferred practice method. Thus, an inspection of terrestrial equipment, not deployment, should be sufficient. However, OSPR may require the equipment to be mobilized into another response planning area to test the OSRO’s ability to mobilize over a greater distance.

Subsection (d)(2)(C) changes the word “reductions” to “changes” to be consistent with the edits in section 819.05.

Subsections (d)(2)(D) through (J) – formerly 3. through 9. have been renumbered. These paragraphs have non-substantive clean-up edits for consistency, capitalization, removal of acronyms, and typography. In (d)(2)(F)2. this is clarified to mean where transfer operations are actually occurring; previously this was vague. And (d)(2)(F)6. is clarified regarding the situations or conditions that might call for drill cancellation – i.e. dangerous situations.

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

Section 819.04. Oil Spill Response Organization Rating Standards, Updates, and Renewals.

Former subsection (a) about “filing” is deleted because it is redundant to section 819.02 regarding the rating application process.

Former subsection (b)(1), the first three sentences, regarding receiving a rating letter, are moved to section 819.03(a)(5) for better organization. The last sentence of former (b)(1), regarding re-application, is deleted because it is redundant to section 819.01(f).

Former subsection (b)(2) is renumbered as new subsection (a)(1), and focuses on the types of ratings. This subsection is also revised to better explain obtaining a rating. Subsections (A), (B), and (C) are created to cover ratings for marine water on-water recovery, inland water on-water recovery, and inland terrestrial ratings.

New subsection (a) is created from existing language to focus on the standards used for issuing a rating. New (a)(1) adds that ratings can be requested for response planning areas, in addition to area contingency plan areas, and expressly lists the types of ratings that are issued pursuant to (a)(1). This allows ratings for non-marine waters.

In (a)(1)(A) there are no substantive changes to the marine response times. The modifications are to be clearer and more simplified. In the rating time frame table the provision about “temporary storage on-scene within 4 hours” is deleted because it is redundant to section 817.02(h)(1)(A) and 818.02(i)(1)(A), and it is not necessary to specifically call out storage here.

Regarding new (a)(1)(B), this is new for inland on-water cleanup capabilities. This rating is relevant for providing services to plan holders who pose a risk to inland waters that are at least 3 inches deep for more than 182 days a year. These plan holders need to plan for on-water recovery.

The inland on-water response times of 6 hours, 12 hours, and 24 hours are similar periods to marine response times. Based on staff experience, these time frames are appropriate expectations for inland response. A rating for the first six hours requires the response resources to be dedicated. This ensures a fast, capable response during the initial crucial hours of an incident. The phrase “dedicated response resource” is a defined term and is the same requirement for a marine rating.

Regarding new (a)(1)(C), this is new for inland facilities. This rating is relevant for providing services to plan holders who pose a risk to inland waters that are *not* at least 3 inches deep for more than 182 days a year. These plan holders generally pose a risk to dry washes or waterways that are shallow or inconsistently have water present. These plan holders only need to plan for terrestrial cleanup. The OSRO is given the opportunity either own the equipment or subcontract for it. And like the marine ratings, the equipment must be functional within one hour of arrival. Terrestrial equipment does not need to be dedicated because it likely is already on the property, spills to ground generally are slower moving, and the equipment can arrive within six hours, thus there is not the urgency for dedicated equipment. The response times of 6 hours, 12 hours, and 24 hours are similar periods to marine response times, and based on staff experience, these time frames are appropriate expectations for inland terrestrial response.

Former subsection (b)(3) is renumbered as new subsection (a)(2), regarding shoreline protection. There are no substantive changes. This subsection is primarily revised to better explain obtaining the rating. There is reference to a shoreline protection rating letter; this is being deleted because OSPR does not issue a specific rating letter for shoreline protection. An OSRO's overall rating would simply acknowledge shoreline protection capabilities, along with any containment, recovery, and storage capabilities that have been demonstrated. These revisions also include acknowledgment that the plan holder can identify sites that need protection; this is not new, it is just being expressly stated here in the rating context.

The table is moved here from 819.02(d)(4)(E), with no substantive changes. The text after the percentages is deleted as redundant and unnecessary. For Area Contingency Plan 4, Channel Island Harbor and Port Hueneme are expressly mentioned to codify existing practice; substantively this is not new.

New subsections (a)(2)(C)1., 2., and 3., regarding operations in small harbors, are moved here from section 819.02(d)(4)(F). There are edits for consistency, grammar, and typography.

New subsections (a)(2)(D)1., 2., 3., and 4., regarding the Sensitive Site Strategy Evaluation Program, are moved here for organizational purposes from former section 819.02(e)(4)(C)1. through 4.. There are no substantive changes.

Former Subsection (b)(4) is renumbered as subsection (a)(3), regarding "Group 5" oils. These are oils that tend to sink instead of float. The word "endorsement" is deleted because OSPR does not issue a specific "endorsement" for Group 5 oil recovery capabilities. An OSRO's overall rating would simply acknowledge Group 5 oil capabilities, along with any other containment, recovery, and storage capabilities that have been demonstrated. The first paragraph is revised to plainly state that such a rating can be sought, but this is not a substantive change. The sentence regarding inspections is deleted because inspections are covered by 819.03(c).

Subsection (3)(A), adds a method of demonstrating Group 5 Oil capability. The U.S. Coast Guard has a program "classifying" OSRO's that can contain or recover sinking oil. OSPR will accept this acknowledgment from the U.S. Coast Guard as satisfactory evidence of the OSRO's ability to recover Group 5 oil. The U.S. Coast Guard's classification system is thorough, and presently exceeds the state's ability to evaluate this capability.

In subsection (3)(B), the former paragraphs have been renumbered, and "topic" words are added to 1., 2., and 3.. No substantive changes.

Former subsection (c), is renumbered as (b). This regards updates to certain information provided in the rating application. This subsection is revised to distinguish when this information is considered significant or non-significant.

The prior language in (1)(A) implied that anytime there was a change in the OSRO's plan holders clients, it needed to be reported immediately; but such urgency was not intended. And (1)(B) implies equipment lists only need to be updated annual; but that is too infrequent.

A 30 calendar day period is added to provide clarity for when non-significant changes must be reported to OSPR. This is consistent with similar reporting periods in OSPR's other regulations.

Subsection (b)(2) is added to accentuate that significant changes must be reported to OSPR, so that OSPR can evaluate any ramifications for plan holders, especially significant reductions in response resources. What constitutes a significant change is described in section 819.05.

The last sentence of (1)(B) is deleted because it is unnecessary in light of the other edits to this subsection.

Former subsection (d), is renumbered as (c), regarding renewal of ratings. This subsection has edits for typography and consistency. The first sentence of (c)(1) is deleted because it covered by 819.01(f).

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

Section 819.05. Notice of Change in Response Resources.

This section has edits for typography and consistency. In subsection (a) the method of notice is updated to include email, but not allow facsimiles. This ensures faster communication, using the common methods for communicating. OSPR does not communicate by facsimile, except as a last resort.

Subsection (a)(1) is deleted and recast as new subsection (c).

Subsection (b) is deleted as duplicative of (a). Former (c) is renumbered as (b).

New (c) defines what constitutes a significant change. The phrase "significant reduction" is not used because there may be circumstances that affect an OSRO's capability that are not a reduction in resources.

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

Section 819.06. Rating Modification, Suspension, or Revocation.

Government Code section 8670.30(d) provides that ratings may be modified, suspended, or revoked. The revisions to section 819.06 better explain the process for modification, suspension, and revocation, and this section has edits for typography and consistency.

The concept of “denial” has been removed from this section as redundant and confusing, because denials of requested ratings are addressed in section 819.03.

In (a)(1) examples of reasons for modification are added. The process for modification is addressed in new revisions to (b)(1).

In (a)(2) examples of reasons for suspension are added. The process for suspension is addressed in new revisions to (b)(1). The former sentence regarding refusing to participate in drills is deleted because it is now addressed in (a)(1); failure to complete a drill will result in modification of the rating. And this subsection is clarified to indicate that the suspended services shall not be offered.

New (a)(3) is derived from (a)(2). This is to make the revocation provisions distinct from the suspension provisions. In (a)(3) revocation is explained as a complete loss of all ratings. This distinguishes it from modifications of a rating or ratings that an OSRO may have. The sentence regarding 60 days to respond to deficiencies is deleted because the process for revocation is now covered in new (b)(2).

Former (a)(3) is deleted as redundant to 819.03(a) regarding denial of requested ratings.

Subsection (b)(1) is now limited to the process for modifications and suspensions. The sentence regarding revocation is deleted because revocations are addressed by new (b)(2).

New (b)(1)(A) provides that reapplication is the way for an OSRO who has lost a rating due to a modification to try to get it back.

New (b)(1)(B) provides that written request is the way for an OSRO with a suspended rating to get the suspension lifted. Fifteen calendar days is a reasonable time for staff to review the reasons for lifting the suspension, but is not too long for the OSRO to wait for a determination.

New (b)(2) provides the process for revocation. It gives the OSRO an opportunity to address the identified problems. Thirty days after revocation for filing a response from the OSRO is ample time for the OSRO to lodge disagreement with the revocation. Because revocation removes the OSRO from providing services to plan holders, the OSRO would have 15 calendar days to arrange for termination of services. This also gives plan holders some time to engage other rated OSROs.

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

Section 819.07. Reconsideration and Hearing Procedures.

This section has edits for typography, consistency, and clarity. The subsections have been renumbered for organizational purposes.

New subsection (a) is cast as being about the process for reconsideration. New subsection (b) is cast as being about the process for a hearing.

In (a)(2)(B), (a)(3), and (b) calendar days are switched to business days to be consistent with other OSPR regulations regarding the reconsideration process. In (a)(2)(B) twenty days is reduced to 15 days, for consistency with other OSPR regulations regarding the reconsideration process.

In (b)(1) the citation to the administrative hearing process is corrected.

The Authority cited is amended to include section 8670.7.5 of the Government Code which authorized emergency regulations to implement provisions regarding oil spills from inland facilities.

IV. Economic Impact Assessment [Gov. C. §11346.2(b)(2)(A),(5); 11346.3(a)]

(a) What is the evidence supporting a finding of No Significant Statewide Adverse Economic Impact directly affecting business, including the ability of California businesses to compete with businesses in other states?

These regulations will not have a significant statewide adverse economic impact. Based on OSPR’s experience implementing the emergency regulations in 2015, fewer than 10 OSROs are affected. Moreover, these regulations do not impose any costs of participation or compliance on them. Participation in the oil spill response industry from out of state is unlikely. These regulations are strictly for OSROs responding to oil spills in California. To date, all of the applicants have been based in California.

These are not considered “major regulations” because the economic impact assessment concludes that the impacts, summing both costs and benefits, will be considerably less than \$50 million dollars annually.

Costs

These regulations establish ratings for OSROs in an inland context. Ratings are voluntary. OSROs may offer oil spill response services whether or not they are rated. However, facilities and vessels that are required to have contingency plans and that rely

on an OSRO must specify a rated OSRO in their contingency plans. Thus, becoming a rated OSRO is a certificate of approval that increases the OSRO's participation in the market.

The cost to inland facilities to retain an OSRO are examined under the Contingency Plan regulations. This document examines the cost of the ratings requirements to OSROs.

There are multiple types of ratings, some with different requirements. There is no direct application cost to receive a rating. All ratings are good for three years.

California Office of Emergency Services (OES) divides California into six Response Planning Areas (RPAs). OSPR uses these areas and issues OSRO ratings within each area, contingent upon the OSRO being able to respond anywhere within the RPA within at least six hours. OSPR will also issue a rating for just a single county within an RPA, if requested. If an OSRO can meet its response objectives in the RPA or county, it can receive a rating approval for that region. There are two types of ratings relevant to the inland waters of the state: inland on-water (e.g. lakes, rivers) and terrestrial (e.g. dry washes, uplands). For an on-water rating, an OSRO must pass an unannounced drill. For a terrestrial rating, an OSRO must pass an inspection of their equipment. Currently, there are five OSROs that have an inland on-water rating. One of these is rated for all six RPAs, with resources positioned at several locations around the state.

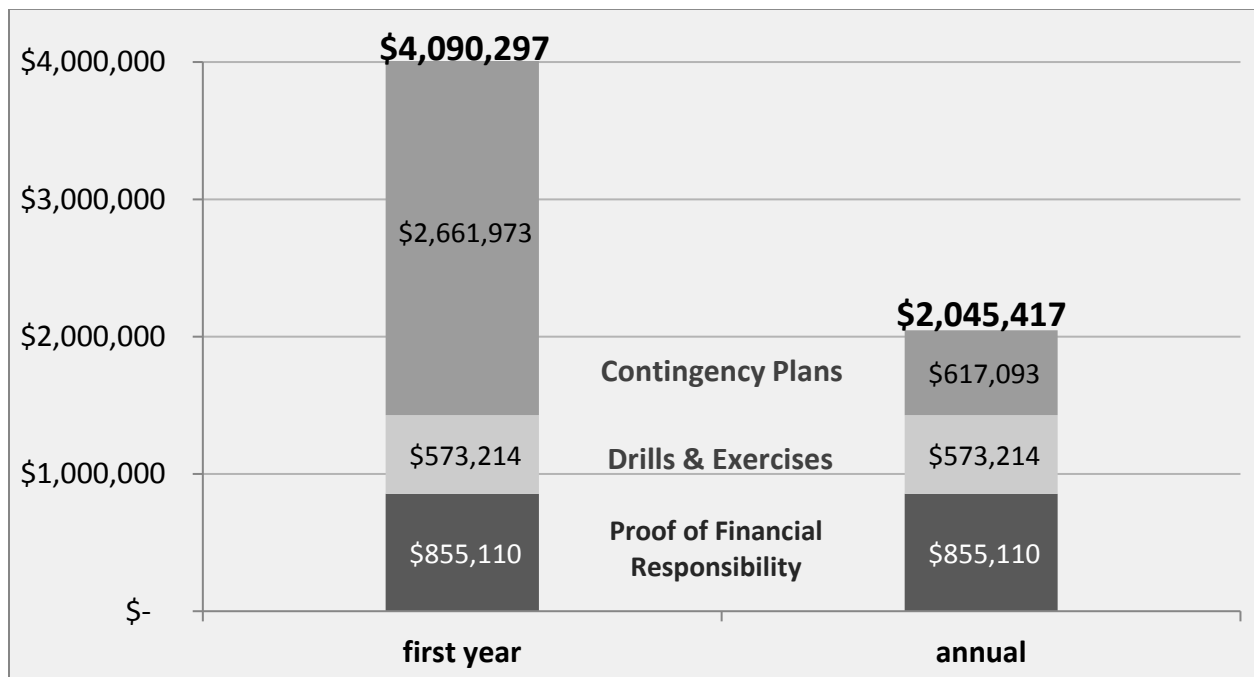
Before the implementation of these emergency regulations, OSROs were present in the interior part of the state, with the response equipment and staff, providing response services without a rating. Thus, the costs for an inland OSRO to go from unrated to rated is just the cost of participating in an unannounced equipment deployment drill or inspection every three years. An equipment deployment drill lasts most of a day. An inspection lasts just a few hours. The act of submitting to an inspection or deploying equipment for a drill is consistent with the regular maintenance, inventory, and training of an OSROs business, and thus represents little or no additional cost. Furthermore, the OSRO is paid for its services by the facility or contingency plan holder.

Since the adoption of the emergency regulations, some OSROs have expanded their services from the marine environment to the inland environment. Some had pre-existing equipment and staff, while others have made an investment in new equipment and staff in order to become inland rated OSROs. This is an elective business investment on their part as they seek to move into the market of becoming an OSRO with an inland rating. Thus, while hiring an OSRO is a cost to a plan holder, it is a business opportunity for OSROs. This cost, because it is paid for by the plan holders as they seek to meet the requirements of a contingency plan, is quantified under the contingency plan regulations.

Cumulative Impact

At this time, OSPR is also promulgating regulations for inland facilities regarding: 1) oil spill contingency planning, 2) oil spill drill and exercise requirements, and 3) demonstration of financial responsibility to pay for cleanup and damages. The economic impact assessment for each of those requirements is addressed in the Initial Statement of Reasons (ISOR) for each of those rulemakings. Collectively, looking at the costs to comply with all aspects of these three rulemakings (contingency planning, drills and exercises, and financial responsibility) across all the affected operators (about 45 facilities), the total cost for industry-wide compliance is expected be about \$4 million (Figure 1) in the first year, and \$2 million annually in future years. For reasons described in this and other ISORs, this is a high estimate.

Figure 1: Total Cost of All New Oil Spill Preparedness Regulations



Summary of Costs

The estimated costs of all the regulations are described in detail in each of the respective ISOR's, but are presented here for summary purposes:

- Contingency plans: \$2.7 million in the first year; \$617,000/yr annually
- Drills and exercises: \$573,000 annually
- Financial responsibility: \$855,000 annually
- OSROs: zero (captured under contingency plan analysis)

Total expected cost of the four packages combined: \$4 million in the first year; \$2 million/year thereafter.

Based on this analysis, the proposed regulations collectively will not have a significant adverse economic impact on businesses in California or their ability to compete with out-of-state businesses. The impacted companies are involved in oil production, oil transport, oil refining, and oil distribution within the state. California receives about two-thirds of its oil from out of state (mostly via tankers coming from Alaska or overseas) and a third of its oil from domestic production within California. Most of the domestic production is from inland locations. Nearly all of the oil consumed in California is refined in the state. All of it is then distributed for sale throughout the state.

In general, businesses from outside of California do not compete with California refineries or transporters (although facilities within California may be owned by a larger corporation based outside of California). Inland producers do compete on the global market with all oil producers worldwide. However, because they are located locally, they have a strong economic advantage over out-of-state competitors due to minimal transport costs. All domestic California oil production is consumed within California. The increased costs associated with preparing and maintaining contingency plans incurred by these companies is unlikely to affect their ability to compete with businesses from outside the state. While OSPR does not have data at the individual company level, we can examine the impact across the industry as a whole. Annual California inland production is approximately 170 million barrels. (California Department of Conservation Monthly Oil and Gas Production and Injection Report (October 2016)) Assuming a market value of \$50/barrel, the value of this annual production is \$8.5 billion. The estimated total cost of complying with these regulations, across all facilities and companies, is \$855,110 annually. Assuming these costs are all incurred in one year (which is unlikely), this is 0.010% of the total revenues of oil production. If applied to the cost of production, these costs would add \$0.0050 (half of a penny) to the price of a barrel of oil, and this would only be in the first year. Given the normal variability in the price of oil, and the transport price advantage that producers in California have over their overseas competitors (several dollars per barrel), the cost of demonstrating financial responsibility is unlikely to affect their ability to compete with other producers from out of state.

Note that, due to the promulgation of the emergency regulations, the first two years of compliance with these regulations have already occurred. OSPR is not aware that compliance with this caused any effects on the ability of companies to compete with businesses from out of state.

Because the demand for gasoline and other oil products is highly inelastic in the short run, it is likely that nearly all of this cost would be passed on to consumers. Thus, the \$4 million born by 45 companies in the first year, and \$2 million annually after that, would be passed down to California's millions of households and business. Here we examine the likely increased cost of driving a car for a year.

The total high end estimated cost for all of the new regulations in the first year is \$4,090,297 across all affected companies. This is 0.048% (less than five-hundredths of

one percent) of the total revenues of oil production. If applied to the cost of oil production, these costs would add \$0.0241 (a little more than two cents) to the price of a barrel of oil, and this would be only in the first year (which has already occurred under the emergency regulations) (Table 3). In future years, the cost would be less than half of that.

Again, the benefit to the State by having facilities with spill contingency plans should result in less damage to the environment and reduced response costs overall.

Table 3: Total Estimated Cost of Proposed Regulations Across all Facilities in Year 1 <i>(based on high-end estimates)</i>			
Regulation	Cost	% of value of Inland oil production in California	Potential addition to price of a barrel of oil
Contingency Plans (mostly upfront costs)	\$2,661,973	0.031%	\$0.0157
Drills and Exercises (annual costs)	\$573,214	0.007%	\$0.0034
Financial Responsibility (annual costs)	\$855,110	0.010%	\$0.0050
TOTAL	\$4,090,297	0.048%	\$0.0241

To apply this total (an increase of \$0.0241/barrel) to the annual cost of driving a car, we assume a vehicle is driven 12,000 miles/year, gets 17.5 miles per gallon, and thus requires 686 gallons of gasoline/year. A price increase of \$0.0241/barrel translates to \$0.00057/gallon (1 barrel = 42 gallons). Applied to the 686 gallons needed to drive for a year, this would add \$0.39 (or 39 cents) to the annual gas budget for the vehicle.

Given the normal variation in gas prices at the pump, it is unlikely that this change would be noticed by consumers, nor impact their economic decisions.

(b) Will there be any effects of the regulation on the creation or elimination of jobs within the State?

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.

(c) Will there be any effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State?

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.

(d) Will there be any effects of the regulation on the expansion of businesses currently doing business within the State?

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.

(e) Will there be any other benefits of the regulations?

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. [Ref. Gov. Code section 8670.2]

Having rated OSROs ensures a faster response of trained and ready personnel to respond to oil spills.

These regulations regarding OSROs are part of a larger package of regulations that build upon OSPR's marine oil spill preparedness and response program to cover inland facilities that pose a threat to inland surface waters. Together, they are part of a four-pronged approach to improve preparedness and response capabilities across the inland oil production and transport industry. The following four components are new regulations for inland facilities with regard to:

1. Contingency plans
2. Drills and exercises
3. Financial responsibility
4. Rating of oil spill response organizations

While it is difficult to examine the economic benefits of any one component, we examined the overall benefit of the suite of the new regulations by focusing on the ultimate measure of program success: the number and volume of oil spills over time.

Cumulative Impact

To examine the benefits of these regulations, we considered three factors:

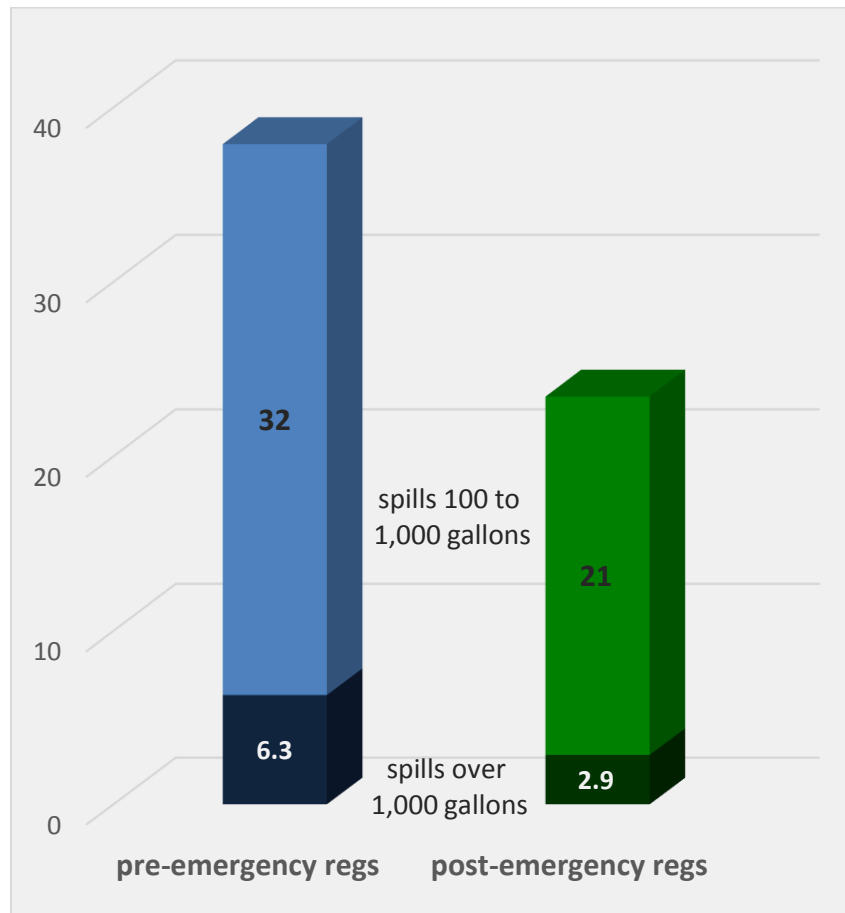
1. The reduction in small and medium-sized spills since the implementation of the emergency regulations.
2. The reduction in the risk of large spills.
3. The added risk of an oil spill due to an increase in the transport of crude by rail.

Reduction in Small and Medium-sized Spills

OSPR has a database of spills, based on reports from the Office of Emergency Services. Smaller spills happen on a regular basis, allowing us to compare spill data since the initiation of the emergency regulations in September 2015. Here, we examined data regarding inland oil spills to water, comparing 21 recent months (September 2015 thru April 2017) under the emergency regulations to the previous 38 months (July 2012 thru August 2015) before the expansion to a statewide program. We include all spills of 10 gallons or more. There are hundreds of spills under 10 gallons but, for most of these, the response costs were negligible.

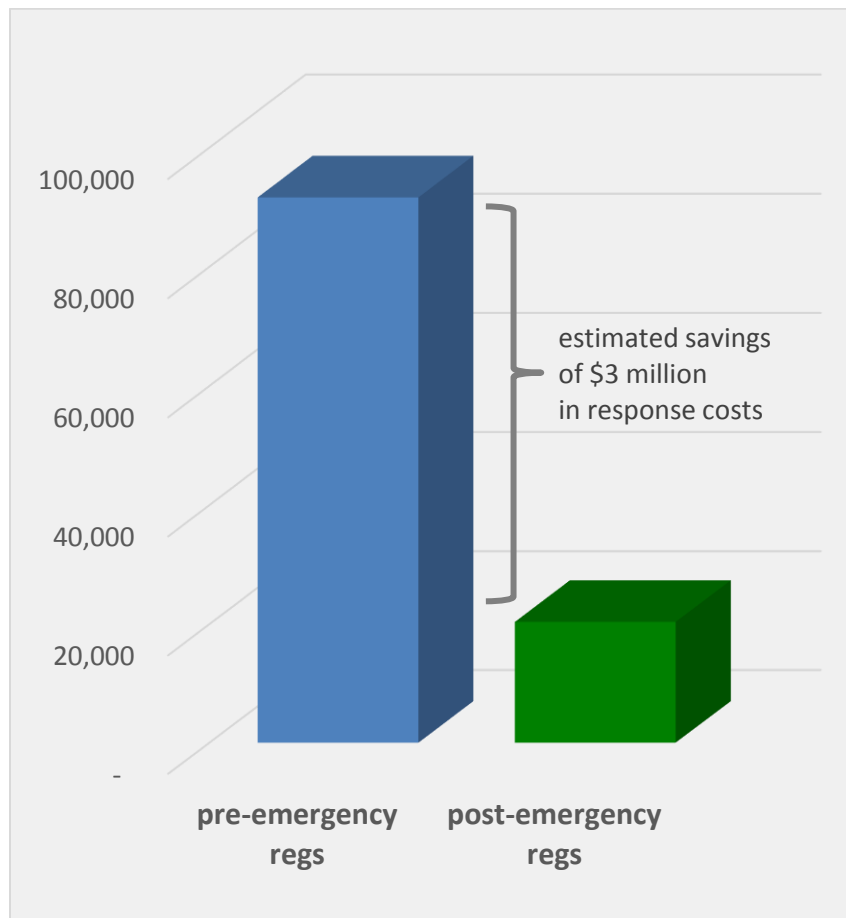
Normalizing to a 12-month period to use comparable annual figures, the total number of inland oil spills to water (of 10 gallons or more) has stayed about the same (123/year before the emergency regulations went into effect and 135/year after). However, the spills are now smaller than previously. The number of spills from 100 to 999 gallons fell a third (from 32 to 21/year), while the number of spills of 1,000 gallons or more dropped in half (from 6.3 to 2.9/year) and (Figure 2).

Figure 2: Number of Inland Oil Spills to Water



More significantly, the volume of oil spilled declined dramatically, from about 90,000 gallons/year before the establishment of the emergency regulations, to 20,000 gallons/year after (Figure 3). Based on an average response cost of \$1,779/barrel, or about \$42/gallon), this represents an annual savings of just over \$3 million/year. This response cost, provided to OSPR by a group of inland oil facilities who conducted their own internal survey, is intended to include cleanup costs as well as third party claims and natural resource damages.

Figure 3: Gallons Spilled/Year (Inland Oil Spills to Water)



An important caveat to this analysis is that significant oil spills are rare events, and large oil spills are even rarer, thus requiring long time frames to ensure enough data to paint a realistic picture. Furthermore, one large spill within the time period under examination can strongly bias results. In this instance, there were no exceptionally costly spills during the months under examination. Removing the largest spills from the 2012-2017 data would not meaningfully change the results presented above.

Risk of a Large Spill

Large spills are rare, occurring once every few years. Yet, because of their potential harm, preparing for them is one of the primary goals of OSPR. It is possible that the new planning regulations and increased attention, in the long run, will prevent a large spill, not yet detected in the data above. To assess the potential benefit of this, we can examine the likely cost of such a spill, its annual probability, and the degree to which the new regulations will lower that probability. The result will be an expected benefit, measured in terms of reduced annual expected costs. The following equation describes this analysis:

$$\text{Benefits/yr} = \text{cost} * \text{probability of a large inland spill/yr} * \text{reduction in probability}$$

In recent decades, there have been two large inland oil spills to water in California, the 1991 ExxonMobil spill and the 1994 ARCO spill, both pipeline breaks affecting the Santa Clara River. The response costs (including third party claims and natural resource damages) for these events were \$25 million and \$51 million respectively. These spills rank among the most expensive inland spills in United States history. For the sake of this analysis, we assume the cost of a large inland spill would be \$100 million and the probability has been once every 13 years (based on these two spills occurring in the past 26 years). This is an annual probability of 0.077.

The remaining question is how much the new regulations will reduce this probability. To answer that, we looked to OSPR's history with regard to its marine program. Before the beginning of OSPR's marine program in 1991, there were four large marine oil spills between 1986 and 1990 (four in five years). Since then, there have been 11 large spills (or 11 in 26 years). Thus, the annual probability of a large marine spill declined from 0.80 to 0.42. This reduction, by 47%, is similar to the reduction recently documented with regard to smaller inland spills. For the purposes of this exercise, we assume that these regulations will reduce the risk of a large inland spill by 47%. The expected annual benefit, with regard to reducing the probability of a large inland spill, are:

$$\text{Benefits/yr} = \text{cost} * \text{probability of a large inland spill/yr} * \text{reduction in probability}$$

$$\$3,624,260 = \$100,000,000 * 0.077 * 0.47$$

In summary, the new inland regulations should cut the probability of a large inland oil spill roughly in half. This will lower the risk of such an incident from once every 13 years to once every 26 years. The benefit of preventing such an event is \$100 million. The annual expected benefit, taking into the account the reduced probability, is over \$3.6 million.

Risk of a Crude by Rail Spill

Because the new inland regulations apply to railroads transporting oil, an additional benefit will be a reduction in the risk of spills by rail. This is not captured in the data

analyzed above, as crude-by-rail has played a small part in the supply of California's oil historically. However, if market conditions change in the future, crude-by-rail could grow significantly. This section discusses that potential growth and the additional spill risk it brings, and thus the additional potential benefits of the proposed regulations in minimizing that risk.

Historically, crude-by-rail in California has been limited to a twice-a-week, 300-mile run from the San Ardo oil field to the Los Angeles area. There have been no significant spills associated with this. This train transports about 5 million barrels per year.

In recent years, crude-by-rail has been used to import oil into California from Canada, North Dakota, Wyoming, New Mexico, and several other production areas. This peaked in 2013 at just over 6 million barrels per year. There were plans to build crude-by-rail terminals to receive over 150 million barrels per year, but most of these were not built due to a combination of local opposition and market conditions. The only new rail terminals have been in the Bakersfield area. When the price of oil fell dramatically from around \$100/bbl to \$50/bbl in the second half of 2014, transporting crude-by-rail to California became less attractive. Since then, crude-by-rail imports into the state have stayed below 2 million barrels per year.

For this analysis, we assume that 50 million barrels of crude could be transported each year by rail into California in the future, assuming that economic conditions change. This figure represents the likely rail terminal capacity in the Bakersfield area in the future and would represent approximately 9% of California's oil supply.

Based on an analysis of crude-by-rail nationwide in 2013, approximately 131 barrels (or 5,502 gallons) were spilled per million barrels transported. Thus, for the 50 million barrels potentially transported to California, about 275,000 gallons would be spilled. Since about 20% of the route lies within the state, about 55,000 of those gallons would be spilled in California. Assuming the same rate of reduction in spills as applied above for large spills (47%), about 26,000 of those gallons would not be spilled as a result of OSPR's program. Using the \$42/gallon cost estimate described above, this would imply a benefit of almost \$1.1 million per year.

Summary of Benefits

The combined benefits of the regulations regarding oil spill response organizations, contingency plans, drills and exercises, and financial responsibility are considered jointly and summarized here:

- Expected annual benefit by reducing small and medium-sized spills: \$3 million
- Expected annual benefit by reducing large spills: \$3.6 million
- Expected annual benefit by reducing crude-by-rail spills: \$1.1 million

Total expected benefit for all regulations: \$7.7 million/year.

(f) Will there be any benefits to the health and welfare of California residents?

Not directly to individuals. Rated OSROs ensure a minimum level of resources will be used to cleanup oil spills in inland waterways, thus benefiting the communities affected by a spill.

(g) Will there be any benefits of the regulation to worker safety?

Not directly. However, rated OSROs must include an organizational structure to safely manage response to oil spills.

(h) Will there be any benefits of the regulation to the State's environment?

Rated OSROs ensure that the plan holders have pre-identified a competent cleanup contractor 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. This should improve emergency response and result in faster initiation of cleanup activities and more effective control of an oil spill, thereby minimizing impacts to the environment.

V. *Studies, Reports, or Documents Relied Upon* [Gov. C. §11346.2(b)(3)]

- California Department of Conservation Monthly Oil and Gas Production and Injection Report (October 2016) (the most recent available as of this writing): ftp://ftp.consrv.ca.gov/pub/oil/monthly_production_reports/2016/10_2016.pdf
- Etkin, D.S. 1999. *Estimating cleanup costs for oil spills*. 1999 International Oil Spill Conference. Paper #168.
- Helton, D. and T. Penn. 1999. *Putting response and natural resource damage costs in perspective*. 1999 International Oil Spill Conference. Paper #114.
- Mercer Management Consulting. 1993. *Analysis of Oil Spill Costs and Financial Responsibility Requirements*.

VI. *Reasonable Alternatives to Regulatory Action* [Gov. C. §11346.2(b)(4)(A)(B)]

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. Also, no small businesses are affected, as defined by Government Code section 11342.610.

VII. *Specific Technology or Equipment Required by Regulatory Adoption* [Gov. C. §11346.2(b)(1)]

None. Although the regulations establish minimum response times and minimum capabilities, the regulations do not require specific technology or equipment to accomplish the requirements. Industry is free to choose the equipment it wants to use.

VIII. *Duplication or Conflict with Federal Regulations* [Gov. C. §11346.2(b)(6)]

No. In March 2016, the U.S. Coast Guard began administering a similar program to “classify” OSROs. However, the U.S. Coast Guard’s program is different. These regulations generally are more comprehensive or protective than the federal requirements.

IX. *Mitigation Measures Required by Regulatory Action*

The proposed regulatory action will not have negative impact on the environment; therefore, no mitigation measures are needed.

END