

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

**AMENDED** INITIAL STATEMENT OF REASONS  
Including  
ECONOMIC IMPACT ASSESSMENT  
to  
Amend Section 790  
Add Section 817.04  
to  
Title 14, California Code of Regulations  
Regarding Definitions and Abbreviations  
and  
Oil Spill Contingency Plans for Inland Facilities

Date of Initial Statement of Reasons: December 2017

**Date of Amended Statement of Reasons: May 22, 2018**

**Dates and Locations of Hearings:**

**Public Hearing: Date: February 13, 2018**  
**Time: 9:00 a.m. – 12:00 p.m.**  
**Location: Natural Resources Building**  
**1416 Ninth Street, Sacramento, CA 95814**

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

For the 15-day public comment period, the new changes are indicated as:

- Added text is shown in **bold** and **double underline**.
- Deleted text is shown in ~~double strikethrough~~.

***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 requirements for each inland facility to prepare and submit an oil spill contingency plan to OSPR for approval, pursuant to statutory changes made by Senate Bill 861 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 OSPR Administrator to promulgate emergency regulations to implement this program to protect inland surface waters. SB 861 provided that the emergency regulations would be valid for 12 months.

An emergency rulemaking action for inland facility oil spill contingency plans and definitions was approved by the Office of Administrative Law on September 3, 2015 (OAL #: 2015-0825-05EFP). In Title 14 of the Code of Regulations, section 790 was amended and section 817.04 was created. As emergency regulations, they did not go through the formal comment process. The emergency regulations were readopted in September 2016 and again in August 2017 (OAL#'s: 2016-0822-03EFP and 2017-0727-04EFP, respectively). OSPR is now initiating this regular rulemaking action to formally amend section 790 and to formally promulgate section 817.04 to reflect lessons learned from implementing the emergency regulations and input obtained through additional outreach.

#### *(b) Contingency Plans Background*

Since 1991 the *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) has required operators of certain facilities, pipelines, and large vessels to have an oil spill contingency plan for potential oil spills to marine waters (tidally influenced). Since the early 1990's OSPR has had regulations implementing these contingency plan requirements. (See 14 CCR 815.01 through 820.02, and 827.01 through 827.02),

The Act requires the OSPR Administrator to adopt and implement regulations governing the adequacy of oil spill contingency plans (Government Code sections 8670.28 and 8670.29). The regulations must provide for the best achievable protection of waters and natural resources of the state. Among the numerous requirements, the Administrator must set standards for response, containment, and cleanup equipment and operations, which must be maintained and regularly improved to protect the natural resources of the state. The Administrator substantively reviews contingency plans for approval, or advises the operators why their plans are deficient and need revision (Government Code section 8670.30.5).

Operators must have an approved oil spill contingency plan while operating in California or face potential penalties or other enforcement actions. Additionally, operators must maintain a level of readiness that will allow effective implementation of the applicable contingency plans (Government Code sections 8670.28.5 through 8670.34).

#### *(c) Definitions Background*

Section 790, the definitions section, was first enacted in 1991. This section is being amended to account for the legislative changes by Senate Bill 861, and as an

opportunity to perform non-substantive textual cleanup. The amendments to section 790 are included in this rulemaking with section 817.04 (inland facility contingency plans) for ease of reference due to section 817.04's heavy reliance on the terms defined by the definitions.

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

Senate Bill 861 expanded the contingency plan requirements of the Act to apply to operators of inland facilities that pose an oil spill threat to inland surface waters. Thus, SB 861 created a statewide oil spill planning, preparedness, and response program. These inland operators generally consist of oil wells, pipelines, railroads, and inland refineries.

As stated above, Government Code section 8670.28 requires the Administrator to establish oil spill contingency plan regulations. Setting aside the inland regulations adopted pursuant to emergency rulemaking, the longstanding existing regulations only relate to planning for oil spills into marine waters. Thus, the Administrator must promulgate these regulations for inland waters.

As a result of the similarities of the statutes that apply to the marine and inland environments, and to increase efficiency and ensure consistency throughout implementation of the statewide program, the proposed regulations are generally modeled from the marine contingency plan regulations. However, inland water environments do differ from the ocean and coastal shorelines. Inland waterways consist of lakes, rivers, streams, wetlands, and dry washes. Additionally, the terrain in the interior part of the state ranges from flat dry areas like the Central Valley and Mojave Desert to mountainous areas like the Sierra Nevada range, and encompasses several key rivers such as the Sacramento River, the Feather River, and the Colorado River. Because of this diversity, these regulations differ in discrete ways from the preexisting regulations for the marine environment.

As stated before, section 790 (definitions) is being amended to account for legislative changes enacted by Senate Bill 861, and as an opportunity to perform nonsubstantive textual cleanup without disrupting the longstanding marine regulation program.

## **III. Addendum**

**In response to public comments, modifications to the proposed regulations have been made. Additionally, there are modifications to the Economic and Fiscal Impact Statement (form STD 399). This Amended ISOR adds statements of necessity, other clarifying statements, and minor editorial changes.**

The additions to this Amended ISOR are indicated in **bold, double underlined text**; deletions are indicated in ~~double-strikeout text~~. Minor punctuation edits, while illustrated similarly in the text, are not explained in this Amended ISOR.

**Pursuant to Government Code Section 11347.1, OSPR will provide public notice of the modified regulatory text, the Amended ISOR, and other associated documents, for a minimum of 15 days prior to considering the proposed regulations for adoption.**

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

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. The proposed regulation implements, interprets, and make specific Government Code sections 8670.28 through 8670.31 as those code sections pertain to inland facilities that could impact inland waters. The proposed inland contingency plan regulation is necessary to provide specificity not found in the statutes, and to distinguish inland planning standards from marine standards. However, it is anticipated that in a year or two the marine regulations and the inland regulations will be further consolidated for increased consistency.

The emergency inland contingency plan regulation and the definition amendments will expire in August 2018. OSPR is initiating this regular rulemaking action to make permanent the contingency plan regulation and the definition amendments. This version of sections 790 and 817.04 differ from the emergency regulations in discrete ways that reflect valuable feedback OSPR has received from industry and staff experience implementing the emergency regulations.

The sections below set forth a discussion of the specific purpose for each regulatory provision to be amended and/or adopted in sections 790 and 817.04 and why each regulatory provision adopted is reasonably necessary to carry out the purpose and addresses the problem for which it is proposed. Thus, it is to be read as a companion to the proposed regulations, which, for the readers' ease due to the regulations' length, are not inserted in their entirety herein.

**Section 790 – Definitions:**

**Purpose:** The purpose of this section is to define terms in the context of these regulations. For the specific edits detailed below, the purpose for each item is to define that particular term in the context of these regulations.

**Necessity:** Unless otherwise indicated, changes to this section include nonsubstantive clean-up to existing regulations. These changes include deleting unnecessary terms, moving definitions from other sections into this section, editing for style consistency and uniformity with existing Title 14 regulations or the California Style Manual (e.g., capitalization, punctuation, consistent use of terms or phrases, proper citations, etc., referred to throughout as edits for uniformity), and renumbering as necessary. Some

general amendments include:

- Throughout, the word “section” and similar words are changed to lowercase in accordance with the California Style Manual.
- Where “day” is referenced, without stating whether it is business or calendar, this has been clarified.
- Capitalization is made consistent.
- Terms and phrasing usage is made consistent.
- Elimination of redundancy.
- Subsections and paragraphs are renumbered accordingly.
- Diction edits for readability or conciseness.
- Letter-spacing, line-spacing, and kerning.
- Fix typographical errors.

The following edits below are necessary to achieve these objectives.

Subsection (a)(1) “ACP” is added to define the acronym. It has been used but not previously defined.

Former subsections (a)(1), (2), and (3) – “Act”, “Administrator”, and “Adverse Weather” – are renumbered as subsections (a)(2), (3), and (4) respectively, and revised for uniformity.

Former subsection (a)(4) “Agent for Service of Process” is renumbered subsection (a)(5), and is revised for uniformity.

Former subsection (a)(5) “Anchorage” is renumbered subsection (a)(6), and revised for uniformity.

Former subsection (a)(6) “Assets” is renumbered subsection (a)(7). The term GAAP is spelled out for clarity. **Subsection (a)(7) is renumbered to (a)(9).**

Former subsection (a)(7) “Area Contingency Plan” is renumbered subsection (a)(8), and revised for uniformity. **Subsection (a)(8) is renumbered again to (a)(7) and non-substantive revisions are made for accuracy.**

New subsection (a)(9) “Area Exercise” is moved here from section 815.05 with no substantive changes. This is to consolidate definitions into section 790. **Subsection (a)(9) is renumbered (a)(8) with no substantive changes.**

**Former subsection (a)(7) “Assets” is renumbered subsection (a)(9), in alphabetical order, with no substantive changes.**

Subsection (b)(1) “Balance of the Coast” - No change.

New subsection (b)(2) is added for the acronym “BAP”, which been used but not previously defined.

Former subsection (b)(2) “Barge” is renumbered subsection (b)(3), with no changes.

Former subsection (b)(3) “Barrel” is renumbered subsection (b)(4), and revised for uniformity.

Former subsection (b)(4) “Best Achievable Protection” is renumbered subsection (b)(5), and is revised for uniformity. In (B) and (C) the provisions are made consistent with Government Code section 8670.3(b)(1), which adapts the marine program to include inland waters.

Former subsection (b)(5) “Best Achievable Technology” is renumbered subsection (b)(6), and revised for uniformity. It is also made consistent with Government Code section 8670.3(c)(1). The phrase “historical, current or future” is deleted as superfluous to paragraphs (A) and (B).

Former subsection (b)(6) “Bollard Pull” is renumbered subsection (b)(7), and revised for uniformity.

Former subsection (b)(7) “Braking Force” is renumbered subsection (b)(8), with no changes.

Former subsection (b)(8) “Bulk” is renumbered subsection (b)(9), with no changes.

Former subsection (b)(9) “Bunkering” is renumbered subsection (b)(10), and revised for uniformity.

Former subsection (b)(10) “Bunkering Oil” is renumbered subsection (b)(11), and revised for uniformity.

New subsection (b)(12) “Business Days” is added to correlate the common term “business days” with the term “working days,” defined in subsection (w)(3), for consistency.

In subsection (c)(1) the term “California Marine Waters” is deleted as unnecessary. The proper term is “Marine Waters”, which is defined in subsection (m)(3), and the word “California” in this context is superfluous. Instead, the term “California Oil Spill Contingency Plan” is added at (c)(1). This term is used in other OSPR regulations that are not the subject of any current rulemaking. It means the plan that the OSPR Administrator is required by statute to prepare on behalf of the Governor.

New subsection (c)(2) defines “Certificate of Financial Responsibility”. This is moved here from section 791, to consolidate definitions into section 790. The term “marine

facility”, as formerly used in section 791 is now just “facility” here in (c)(2), to account for changes by SB 861. The term “certificate of financial responsibility” applies to all facilities regulated by OSPR, whether marine or inland. The owner or operator of the facility or vessel needs make the financial responsibility demonstration and have an oil spill contingency plan, but the entity that actually provides the financial responsibility for a particular facility or vessel may not be the plan holder.

Former subsection (c)(2) “Cleaned Up” is renumbered to (c)(3). It is revised for uniformity. Paragraphs (c)(3)(A) and (B) are deleted as unnecessary. The state on-scene coordinator or the Unified Command determine when cleanup is complete. These are defined terms, which do not need to be further explained in paragraphs (A) and (B). In (c)(3)(B) the phrase “state incident commander” changed to “state on-scene coordinator” to reflect the evolution of this term within the incident management community.

Former subsection (c)(3) “Clearing House” is renumbered to (c)(4), with no changes.

Former subsection (c)(4) had erroneously been listed twice as “Coast Guard Designated Area” and as “COLREGS.” These two definitions are renumbered accordingly as new subsections (c)(5) and (c)(6).

Subsection (c)(5) “Coast Guard Designated Area” is renumbered, with no changes.

Subsection (c)(6) “COLREGS” is renumbered, and is revised for uniformity. The full title of the document, the publisher of the document, and the nature of the document are added to clarify the document referred to by the term. This is not a substantive change.

Subsection (c)(7) “Competitive Aspects” is renumbered from subsection (c)(6), and revised for uniformity.

Former subsection (c)(7) “Containment Area” is renumbered to subsection (c)(8), and revised for uniformity.

In new subsection (c)(9) “Contingency Plan” is added to cross-reference this commonly used phrase to the proper definition.

Former subsection (c)(8) “Conventional Tug” is renumbered to subsection (c)(10), with no changes.

In new subsection (c)(11) “Contract or Other Approved Means” is moved here from sections 815.05 and 825.05 to consolidate definitions into section 790. Conceptually this term is not changed. In (c)(11)(A) the phrase “personnel and equipment” is replaced with “response resources” because this is a defined term which includes the concepts of people and equipment. Using the defined term adds consistency. Also the references to tank vessels, marine facilities, and geographic regions are removed because they are

marine terms. SB 861 made the OSPR program applicable all facilities that pose a risk to all state waters, thus inland facilities will need to identify an oil spill response organization appropriate to the location of the inland facility, as provided for in section 817.04. In (c)(11)(B) the text has been parsed into subsections 1., 2., and 3. for clarity, but is not substantively changed; the requirements are the same.

Former subsection (c)(9) “Crude Oil” is renumbered to subsection (c)(12), and revised for uniformity.

Former subsection (c)(10) “Culturally Sensitive Sites” is renumbered subsection (c)(13), with no changes.

Former subsection (c)(11) “Current Assets” is renumbered subsection (c)(14), and revised for uniformity. The term GAAP is spelled out.

Former subsection (c)(12) “Current Liabilities” is renumbered subsection (c)(15), and revised for uniformity. The term GAAP is spelled out.

Subsection (d)(1) “Deadweight Tonnage” is revised for uniformity.

Subsection (d)(2) regarding “Dedicated Response Resources”, deletes the phrase “equipment and personnel” and replaces it with the defined phrase “response resources”. Response resources is defined in subsection 790(r)(8) to mean all equipment, personnel, and supplies and services. It is more accurate to include supplies and services, as they are necessary concepts for achieving and maintaining response capability.

Subsection (d)(3) “Department” is changed to reflect the Department’s new name.

Subsections (d)(4), (5), and (6) – “Discharge”, “Discharge Container System” and “Displacement” respectively – No change.

Subsection (e)(1) “Economically Sensitive Sites” - No change.

New subsection (e)(2) adds the acronym “EDRC” and cross-references the definition. This acronym is used in the Table at subsection 817.04(o).

Former subsection (e)(2) “Effective Daily Recovery Rate” is renumbered subsection (e)(3) and revised for uniformity. This term “Effective Daily Recovery Rate” is a commonly understood term within the industry regarding the capability of a skimmer or skimming equipment. The definition is updated to reflect that common understanding. The word “ocean” is deleted because currents can also refer to currents in rivers or other water bodies.

Former subsection (e)(3) “Environmentally Sensitive Site” is renumbered as subsection



(e)(4) and revised for uniformity. This term is also revised to add the term “Environmentally Sensitive Area”, because it is used synonymously in these regulations. The term is also revised to clearly encompass “environmental” sites and “cultural and historical” sites as found in both area contingency plans and geographic response plans. The area contingency plans and the geographic response plans are the primary documents that industry and the federal government rely upon for site identification. The U.S. Environmental Protection Agency and geographic response plans are also added to this definition to be consistent with the statutory definition of “environmentally sensitive area” in Government Code section 8670.3(f). **The text “or the California oil spill contingency plan” is added as a non-substantive change. This document is an additional source of identifying environmentally sensitive areas and sites. The text following this and to the end of the sentence is deleted as a non-substantive change. The language is unnecessary and redundant; responsibility for the creation of area contingency plans, geographical response plans, and the California oil spill contingency plan is described in the definitions of these terms.**

New subsection (e)(5) “Equipment Deployment Drill”, is moved here from sections 815.05 and 825.05 with no substantive changes.

Former subsection (e)(4) “Escort Tug” is renumbered (e)(6) accordingly with no substantive changes.

Former subsection (e)(5) “Escort Vessel” is renumbered (e)(7) accordingly with no substantive changes.

Subsection (f)(1) “Facility” is redefined consistent with statutory changes expanding OSPR’s jurisdiction over inland surface waters. SB 861 added a definition of “facility” at Government Code section 8670.3(g)(1). The term describes types of facilities subject to these program requirements. Previously section 790 defined term “facility” to just read “see marine facility.”

The changes at (f)(1) make the regulatory definition of “facility” consistent with the statute. The term “facility” thus collectively includes concepts from “marine facility”, “inland facility”, and “small marine fueling facility”.

In paragraph (1)(A)1. the scope of facility is limited to those handlers of oil who are involved in the process of extracting oil from the ground, moving it, processing it, and distributing oil or petroleum products to consumers or end-users. For example, a diesel generator at a hospital is not a “facility” for purposes of these regulations. **The words “and is” are added to make clear that all processes described in (1)(A)1., not just oil transportation, are intended to be defined within the association with the supply chain of oil. At (f)(1)8., “as cargo” is changed to “in bulk” to be consistent with the new revision to the definition of “oil in bulk” in this section.**

The exclusions in (f)(1)(B) are from Government Code section 8670.3(g)(2), and are restated here for ease of reference. Again, at (1)(B)2., the exemption clarifies that facilities that are not part of the supply chain are exempted.

Subsection (f)(2) “Facility Transfer Area” is revised for uniformity.

Subsection (f)(3) “Facility Transfer Point” – No change.

Subsection (f)(4) “Federal Breakwater” is revised for uniformity.

New subsection (f)(5) adds a definition for “Federal On-Scene Coordinator.” The fundamentals of this definition comes from the definition as used in the U.S. Coast Guard *Incident Management Handbook* (2014). This definition is necessary to evidence consistency with the practices of the U.S. Coast Guard and with U.S. Environmental Protection Agency. This term is familiar to and widely understood by industry and the response community.

Former subsection (f)(5) “Fiscal Year” is renumbered subsection (f)(6).

New subsection (f)(7) “Full Scale Combination Exercise” is moved here from section 815.05 with no substantive changes.

Subsection (g)(1) is deleting an acronym “GAAP” and spelling out the term “Generally Acceptable Accounting Practices.” There is no substantive change. In the past the acronym GAAP was only used in definitions; it is being replaced by the full name.

Subsection (g)(2) “Geographic Region” is revised for uniformity. It is also revised to change “regions” to “areas” because that is the U.S. Coast Guard term. In subsections (A) through (F) the county names are ordered from north to south for ease of reference. In subsection (B), an out-of-date citation is deleted. Subsection numbers (D)(1) and (2) are removed, with the corresponding text becoming (D) and (E), and Area 6 is now numbered subsection (F).

Subsection (g)(3) “Geographic Response Area” is revised to be made singular, instead of plural. And the acronyms for ACP are spelled out.

New subsection (g)(4) “Geographic Response Plan” is added. A similar version of this term existed prior to 2014, and it is being added back here. Geographic response plans address spills in inland waters (i.e. waters that are not marine waters). These plans are relied upon by industry and government responders for identifying relevant information during a spill, such as resources at risk and protection strategies. **The definition as a whole is revised for accuracy and clarity. The text “as part of the Region 9 Regional Response Team” is deleted as a non-substantive change. Reference to the RRT, as a whole, is neither necessary, nor entirely accurate.**

Subsection (g)(5) “Gross Tons” is revised to be consistent with the definition of “nontank vessel” at Government Code section 8670.3(n)(4). The word “registered” was deleted from the statute, so it is being deleted from (g)(5).

New subsection (g)(6) “Group 1 Oil” is added to identify the Group 1 oils as related to “Non-persistent Oil”, which is defined in subsection (n)(3). Group 1 oils are commonly known to industry; this is a federal term.

Subsection (h)(1) “Harbor Safety Committee” is revised for uniformity. The phrase “safety needs” is deleted because it does not accurately describe the role of a Harbor Safety Committee, which is described in the referenced statute. Harbor Safety Committees plan the safe navigation and operation of vessels within the designated harbors.

Former subsection (h)(2) “Hazardous Material” is deleted as an unnecessary term. OSPR does not regulate hazardous materials, and the term is not substantively used in the regulations.

New subsection (h)(2) “HAZWOPER” is added to define the common acronym for the primary safety training requirement for response to pollution incidents, established by the Occupational Safety and Health Administration. This acronym is used in subsections 817.04(m)(3) and (t).

Subsection (h)(3) “High Volume Ports” is revised for uniformity.

Subsection (i)(1) “Incident Action Plan” is revised to spell out incident action plan.

New subsection (i)(2) “Incident Command System” is added. This is a common, well-known concept in the response community. The *Incident Management Handbook* is referenced as an example of an appropriate incident command system. This Handbook is used by the federal on-scene coordinators for managing oil spills. The spill response community uses this as the basis for incident management.

Former subsection (i)(2) “Infrequent Transfer” is renumbered subsection (i)(3).

Former subsection (i)(3) “Inland Waters” is renumbered subsection (i)(5).

Former subsection (i)(4) “Intangible Assets” is renumbered subsection (i)(7).

New subsection (i)(4) “Inland Facility” is added to distinguish facilities that may impact inland waters from facilities that may impact marine waters.

Former subsection (i)(5) “Involved Parties” is renumbered subsection (i)(8). The term “marine terminal” is added to this definition for greater accuracy. Tankers and barges dock at marine terminals. **The term “discharge” is changed to “spill” for uniformity**

**with the regulations as a whole, as well as the defined terms within this section.**

New subsection (i)(6) “Innocent Passage” is moved here from section 815.05 with no substantive changes.

Subsection (j) is reserved. No change.

Subsection (k) “Kips” – No change.

New subsection (l)(1) “Letter of Approval” is moved here from sections 815.05 and 825.05 with no substantive changes.

Former subsection (l)(1) “Liabilities” is renumbered subsection (l)(2), is revised for uniformity, and the meaning of GAAP is expressly stated.

Former subsection (l)(2) “Linefill Capacity” is renumbered subsection (l)(3) and is revised for uniformity.

Former subsection (l)(3) “Line Haul Tug” is renumbered subsection (l)(4).

Former subsection (l)(4) “Lightering” is renumbered subsection (l)(5).

Former subsection (l)(5) “LOA” is renumbered subsection (l)(6) and is revised for uniformity.

Former subsection (l)(6) “Local Government” is renumbered subsection (l)(7) and is revised for uniformity.

Former subsection (l)(7) “Long Tons” is renumbered subsection (l)(8) and is revised for uniformity.

Subsection (m)(1) “Marine Facility” is revised to reduce redundancy. It is now explained simply as a facility that poses a risk to marine waters. The substance of the former term Marine Facility has been moved to the definition of “Facility” at subsection (f)(1). The term “Facility” is now the primary definition for what is a facility. The terms “Inland Facility” and “Marine Facility” are subsets of “Facility”, and are primarily distinguished by the type of waterways to which they pose a risk.

Subsection (m)(2) “Marine Terminal” is revised for uniformity. The reference to subsection (k) is deleted to avoid possible confusion in the future if that subsection is renumbered.

Subsection (m)(3) “Marine Waters” – No change.

Subsection (m)(4) “Master”, change for consistent term use; not a substantive change.

Subsection (m)(5) “Mobile Transfer Unit” is revised for uniformity. The term “marine waters” is changed to “waters of the state” to reflect the expansion of jurisdiction to include inland waters. **The term “discharge” is changed to “spill” for uniformity with the regulations as a whole, as well as the defined terms within this section.**

Subsection (m)(6) “Mobilization Time” – No change.

Subsection (m)(7) “MTU” is deleted as an unused acronym. It was only used in the definition of mobile transfer unit.

Subsection (n)(1) “Navigational Aid”, change for consistent term use; not a substantive change.

Subsection (n)(2) “Non-dedicated Response Resources” is revised for uniformity.

Subsection (n)(3) “Non-persistent Oil” is revised for uniformity. This term is also revised to expressly add diesel to the list; diesel is a common Group 1 oil. The phrase “at the time of shipment” is added for determining an oil’s non-persistence; and makes this consistent with the federal definition of non-persistent oil (Section 1.2.3. of Appendix E of 40 C.F.R Part 112).

Subsection (n)(4) “Nontank Vessel” is revised for uniformity.

Former subsection (o)(1) “Offshore” is renumbered subsection (o)(2) for proper alphabetizing and is not hyphenated. The term, in the context of operating environments, is to distinguish from shallow waters and sheltered waters.

Former subsection (o)(2) “Office of Spill Prevention and Response” is renumbered subsection (o)(1) and is revised to accurately define the term.

Subsection (o)(3) “Offshore Marine Facility” is revised for uniformity.

Former subsection (o)(4) “Offshore Marine Terminal” is deleted as unnecessary; it is an unused term. In addition, the definition of “offshore marine facility” adequately addresses the type of facility that could be offshore and would otherwise be characterized as a marine terminal.

Former subsection (o)(5) “Oil” is renumbered subsection (o)(4) and is revised for uniformity.

Former subsection (o)(6) “Oil in Bulk” is renumbered subsection (o)(5). **The phrase “or in a tank car” is added to clarify the regulations apply to railroads that carry oil cargo in tanks, not packaged oil on the train. The term “discharge” is changed to “offloaded” to avoid confusion with the defined term “spill” which is used interchangeably with “discharge”. In this sentence, we are not referring to oil that**

**has been spilled, but rather oil which has been legally offloaded or removed.**

Former subsection (o)(7) “Oil Pollution Risk Area” is renumbered subsection (o)(6) and deletes the acronym “OPRA,” which is not used except in this definition.

Former subsection (o)(8) “Oil Spill Contingency Plan” is renumbered subsection (o)(7) and is revised for uniformity. The citation to the two sections is replaced with the applicable subchapters. **This section has non-substantial grammatical and typography revisions to improve clarity.**

Former subsection (o)(9) “Oil Spill Response Organization” is renumbered subsection (o)(8), and is revised for uniformity. In subsection (A) the term “Rated OSRO” is deleted here as redundant; it is already defined at subsection (r)(2). Subsection (A) is revised to explain that an oil spill response organization can be rated, and provides the citation to the rating process.

Former subsection (o)(10) “Oil Transfer System” is renumbered subsection (o)(9) and is revised for uniformity.

Former subsection (o)(11) “Operator” is renumbered subsection (o)(10), and is revised for uniformity.

Former subsection (o)(12) “Operating” is renumbered subsection (o)(11) and is revised for uniformity. The use of the word “underway” is a federal term, added for consistency with federal terminology to describe operating.

Former subsection (o)(13) “Operating Environment” is renumbered subsection (o)(12) and is revised for uniformity. The word “marine” is removed to reflect statutory changes of Senate Bill 861 expanding the program to cover all waters of the state. **“Shallow water” has a non-substantive grammatical revision, and “inland waters” is added to reflect statutory changes of Senate Bill 861 expanding the program to cover all waters of the state.**

Note: Former subsections (o)(12) and (13) were erroneously published as merged. In the erroneously published version, the paragraphs (A) and (B) of (o)(12) were published as part of (o)(11). In June 2017, and some months prior, the Office of Administrative Law notified the publisher of the error, asking for correction. The correction has been made.

Former subsection (o)(14) “OSPR” is renumbered subsection (o)(13) and is revised for uniformity.

Former subsection (o)(15) “OSRO” is renumbered subsection (o)(14) and is revised for uniformity.

New subsection (o)(15) “OSRO-Owned and Controlled Resources” is moved here from section 815.05 to consolidate definitions into section 790. No substantive changes.

Subsection (o)(16) “OSRO Rating Letter” is moved here from section 815.05 to consolidate definitions into section 790. No substantive changes. Deleted the phrase “unless exempted by the Administrator”; this phrase is unnecessary, there are no exemptions for OSRO’s.

Former subsection (o)(16) “Owner or Operator” is renumbered subsection (o)(17) and is revised for uniformity. It is also revised to eliminate the references to “marine” because of statutory changes making the program applicable to all facilities, whether marine or inland. **A non-substantive edit has been made for consistency.**

Former subsection (o)(17) “Owner’s Equity” is renumbered subsection (o)(18) and is revised for uniformity.

Former subsection (p)(1) “P&I Club” is deleted as an unnecessary cross-reference of a commonly used abbreviation. “Protection and Indemnity Club” is defined in subsection (p)(11). Use of the acronym is being deleted from OSPR’s regulations.

Former subsection (p)(2) “Persistent Oil” is renumbered subsection (p)(1) and is revised for uniformity. Additionally, a “Note” is added to avoid confusion on the lack of reference to Group 1 oils in this definition.

Former subsection (p)(3) “Person” is renumbered subsection (p)(2).

Former subsection (p)(4) “Petroleum Barge” is deleted because it is an unused term.

Former subsection (p)(5) “Pilot” is renumbered subsection (p)(3) and is revised for uniformity.

Former subsection (p)(6) “Pipeline” is renumbered subsection (p)(4) and is revised for uniformity. The provisions regarding whether a pipeline is a facility have been revised to reflect there is more criteria than just posing a threat to state waters. Whether a pipeline is a facility is addressed in sections 817.01 and 817.04.

New subsection (p)(5) “Plan Holder” is moved here from section 815.05 to consolidate definitions into section 790, with no substantive changes.

New subsection (p)(6) “Plan Recipient” is moved here from section 815.05 to consolidate definitions into section 790, with no substantive changes.

Subsection (p)(7) “Point of Transfer” is revised for uniformity.

Subsection (p)(8) “Port Authority” – No change.

New subsection (p)(9) “Production Facility” is added to define this type of facility for determining the applicability of program requirements. This definition is similar to section 3010 of the Public Resources Code, which guides the state Division of Oil, Gas, and Geothermal Resources. However, OSPR is adding the concept of custody transfer points to distinguish production operations from transmission pipeline operations, which have different reasonable worst case spill volume planning calculations.

Former subsection (p)(9) “Production Pier” is renumbered subsection (p)(10) and is revised for uniformity.

Former subsection (p)(10) “Protection and Indemnity Club” is renumbered subsection (p)(11) and is revised for uniformity.

Subsection (q)(1) defining the acronym “QI” is deleted as unnecessary. Everywhere it is used in the regulations it is preceded by the defined term Qualified Individual. It is also unnecessary given its proximity in the regulations adjacent to its related definition “Qualified Individual” (subsection (q)(1)). **The word “contingency” is added for clarity.**

Former subsection (q)(2) “Qualified Individual” is renumbered subsection (q)(1) and is revised for uniformity. In (q)(2)(B) the reference to “liaison” is replaced with the concept of coordinating, to be more accurate and avoid confusion. A liaison officer is a formal role within the incident command system, and a qualified individual is not a liaison officer. A qualified individual serves as one the responsible party’s initial representatives during a spill, with authority to order response resources and expend money. Although they “liaise” as that word is commonly used, the word coordination is being used instead to avoid any confusion or false expectations.

New subsection (r)(1) “Railroad” is added to explain and clarify this type of facility for determining the applicability of program requirements. This is consistent with sections 8670.03 and 8670.28 of the Government Code. **The term “as cargo” is changed to “in bulk” to limit the scope of railroads as a facility by the kinds of oil cargo they transport (oil in tanks cars vs. packaged oil on a train), as well as to be consistent with the new revision to the definition of “oil in bulk” in this section.**

Former subsection (r)(1) “Rated Oil Spill Response Organization” is renumbered subsection (r)(2) and is revised for uniformity. The word “service” is added to accurately indicate that ratings cover “services” – such as booming, skimming, etc.

Former subsection (r)(2) “Reasonable Worst Case Spill” is renumbered subsection (r)(3). The definition is revised to specifically identify where in the regulations the reasonable worst case spill volume is calculated for each type of vessel or facility. The redundant definition in sections 791 and 825.05 will be deleted.



Former subsection (r)(3) “Regional Response Team” is renumbered subsection (r)(4) and is revised for uniformity.

Former subsection (r)(4) “Remove” is renumbered subsection (r)(5).

Former subsection (r)(5) “Response Area” is renumbered subsection (r)(6) and is revised for uniformity.

Former subsection (r)(6) “Response Resources” is renumbered subsection (r)(8).

New subsection (r)(7) “Response Planning Area” is added as relevant to oil spill planning within the state (section 817.04). Response Planning Areas are distinct geographic regions with established times for responding to a spill with a minimum amount of oil spill equipment within the Response Planning Area. The Response Planning Areas are the same boundaries as Local Emergency Planning Committee Regions.

Former subsection (r)(7) “Response Vessel” is renumbered subsection (r)(9). The specific types of vessels listed are deleted from this definition to avoid possible confusion. Response vessels are not tankers or barges – which carry oil as cargo. Response vessels are generally the type of vessel that pull boom, collect oil with a skimmer, or are work platforms for spill response activities. The phrase “waterborne craft” is deleted and replaced with “vessel” because the defined term “Vessel” (subsection (v)(1)) covers waterborne craft.

Former subsection (r)(8) “Responsible Party” is renumbered subsection (r)(10) and is revised for uniformity. In (B) and (C) the word “marine” is deleted to reflect expanded statutory application to inland facilities. The term “party responsible” is being deleted as a confusing phrase, and will be deleted where used. It is unnecessary to have this phrase. And it is too similar to “person” responsible, which is a different concept.

Former subsection (r)(9) “Risk and Hazard Analysis” is renumbered subsection (r)(11) and is revised for uniformity.

Former subsection (r)(10) “Risk Zone” is renumbered subsection (r)(12) and is revised for uniformity.

Subsection (s)(1) “Santa Barbara Channel” – No change.

Subsection (s)(2) “Sensitive Site Strategy Evaluation Program” is revised for uniformity and consistency of terms. The word “protection” is deleted as redundant in the sentence. Reference to geographic response plans is added because they contain inland response strategies, and the OSPR mandates now cover both marine and inland waters. The word “environmentally” is added to provide clarity. This program only evaluates strategies related to sensitive sites; it does not evaluate strategies related to

cultural sites or economic sites. The reference to marine waters is deleted to adapt the definition to reflect that the program is not limited to marine waters. The last sentence is deleted as not relevant to defining the term or providing interpretive guidance.

New subsection (s)(3) “Shallow-Draft Vessel” is moved here from section 815.05 to consolidate definitions into section 790. The redundant definition will be deleted.

Former subsection (s)(3) “Shallow Water” is renumbered (s)(4), and revised for uniformity. **“Marine” is added back in the definition as it was previously deleted erroneously. There are other non-substantive grammatical revisions.**

Former subsection (s)(4) “Sheltered Waters” is renumbered (s)(5), and is revised for uniformity. **Non-substantive revisions are made to grammar.**

Former subsection (s)(5) “Shifting” is renumbered (s)(6), and has the phrase “place or position” added for clarity and readability.

Former subsection (s)(6) “Shoreline Protection Tables” is renumbered (s)(7). It has a sentence explaining how the tables are updated pursuant to the Administrative Procedure Act. This is moved here from section 819.02(d)(4)(A).

Former subsection (s)(7) “Short Ton” is renumbered (s)(8), and is revised for uniformity.

Former subsection (s)(8) “Small Craft” is renumbered (s)(9), and is revised for uniformity.

Former subsection (s)(9) “Small Craft Refueling Dock” is renumbered (s)(10), and is revised for uniformity.

Former subsection (s)(10) “Small Marine Fueling Facility” is renumbered (s)(11), and is revised for uniformity.

Former subsection (s)(11) “Small Vessel” is renumbered (s)(12), and is revised for uniformity.

Former subsection (s)(12) “Spill” is renumbered (s)(13). The volume – 42 gallons – has been removed to be consistent with section 8670.3(ac) of the Government Code. This change reflects that the program has been expanded to all state waters.

Former subsection (s)(13) “Staff” is renumbered subsection (s)(15) and is revised for uniformity.

New subsection (s)(14) “Spill Management Team” is moved here from sections 815.05 and 825.05 to consolidate definitions into section 790, with no substantive changes. Reference to the National Contingency Plan (NCP) is deleted as unnecessary and

potentially confusing. The NCP requires federal responders to perform incident management, and expects organized incident management by all responders, but does not directly require the private sector to have a spill management team. However, for example, the U.S. Coast Guard does require facilities and vessel operators to have a spill management team. [e.g. 33 CFR §154.1035(b)(3)(iv)]

Former subsection (s)(14) “State Fiscal Year” is renumbered (s)(16).

Former subsection (s)(15) “State Incident Commander” is deleted as outdated. The concept is being replaced by new (s)(16) with the term “State On-Scene Coordinator”. This reflects the change in nomenclature within the response community, but there is no substantive change to the definition.

Former subsection (s)(16) “State Liaison Officer” is renumbered (s)(17).

New subsection (s)(17) adds the term “State On-Scene Coordinator” to reflect the change in nomenclature within the response community from “commander” to “coordinator”, but there is no substantive change from the prior definition of State Incident Commander.

Subsection (s)(19) “State Waters” is added for consistency, to indicate that this phrase is synonymous with the defined term “waters of the state”.

Former subsection (s)(17) “Static Bollard Pull” is renumbered subsection (s)(20).

New subsection (s)(21) “Supply Chain of Oil” is added to help delineate to whom these requirements apply. The intent is to limit the scope of facilities to those handlers of oil who are involved in the process of extracting oil from the ground, moving it, processing it, and distributing oil or petroleum products to consumers or end-users. The end-users or individual consumers are not a “facility” for the oil they consume. **There are non-substantive edits for the purpose of delineating who is considered the supply chain, and who is the ultimate consumer of the oil.**

This concept is similar to the definition of “end-user” found at section 8541 of Title 22 of the United States Code, and section 95102(a)(336) of Title 17 of the California Code of Regulations.

It is also similar to provisions of other agencies in the California Code of Regulations: Air Resources Board, sections 93115.4(a)(32), 95102(a)(151), 95202(a)(56), 95802(a)(128) of Title 17; California Energy Commission section 1302(b)(17) of Title 20; the Department of Toxic Substances Control, section 67384.3 of Title 22.

New subsection (s)(22) “Systems Approach” is moved here from 815.05 to consolidate definitions into section 790, with no substantive changes.

New subsection (t)(1) “Tabletop Exercise” is moved to here from section 815.05 and section 825.05 to consolidate definitions into section 790, with no substantive changes.

Former subsection (t)(1) “Tank Barge” is renumbered subsection (t)(2).

Former subsection (t)(2) “Tank Ship” is renumbered subsection (t)(3), and is revised for uniformity.

Former subsection (t)(3) “Tank Vessel” is renumbered subsection (t)(4).

Former subsection (t)(4) “Tanker” is renumbered subsection (t)(5).

Former subsection (t)(5) “Terminal” is renumbered subsection (t)(6).

Former subsection (t)(6) “Tractor Tug” is renumbered subsection (t)(7).

New subsection (t)(8) “Transmission Pipeline” is added to distinguish oil *production* operations from oil *distribution* operations. Production facilities have a different reasonable worst case spill volume calculation than larger pipelines that take oil away from production fields and otherwise distribute oil and petroleum products around the state.

Former subsection (t)(7) “Transporting Oil in Bulk” is renumbered subsection (t)(9) and is revised for uniformity.

Former subsection (t)(8) “Tug” is renumbered subsection (t)(10).

New subsection (u)(1) “Unannounced Drill” or “Unannounced Exercise” is moved here from section 815.05 and section 825.05 to consolidate definitions into section 790, with no substantive changes.

Former subsection “(u)” defining Unified Command is renumbered subsection (u)(2) and is revised for uniformity. There are various ways to organize the command structure. The members of the Unified Command will agree upon this. Most commonly the structure is the version described in the U.S. Coast Guard or U.S. Environmental Protection Agency *Incident Management Handbook*, but the parties may agree that a different incident command system is appropriate for the incident.

Subsection (v)(1) “Vessel” – No change.

Subsection (v)(2) “Vessel Carrying Oil as Secondary Cargo” has the phrase “cargo residue” deleted. Residue it is not mentioned in the statutory definition at section 8670.3 of the Government Code.

Subsection (v)(3) “Vessel of Opportunity” is revised for readability, but the essence is

not changed. The undefined general word “craft” is replaced with the defined general term “vessel”. The word “not” is added for clarity, and should have been added originally. The focus of a vessel of opportunity is a vessel this is not a normally used for spill response.

Subsection (v)(4) “Vessel Traffic Service System” is revised for uniformity.

Subsection (v)(5) “VTS” is deleted as an unnecessary acronym. It is only used in the definition.

New subsection (w)(1) “Waters of the State” is added to ensure consistency with Government Code section 8670.3(a).

Former subsection (w)(1) “Working Capital” is renumbered subsection (w)(2) and is revised for uniformity. The acronym GAAP is being spelled out.

Former subsection (w)(2) “Working Days” is renumbered subsection (w)(3) and is revised for uniformity. The word “state” is clarified to mean State of California.

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 817.04 – Inland Oil Spill Contingency Plans:**

This is a new section created to implement the inland program mandates required by SB 861.

##### **Subsection (a)**

Purpose: Subsection (a) describes the scope and purpose of the inland oil spill contingency plan requirements for inland facility owners and operators.

Necessity: This subsection is necessary because this is a new mandate, providing detail and specificity not found in the statute

##### **Subsection (a)(1) has a non-substantive grammatical edit.**

Subsection (a)(2) explains that these requirements are planning standards, not actual performance standards. This is a common planning concept. Real-time circumstances cannot be predicted, such as floods, earthquakes, protests, freeway closures, extreme water conditions, etc., which may hinder response activities. **This subsection has a non-substantive grammatical edit.**

## Subsection (b)

Purpose: Subsection (b) specifies as a matter of threshold applicability which owners or operators are required to have a contingency plan and which are not. Exemptions are explained in subsection (c).

Necessity: This subsection is necessary because the statute does not provide this specificity. The potential risk of impacts to waters of the state can be predicted in part by proximity to those waters and the amount of oil on site. Thus, to focus planning resources commensurate with the potential environmental risk, subsection (b) identifies threshold applicability criteria.

In subsection (b)(1) the core threshold is operating within a quarter mile of inland surface waters. This is deemed a reasonable distance for posing a threat to surface waters based on past experience responding to spills and professional judgement. Also, one-quarter mile distance from a waterway is also used by the Division of Oil, Gas, and Geothermal Resources (**DOGGR**) for facility planning purposes. (See section 1722.9(f), of Title 14, California Code of Regulations) Thus, many of the inland facilities will be familiar with this distance for determining program applicability.

**Subsection (b)(1) is renumbered (b)(1)(A) to allow for the addition of subsection (b)(1)(B). This is a non-substantive change.**

**New subsection (b)(1)(B) is added to allow the provision for facility owners and operators to reference the NHD in determining their facility(ies) applicability to OSPR's contingency planning requirements. The previous defining characteristics of inland waters "at least three inches deep for more than 182 days a year" and "less than three inches deep or are more than 3 inches deep but for less than 182 days a year", have been revised to designations recognized by the U.S. Geological Survey's National Hydrography Dataset (NHD) as "perennial" and "intermittent or ephemeral", respectively. The NHD is a digital dataset representing the water drainage network of the United States with features such as rivers, streams, canals, lakes, ponds, coastline, dams, and streamgages. It is the most up-to-date and detailed hydrography dataset for the nation and is managed by the United States Geological Survey. These criteria are revised throughout the companion statewide regulations.**

**The NHD is housed within the Environmental Response Management Application, commonly referred to as ERMA, which is a web-based Geographic Information System (GIS) tool that assists both emergency responders and environmental resource managers in dealing with incidents that may adversely impact the environment. ERMA integrates and synthesizes various real-time and static datasets into a single interactive map, thus provides fast visualization of the situation and improves communication and coordination among responders and environmental stakeholders.**

In subsection (b)(2), the Administrator is reserving the ability to determine, based on good cause, that there may be a facility beyond ¼ mile from state waters that should be regulated. Hypothetically, a large transportation pipeline running across the ridge of a steep canyon that is just beyond ~~4~~<sup>1</sup>/<sub>4</sub> mile above a river below may need a contingency plan. This serves the legislative intent to provide best achievable protection of state waters. **This subsection has a non-substantive grammatical edit.**

Subsection (b)(3) explains situations of non-applicability. The first reason for non-applicability, at (3)(A), is being more than ¼ mile from inland waters; this is merely stating the converse of (b)(1). **This subsection has a new non-substantive grammatical edit.**

Subsection (3)(B) establishes threshold applicability criteria for production facilities. An average daily production rate was chosen to eliminate wells that pose very low threat. A well that produces less than 10 barrels a day is considered a “stripper well”. This definition is by the Interstate Oil & Gas Compact Commission; the members of this commission are the Governors of 38 states, including California. Based on 2016 annual data from ~~the Division of Oil, Gas, and Geothermal Resources~~ **DOGGR**, of 265 active producing oil wells, 148 of them are considered “stripper wells” – their daily production average was less than 10 barrels per day. OSPR has deemed these wells to be a risk below the Act’s intent for full program applicability. However, these wells would be covered by DOGGR’s spill planning requirements. **This subsection has non-substantive grammatical edits.**

Subsection (3)(C) explains the program does not apply to tanks that are already regulated as aboveground petroleum storage tanks or underground petroleum storage tanks. Government Code section 8670.3 expressly creates this non-applicability; by definition these tanks are not a “facility.” This non-applicability is derived from the two Health & Safety Code tank programs. However, the Health & Safety Code expressly carves out an exception to this non-applicability: oil production tanks regulated by ~~the Division of Oil, Gas, and Geothermal Resources (DOGGR)~~ are not regulated as “aboveground petroleum tanks”, pursuant to Health & Safety Code section 25270.2(a)(3). Thus these DOGGR tanks could be regulated by OSPR. **At (3)(C)1., the “1.” is deleted as an unnecessary format structure. Twice, “subdivision” is corrected to “subchapter.”**

Subsection (b)(4) gives the Administrator the discretion to require program applicability to an inland facility that has a spill that impacts state waters if previously the requirements were inapplicable or an exemption had been granted. This is similar to the marine facility requirements (Section 817.01(b)(2)(E)). This serves the legislative intent to provide best achievable protection of state waters. For example, a facility could be granted an exemption based on primary and secondary containment infrastructure, but later a spill gets through the containment because the infrastructure was not maintained. Another example is where physical conditions may have changed, such as the installation of a culvert that was not present at the time of an applicability/exemption

determination, and an oil spill passes through the new culvert into state waters. Unless the culvert is re-engineered to prevent spills, the facility has demonstrated it poses a risk. **Non-substantive grammatical edits are made for clarity.**

### Subsection (c)

Purpose: Subsection (c) provides exemptions for those operators for whom these requirements would otherwise apply. This subsection provides a process for requesting an exemption.

Necessity: This subsection is necessary because the statute does not provide this specificity. The Administrator is mandated with setting standards for determining the reasonable worst case oil spill for facilities (and vessels). (Gov. C. §8670.28(a)(10)) These exemptions are required to address the concept of “reasonable”, while still ensuring that all areas of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. (Gov. C. §8670.28(a)(1)) Thus, the provisions of (c) fairly exclude operators who could not pose a risk to state waters even though they are within a quarter mile from surface waters due to their size, geographic location, or other factors affecting risk from an oil spill.

In (c)(1)(A), common sense criteria are identified as bases for finding that an operation would not reasonably be expected to impact state waters.

**Subsection (c)(1)(B) is added to improve clarity regarding criteria for an exemption from having an oil spill contingency plan where the boundary lines of an inland facility may be within the ¼ mile applicability threshold, but the equipment on that facility that poses a risk of an oil spill is located outside the ¼ mile threshold.**

**Former subsection (c)(1)(B) is renumbered to (c)(1)(C).** In (c)(1)(C) the exemption for transmission pipelines is the same as the federal pipeline planning requirement based on the size of the pipeline. (49 Code of Federal Regulations Part 194.101(b)) This provides consistency for pipeline operators. **The term “discharge” is changed to “spill” for uniformity with the regulations as a whole, as well as the defined terms in section 790.**

In (c)(2) the process for requesting an exemption is explained, providing due process to facility owners and operators. The Administrator would have 30 **calendar** days to review the exemption request. Thirty days is chosen for consistency; it is the same period that is used for review of a contingency plan. It gives OSPR staff a reasonable amount of time to review the request, coordinate a site visit with the requesting entity, and prepare a written evaluation of the exemption request. **The edit reflected here is to the ISOR only; the regulatory text required no revision.**



Subsection (c)(2)(A) allows for multiple exemption requests, but each request does not reset the review period. OSPR found early on that it seemed some operators were simply trying to delay compliance by submitting repeated requests based on little or no new facts.

Subsection (c)(2)(B) allows for reconsideration of a denial of an exemption request, providing due process. However, requesting a reconsideration cannot be used to delay compliance.

Subsection (c)(3) provides the exemption expires after five years. This gives OSPR the opportunity for periodic reevaluation. A five year cycle was chosen to align the with the five year term for contingency plans pursuant to subsection (f) of section 8670.31 of the Government Code.

#### Subsection (d)

Purpose: Subsection (d) allows an operator with multiple facilities to submit a single contingency plan that covers all operations, commonly referred to as a “blanket plan.”

Necessity: This subsection implements the statutory requirement to allow a single plan for multiple facilities. (Government Code section 8670.28(a)) The criteria in subsection (d)(2) are modeled from the criteria that have been used for marine facilities for years, at section 816.01(a)(1). This provides consistency in implementation of statewide mandates. Experience has shown these criteria to be effective at reducing the burden on owners or operators to create more than one plan, while providing the necessary protection to state waters posed by multiple facilities.

If the facilities do not pose similar risks or are not protected by substantially the same response resources, then separate plans for each facility may be more appropriate.

**In subsection (d)(2), “may” is changed to “shall” for consistent expression of mandatory provisions and alignment with the immediately preceding language in (d)(1). Additional non-substantive grammatical edits are made.**

#### Subsection (e)

Purpose: The purpose of subsection (e) is to describe the minimum formatting requirements for an oil spill contingency plan, including how to designate information in the plan as confidential.

Necessity: The applicable statute requires plans to be written (Government Code section 8670.29(b)(1)). This section provides structure for what is expected.

Subsection (e)(1) informs the owners or operators of inland facilities that they must submit a contingency plan when they reasonably should know they need to submit one. The period of 120 calendar days – four months – is considered a reasonable amount of

time to develop and submit a plan. Since passage of the Act in 1990, the ability to develop an adequate contingency plan has greatly improved over the past 25 years. Plans are common now, and numerous consultants exist that can be retained to create a plan if an owner or operator does not feel comfortable developing it on their own. Industry trade groups such as the Western States Petroleum Association and the California Independent Petroleum Association have members that already have contingency plans, and presumably can facilitate helping other members attain compliance. **Non-substantive grammatical edits are made.**

Subsection (e)(2) establishes minimum requirements that must be submitted where an owner or operator will be acquiring a new facility. These “future operations” provisions are modeled from the preliminary approval requirement for marine facility contingency plans at section 816.03(e). This ensures continuity of oil spill coverage for existing facilities during the transition of ownership or operation, and ensures pre-planning for facilities that will be coming online. OSPR’s 30 calendar day review period is the same for reviewing a new plan; this is a consistent time period, discussed regarding subsection (f) below. The time for submitting a plan within 120 calendar days of acquisition and operation is the same period used for new operations, as described in subsection (e)(1) above and at section 791.6(c) [financial responsibility]. **A non-substantive grammatical edit is made at (e)(2)(A)1.**

**This pre-transition notice should not be a change for operators. Operators are already required to notify DOGGR in writing of acquiring the right to operate a well prior to final acquisition. [Public Resources Code section 3202] And notices of offers to sell and notices of intention to purchase must be provided to DOGGR in advance. [sections 1881 and 1881.5 of Title 14 of the Code of Regulations]**

Subsection (e)(3)(A) implements the express statutory obligation to allow a single plan for multiple facilities. (Gov. C. §8670.28(a)) This subsection advises a plan holder that the plan may cover multiple facilities with a single plan, provided that review of content and approval for a single plan must be coordinated, as allowed pursuant to subsection (d). **A non-substantive clean-up change is made for consistency.**

Subsection (3)(B) states the general intent that an owner or operator can rely on existing documents or an existing contingency plan they may already have; completely new document are not necessarily required. For example, a pipeline operator with a contingency plan approved by the federal Pipeline, Hazardous Materials, and Safety Administration (PHMSA) may already significantly address the requirements of this section, and the plan may only need slight modifications. Another example, area contingency plans or geographic response plans can be referenced; owners and operators do not need to include these. Use of existing plans save owners or operators from unnecessarily creating documents, and saves OSPR staff from reviewing and managing unnecessary documents.

Subsection (e)(4) requires plans to be in an electronic format. An electronic or digital format is much more efficient than requiring paper plans, and this seems to be the preferred format by all parties. Digital files can be inexpensively created and emailed or uploaded to an FTP site, instead of paying for printing large documents, binder costs, and the costs and delay of mailing by postal service. Since January 1, 2012, OSPR has not accepted hard copies of marine contingency plans, per section 816.02. **A non-substantive edit is made to provide examples of the acceptable formats of electronically submitted documents.**

The provisions of subsection (e)(5) address the need to allow for confidentiality of certain content in contingency plans. By law, plans must be available to the public for review (Government Code section 8670.28(b)). However, owners and operators also have a right to protect certain privileged or proprietary information. Thus, subsection (d)(5), which is similar to the marine regulations at section 816.01(d) and 816.03(c), establishes a process for specifically designating information that is entitled to be withheld from public inspection so that the opportunity for public review is only affected where necessary. The intent of (e)(5)(B) is to make clear that each instance of claimed confidentiality is supported. OSPR has received plans with information that was redacted based on a mere claim of “privilege”; such a mere claim is not sufficient justification. OSPR also has received redacted information that was readily available on the internet, even on the plan holder’s own public website; withholding such redacted information from public review cannot be justified without specific and legitimate authority.

Subsection (e)(5)(C) requires two plans to be submitted if there is a claim of privilege or confidentiality. This is a common approach, and is currently allowed for marine contingency plans at section 816.01(d). This allows OSPR to consider the adequacy of the plan by reviewing the un-redacted version; and allows the public access to a plan while protecting legitimate privacy concerns of the plan holder.

Subsection (e)(5)(D) provides a balance between the public’s statutory right to review a contingency plan and a plan holder’s legal rights to protect legitimate confidential or privileged information. Ten business **days** ~~days~~ essentially ~~days~~ provides two weeks’ time for the plan holder to assert their claimed privileges in Court and seek an order to not release the information.

Subsection (e)(5)(E) specifies who makes the decision regarding disclosure or withholding.

#### **Subsection (f)**

Purpose: The purpose of subsection (f) is to describe the time frame by which OSPR will review contingency plans and either issue an approval or provide the facility operator with a list of deficiencies. It provides a clear, transparent process so both the operators and OSPR staff know how long a review will take, when approval can be

expected, and what the appeal process is if an operator wants reconsideration of a plan. It also describes how the public may review a submitted contingency plan.

Necessity: This subsection is necessary because statute requires OSPR review of contingency plans, but does not provide sufficient details related to review and approval.

In (f)(1) OSPR would have 30 **calendar** days to approve or disapprove a plan. If there are deficiencies, these must be addressed and resubmitted to OSPR within 30 **calendar** days. These times are set by Government Code section 8670.31(c) and (d). By statute, the Administrator has authority to conduct drills and inspections as part of the review of a contingency plan. (Gov. C. §8670.31(e)) Based on experience, it usually takes about 15 **calendar** days for OSPR to review a re-submission in response to a notice of deficiency. **The edits reflected here are to the ISOR only; the regulatory text required no revision.**

An appeal process is necessary to provide due process to plan submitters. In addition, statute requires that the regulations must provide for public review and comment on contingency plans; this subsection meets that intent (Government Code section 8670.28(b)).

**Subsection (f)(1)(A) has non-substantive grammatical edits.**

**Subsection (f)(1)(E) has sentence structure edits for better readability and clarity.**

Subsection (f)(2) explains the approval process, including preliminary approval of the plan upon submission while the plan is being reviewed. This is similar to approval of marine contingency plans. It is necessary to consider the contingency plan to be preliminarily approved upon submittal to provide certainty to all parties as to the terms that would apply if there were a spill during the review period prior to formal approval or denial.

**At subsection (f)(2)(E), language is added to further establish that which is in (f)(1)(B), but that the Administrator may determine, not only the adequacy of a plan, but also if, after a plan has been approved, the Administrator may deem it to be deficient based on verification, inspection, or performance.**

Subsection (f)(3) explains the denial or revocation process. This is similar to denial or revocation of marine contingency plans.

Subsection (f)(4) allows for reconsideration if a plan holder feels OSPR has made an erroneous decision to deny or revoke a plan. These time frames are the same as provided for marine facilities, at section 816.03(g). These time frames provide sufficient time for a plan holder and the Administrator to process reconsideration requests while minimizing the time to complete contingency planning.

**Subsection (f)(4)(B) has sentence structure edits for better readability and clarity.**

Subsection (f)(5) allows for public review of contingency plans. By law, contingency plans must be available to the public for review (Government Code section 8670.28(b)). The Public Records Act provides a well-known process for review of documents held by public agencies.

**Subsection (g)**

Purpose: Subsection (g) defines notification procedures and describes who the plan holder needs to call in the event of a spill, how quickly, and with what type of information. **The word “Spill” is added to the subsection title for clarity.**

Necessity: Statutes require spills to be reported (e.g., Government Code section 8670.25.5; Health & Safety Code section 25510), and contingency plans must have a list of contacts to call (Government Code section 8670.28(a)(8)). This subsection identifies the type of information that is needed by OSPR and the Office of Emergency Services, to properly assess the situation and respond effectively. The requirements of subsection (g) are similar to marine facility requirements, at section 817.02(g). The contacts listed at (g)(1)(A) through (F) are the minimum contacts needed to initiate response to a spill.

Subsection (g)(2) provides specificity to the statutory requirement that spills be “immediately” reported. The initial call must be initiated within 30 minutes, which acknowledges that it may take some time to understand the situation and get the first call initiated. Based on feedback from industry, some calls to the National Response Center and the Warning Center at the California Office of Emergency Services are said to take a long time to complete. However, an open-ended call period would defeat the goal of getting state and federal responders engaged. Thus, as a compromise to this feedback, all calls must be completed within two hours after the first call.

The purpose of (g)(3) is to make clear that the plan holder is responsible for ensuring these calls are made. This responsibility cannot be passed off to a qualified individual, who is often a consultant or a spill management team.

The purpose of (g)(4) is to ensure the phone numbers can be quickly found and used. This helps implement the requirement that operators must maintain a level of readiness that will allow effective implementation of the plan, and that the plan be promptly implemented. [Government Code section 8670.28.5, 8670.29(a)]

The purpose of (g)(5) is to require plan holders to consider spills larger than their reasonable worst case spill planning volume, because the plan holder will be responsible to clean up the spill regardless of how large the spill is. This is similar to marine requirements at 815.03, 816.03(b)(2)(F), and 817.02(d)(3).

Subsection (g)(6) describes the information a plan holder should be prepared to provide to the contacts on the spill notification list. This list is the same for marine facilities, as provided in section 817.02(g)(4). Some of this information will be particularly relevant to the oil spill response organization, the spill management team, and agency responders. The California State Warning Center and the National Response Center also want much of this information when a spill is reported.

The purpose of (g)(7) is to let plan holders know that notifications should be made to initiate response actions within the first 30 minutes even if not all of the information is immediately known at the time the calls are made.

Statute requires updates be provided to the Office of Emergency Services if the initial information was inaccurate, incomplete, or has changed. [Gov. C. § 8670.25.5(a)(2)] Thus, subsection (g)(8) requires changes be updated every 12 hours for the first two days unless the Unified Command agrees this is not needed. This is necessary to ensure sufficient resources are called out in the crucial first hours and days of a spill. **A non-substantive grammatical change is made.**

#### Subsection (h)

Purpose: Subsection (h) describes the basic information needed in the plan, such as who the operator is, contact information, and who the plan holder's contractors are.

Necessity: Statute requires much of this information (Government Code sections 8670.28(a) and 8670.29(b)). This subsection is necessary to explain the detail needed in the contingency plan. Additional content specific to vessels, facilities, and railroads is expressly stated at subsections 8670.29(c), (d) and (e) of the Government Code. The content required by subsection (h) is similar to content required for marine facilities in section 817.02(a).

Subsection (h)(1) establishes the identity of the plan holder, the ability to contact the plan holder, and that the plan holder is committed to the plan. **The word "contingency" is added for clarity. An additional minor edit is made at (h)(1)(E).**

Subsections (h)(2) through (4) establish that the plan holder has the necessary equipment and people available for a response – the qualified individual, the spill management team, and the oil spill response organization. These are critically important elements of a contingency plan. **A non-substantive edit is made at (h)(4) to include "of this section" for clarity purposes.**

Subsection (h)(5) establishes a method for OSPR to service legal notices to the plan holder. This is particularly important because the primary place of business for some owners or operators is outside of California, which could make service more difficult and time consuming than it needs to be.

### Subsection (i)

Purpose: The purpose of subsection (i) describes what is expected for spill mitigation measures.

Necessity: Statute requires protection measures to reduce the possibility of a spill. (Government Code section 8670.28(a)(5)). This subsection explains that the risk and hazard analysis is the basis for determining protection measures. Because the analysis will be different for each plan holder, the plan holder will have much discretion to develop this component of the contingency plan. Protection measures, as described in (1) and (2), are those that would avoid a spill or reduce the severity of a spill. These are standard, common industry practices for businesses handling oil.

The protection measures are similar to those required for marine facilities in section 817.02(c)(4).

### Subsection (j)

Purpose: Subsection (j) describes what is required for the description of the facility operations and the reasonable worst case spill volume that might result from those operations.

Necessity: Government Code section 8670.29 describes the minimum content that must be in a contingency plan depending on the facility type. Statute also requires the contingency plan to address the reasonable worst case spill volume from the facility (Government Code section 8670.28(a)(4), (9) and (10)). Subsection (j) builds upon what is required by statute and by the regulations for marine contingency plans.

Subsection (j)(2) describes information that would be useful to planners and responders for understanding the possible risks posed by a non-railroad facility. This information is commonly known and gathered within the response planning community and would be readily available to the facility. This information is similar to the information that has been required for marine facility oil spill contingency plans for 25 years.

Subsection (j)(3) describes information that would be useful to planners and responders for understanding the possible risks posed by a railroad. This information is commonly known and gathered by railroad operators. Some of this information is specifically required by Government Code section 8670.29(e). The requirement for timetable information is relevant to calculating the reasonable worst case spill volume and financial responsibility that a railroad operator must provide; speed is a key factor in the severity of an railroad incident. **“As cargo” is changed to “in bulk” to be consistent with the new revision to the definition of “oil in bulk” in section 790.**

Subsection (j)(4) describes the reasonable worst case spill (RWCS) volume calculations for the main types of inland facilities.

**At (j)(4)(A),** for production facilities, the RWCS volume is 10% of the largest producing well. This amount is based on the assumption that the majority of the fluid extracted by a well in a production field is produced water mixed with crude oil. Although for planning purposes the equipment requirements are for cleanup of the crude oil, all impacts from a spill of produced water must be cleaned up and addressed because all of the water has the potential to contain oil. **The edit reflected here is to the ISOR only.**

**At (j)(4)(B),** for pipelines, the RWCS volume calculation is the same for marine on-shore pipelines, consistent with section 817.02(d)(1)(B). This is also consistent with the federal planning calculation at Title 49 CFR § 194.105. **The term “discharge” is changed to “spill” (2x) for uniformity with the regulations as a whole, as well as the defined terms in section 790.**

**At (j)(4)(C),** for railroads, the RWCS volume is based on speed. General track speed limits are established by the Federal Railroad Administration (FRA). Each railroad can decide for itself what its company maximum operating speed will be, which they do with a published “timetable” reported to the FRA. At the low end, one tank car is the minimum worst case spill volume; at least one tank car is always at risk, for example during a vehicle accident at a crossing. The 10mph calculation will mostly be applicable to short line railroads, who generally carry few tank cars and travel a slower speeds. The 25mph calculation would generally apply to short lines or the two Class I railroads in California (UPRR and BNSF) who travel at medium speeds. The greater-than-25mph calculation would generally apply to the two Class I railroads in California. These three calculation tiers reflect OSPR’s assessment of the average of how many railcars (%) derail in freight train accidents in the United States. Refer to Exhibit A for a detailed analysis. **Both in the body of (C) as well as in the table, “as cargo” is changed to “in bulk” to be consistent with the new revision to the definition of “oil in bulk” in section 790.**

The remaining catch-all RWCS volume calculation is the same as for marine facilities, in section 817.02(d)(1). This calculation is modeled from the federal calculation for a spill from a facility, at Title 33 CFR §154.1029.

Subsection (j)(5) requires the plan holder to re-evaluate the risk they pose by re-examining the reasonable worst case spill volume. This is particularly important if the volume increases, because response resources and financial responsibility may also need to increase. **A non-substantive edit is made to be consistent with defined terms.**

**New subsection (j)(6) is created to provide improved specificity and clarity regarding the procedure for calculating RWCS volume and to separate mutually exclusive categories of facilities. Only one RWCS calculation methodology applies to an individual inland facility based on the facility definition in which it falls.**



## Subsection (k)

Purpose: Subsection (k) describes what is required for a risk and hazard analysis and an offsite consequence analysis.

Necessity: A risk and hazard analysis (“hazard and operability study”) and an offsite consequence analysis are required by statute (Government Code section 8670.28(a)(7)). The risk and hazard analysis identifies where problems could occur at a facility. The offsite consequence analysis focuses attention on the hazards and resources at risk that need to be protected. The contingency plan must identify measures to protect recreational and environmentally sensitive areas. (Government Code section 8670.28(a)(7)) In particular, subsection (k) is necessary to explain the detail needed for the offsite consequence analysis. Knowing what is at risk is one of the key aspects of contingency planning. Subsection (k) is modeled from the marine facility risk and hazards analysis and offsite consequence analysis requirements, at section 817.02(c).

**In (k)(1) “owner or operator” is added for improved clarity.**

**In (k)(2) edits are made to clarify that the offsite consequence analysis that is required in a contingency plan is the responsibility of the owner or operator to conduct. Language requiring the identification and description of environmentally sensitive areas and other resources at risk has been deleted; the requirements are now more specifically outlined in revised (k)(3).**

**Subsection ~~(k)(3)~~ is absorbed by (k)(2). The analysis must include spill trajectories and the potential resources at risk within the trajectories. The plan holder must be familiar with the probable direction and distance of a spill. This is similar to the marine requirements at section 817.02(c)(2) and (3). The addition of “downstream” establishes that the trajectory analysis does not stop at the point of contact with waters of the state; it must consider the trajectory of a spill. A revision is made to allow the provision for facility owners and operators to reference the National Hydrography Dataset (NHD) in determining their facility(ies) applicability to OSPR’s contingency planning requirements. For further explanation, see discussion at (b)(1)(B).**

**New subsections (k)(3) and (k)(3)(A) are formed out of former (k)(3). New (A) eliminates the requirement to describe the resources at risk; the plan must still identify them, however.**

**Former subparagraphs (k)(3)(A) through (E) are renumbered to (k)(3)(i) through (v), under new subsection (k)(3)(A).**

**(i) includes new language that provides sources for owners and operators to access the information required in a contingency plan to identify and map the**

resources at risk for habitat and shoreline types. NOAA's Office of Response and Restoration is a center of expertise in preparing for, evaluating, and responding to threats (e.g. oil spills) to coastal and marine environments. NOAA's Shoreline Assessment Manual outlines methods for conducting shoreline assessments and incorporating the results into decision-making process for shoreline cleanup at oil spills. Table 1 provides a description of the shoreline types for habitat settings. The data in Appendix C provides information on the shoreline descriptors, including expected oil behavior and response considerations for the corresponding habitat settings and types in Table 1.

American Petroleum Institute's *Options for Minimizing Environmental Impacts of Inland Spill Response* is a guide that incorporates lessons learned from spill responses that can minimize the environmental impacts of an inland oil spill. It provides guidance on selecting appropriate cleanup endpoints for inland spills, and response guidelines for issues of special concern for inland spills.

(ii) has an edit to include fully protected species.

Former sSubsection (k)(4) is renumbered (k)(3)(B). The requirement regarding contacts is similar to the marine requirements at 817.02(c)(3)(B). It is important to know who to call when important infrastructure may be at risk. During an incident, precious time could be lost trying to find contact information for these important installations and organizations if these were not pre-identified. The requirement to identify sites is eliminated.

Former subparagraphs (k)(4)(A) through (C) are renumbered to (k)(4)(B)(i) through (iii). There is an edit at (k)(3)(B)(iii). With this edit, OSPR acknowledges that not all such information being requested is accessible.

Former sSubsection (k)(5) is renumbered (k)(3)(C). It requires that strategies and locations for collecting oil on water are identified. These may be pre-identified in geographic response plans or other regional plans, but in areas where strategies or collection points are not pre-identified, then the plan holder needs to describe any that may be appropriate. The requirement to describe the on-water collection locations and strategies is eliminated, however, the identification of them within the contingency plan is still required.

Former subsection (k)(6) is renumbered (k)(4). The intent of subsection (k)(4) helps implement the requirement to identify sensitive areas. In particular, it allows plan holders that are outside of an established regional planning area to refer to planning documents for that area, where appropriate. For example, a facility upstream from and outside of the area covered by a geographic response plan may use the sites and strategies listed in the geographic response plan if it is reasonably foreseeable that a spill from the facility would flow into the areas covered by the geographic response plan.

**There are revisions made to make more clear what was already stated; that owners and operators may rely on ACPs, GRPs, as well as other sources to assist in gathering the data required in their contingency plans. The deleted language was found to be duplicative.**

**Subsection (k)(7) is renumbered (k)(5).** The intent of subsection (k)(~~7~~)(5) is to require a plan holder's contingency plan to cover topics that cannot be anticipated in a regulation, but would be discovered during the review and approval of the plan, or during a site visit, drill or exercise, or an actual spill. **A non-substantive clarification edit is made at this subsection.**

#### Subsection (l)

Purpose: Subsection (l) generally describes the minimum amount of equipment that must be brought to a spill, and how quickly it must arrive on-scene. This subsection is a preface for more specific detail and specific requirements in subsections (m) and (n). The specifics are found in Tables at (m) and (n).

Necessity: Establishment of response times and equipment types is required by statute (Government Code section 8670.28(a)(6)). This subsection is necessary to explain the general expectations. Subsection (l) is modeled from several provisions in the marine requirements, found at section 817.02(d)(3), (d)(3)(A), (d)(5), and (d)(5)(B)11. The marine requirements have been found to be reasonable and workable over many years, and are applicable to inland environments.

~~Subdivision~~ **Subsection** (l)(1) lets the plan holder know how response times are calculated – from notice or knowledge of the spill.

~~Subdivision~~ **Subsection** (l)(2) lets the plan holder know the actual response resource and response time requirements are found in two tables. And, provides that these amounts are used for preparedness, as a planning standard. The conditions of an actual incident may require additional equipment, which the plan holder will ultimately be responsible for. **Non-substantive grammatical edits are made to correct the title of the tables. Additionally, new language is added to make clear that a plan holder has the option of providing response resources of their own, or may contract with a rated oil spill response organization that will provide said resources.**

~~Subdivision~~ **Subsection** (l)(3) requires an assessment of site conditions for safe entry. The California Division of Occupational Safety and Health sets these occupational standards.

~~Subdivision~~ **Subsection** (l)(4) acknowledges that the response time frames may be affected by actual conditions, such as weather, earthquake, unsafe entry conditions, etc.

~~Subdivision~~ **Subsection** (l)(5) requires the response resources be appropriate for use.

~~Subdivision (l)(6) requires the equipment to actually be available and actually work. For example, in September 2017 OSPR called an equipment deployment drill on a rated OSRO and their skimmer was not functional.~~ **Subsection (l)(6) is deleted as duplicative of subsection 817.04(q)(1).**

Subsection (m)

Purpose: Subsection (m) including the Table specifically describe the types of equipment capabilities and the on-scene arrival times applicable to inland facilities that pose a risk to waterways that are designated as intermittent or ephemeral ~~dry more than half of the year.~~ **A revision is made to allow the provision for facility owners and operators to reference the NHD in determining their facility(ies) applicability to OSPR's contingency planning requirements. These criteria are revised throughout the companion statewide regulations. For further explanation, see discussion at (b)(1)(B).**

Necessity: Some inland facilities pose a threat to waterways that are dry most of the year, and some inland facilities pose a risk to waterways that have water most of the year. Because oil on dry land spreads less 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. 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. Also, requiring the water to be at least three inches deep for at least 182 days is a clear threshold for requiring on-water equipment and cleanup capability. Three inches relates to the smallest size containment boom, with a three-inch "skirt", available for on-water oil cleanup. Water that is less than three inches deep would not support traditional on-water cleanup equipment such as containment boom, skimmers, and boats. **The previous defining characteristics of inland waters "at least three inches deep for at least 182 days" or "at least three inches deep for more than 182 days" have been revised to designations recognized in the NHD as "intermittent" or "ephemeral", and "perennial", respectively. For further explanation, see discussion at (b)(1)(B).** However, regardless of this planning requirement, any facility that spills into a waterway that has water in it at the time of the spill will be responsible for accomplishing on-water cleanup even if on-water recovery was not part of their plan.

By comparison, 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, the terrestrial planning requirements in subsection (m) 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.

Statute requires the Administrator to establish response times and equipment types (Government Code section 8670.28(a)(6)). Inland regions are 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. Thus, there is a need to distinguish requirements for cleaning up spills primarily to dirt, i.e. dry waterways, versus on-water cleanup in marshes, creeks, rivers, lakes, etc.

**The Table title has been repositioned above the text between it and the table. The text content has been numbered subsection (m)(1)(D). This is a non-substantive edit.**

Table – Terrestrial Response Times, Containment, Recovery & Storage Amounts: Spills to dry washes generally will be slow moving, compared to spills to flowing water. There are many options for stopping a flow of oil over the ground, such as berms, dikes, trenches, hay bales, sand bags, etc. Each terrestrial spill is unique, thus it is very difficult to prescriptively establish equipment standards. The terrestrial equipment requirements and response times are based on OSPR staff best professional assessment, discussions with oil spill response organizations, and with inland facility plan holders, for what are reasonable terrestrial planning standards. Thus, 6 hours was set as the minimum response time, with a significant amount of containment to arrive early. OSPR has found it is better to “over-respond” initially, than to “under-respond” and try to catch spreading oil.

Subsection (m)(2) describes the capability a plan holder must demonstrate for performing terrestrial cleanup. This is the type of information that a rated OSRO would have provided to OSPR in order to be rated. **Revisions are made to account for the change in personnel in a response effort depending on the length of the response. “Calendar” is added for clarity. The amount of days chosen is modeled from OSPR’s successful and long-standing marine program.**

~~Subdivision~~ **Subsection** (m)(3) requires a narrative for how response resources will be deployed. This is important because it means thinking through how the personnel and the equipment will come together to mobilize.

Subsection (m)(4) provides that the plan holder must be able to satisfy the standards that an OSRO would be held to. Alternatively, the plan holder can instead rely on a rated oil spill response organization (OSRO) to provide this capability, if the plan holder cannot or does not want to do it themselves. Marine facilities have long been able to do this; reliance on OSROs is one purpose for OSPR to rate OSROs.

## Subsection (n)

Purpose: Subsection (n) including the Table specifically describe the types of equipment capabilities and the on-scene arrival times relevant to inland facilities that pose a risk to waterways that have at least three inches of surface water for more than half of the year. **The word “Inland” is added to the subsection title to clarify this section pertains to inland on-water response resources and not marine.**

Necessity: The Administrator is required to establish requirements for types of equipment, the location of equipment, and the time to deliver the equipment. (Government Code section 8670.28(a)(6)) As stated above, inland regions ranging from dry flat areas, to remote steep river canyons, to snowy frozen areas. ~~A half-year division (182 days) is a distinct, reasonable, and clear way of indicating which inland facilities need to plan for on-water response capabilities and which facilities only need to plan for terrestrial response capabilities. Also, requiring the water to be at least three inches deep for at least 182 days is a clear threshold for requiring on-water equipment and cleanup capability. The three-inch depth requirement relates to the smallest size containment boom, with a three-inch “skirt”, available for on-water oil cleanup. Water that is less than three inches deep would not support traditional on-water cleanup equipment such as containment boom, skimmers, and boats.~~ **The previous defining characteristics of inland waters “at least three inches deep for more than 182 days” or “less than three inches deep for less than 182 days” have been revised to designations recognized in the NHD as “perennial” and “intermittent” or “ephemeral”, respectively. These criteria are revised throughout these regulations. For further explanation, see discussion at (b)(1)(B).**

The marine facility regulations have required minimum containment (hard boom), recovery, and storage equipment and response times for many years. Subsection (n) is modeled from that structure for consistency and implementation. (See section 817.02(d)(3)(B)) These three aspects are the core of on-water oil spill cleanup – the oil must be contained (with hard boom, not sorbent boom), be removed from the surface of the water with a skimmer or vacuum truck or other appropriate equipment, and the recovered liquid must be stored somewhere.

**The Table title has been repositioned above the text between it and the table. The text content has been numbered subsection (n)(1)(C). This is a non-substantive edit.**

### Table - Inland On-Water Response Times, Containment, Recovery & Storage Amounts:

The on-water equipment requirements and response times are based on OSPR staff best professional judgement, discussions with oil spill response organizations, and with inland facility plan holders. These are reasonable on-water planning standards for spills to surface waters such as rivers, creeks, and lakes. Certain remote parts of the state, such as in the Feather River Canyon will be more difficult to reach. Thus, six hours was set as the minimum response time, which is similar to the marine response time in

section 817.02(d)(3)(B)1. The 12 hour and 24 hour equipment requirements would reasonably cover larger situations until additional response resources could cascade in to the area. 1,000 feet of boom is a common length of containment boom, which OSPR knows can be delivered within 6 hours. Recovery of 820 barrels is the capability provided by a common small skimmer. OSPR is advised that the oil spill response organizations can provide 820 barrels storage within six hours. Most plan holders rely on a rated OSRO to provide on-water coverage, and they have trailers that can bring this amount of boom and skimming capability by six hours within a Response Planning Area (RPA). Since 12 hour and 24 hour periods do not require dedicated equipment, OSRO's can contract for the amounts to meet the 12 and 24 hour requirements for plan holders. The volumes 1,500 and 3,000 are multiples of the common 500 barrel volume of a "frac" tank.

Subsection (n)(2) specifically lists the equipment the plan holder would need to meet the requirements of the table. This is common information for contingency planning, and is readily available information. This is also the type of information that a rated OSRO would provide to OSPR in order to be rated.

**At subsection (n)(2)(H) the term "discharge" is changed to "spill" for uniformity with the regulations as a whole, as well as the defined terms within this section.**

Subsection (n)(3) describes the requirements for storage of recovered oil during the response. Upon recovery the oil must be placed somewhere temporarily until it can be transported to a final disposal site. Insufficient storage will limit how much oil can be recovered.

Subsection (n)(4) addresses Group 5 oil, which are oils that sink. Only a few plan holders indicate they handle nonfloating oil. This type of oil is addressed separately because recovery of nonfloating oil presents unique challenges. These equipment requirements mirror the same requirements for marine facility plan holders, at section 817.02(d)(5)(E). These requirements are appropriate for both marine waters and inland waters. **The term "discharges" is changed to "spills" for uniformity with the regulations as a whole, as well as the defined terms within this section.**

Subsection (n)(5) addresses shoreline protection, because response to oil spills within or upon certain shoreline types is more challenging than other shorelines, such as sandy beaches versus wetlands. This ~~subdivision~~ **subsection** is generally modeled from existing marine requirements at section 817.02(e)(2).

~~Subdivision~~ **Subsection** (n)(6) requires a narrative for how response resources will be deployed. This is important because it means thinking through how the personnel and the equipment will come together to mobilize. This has been required for marine facilities and rated OSROs for a number of years. The OSRO's application for a rating will have a narrative, which satisfies this requirement for plan holders.

Subsection (n)(7) gives the plan holder the option of either retaining an oil spill response organization for on-water cleanup capability, or performing this with plan holder equipment. However, the plan holder must be able to satisfy the standards that an OSRO would be held to, if they chose to demonstrate this capability themselves.

#### Subsection (o)

Purpose: Subsection (o) describes the requirements for handling wildlife that is oiled or affected by a spill. Either the plan holder can use the Oiled Wildlife Care Network (OWCN) for rescue and treatment services, or the plan holder can propose an alternative system that must be approved.

Necessity: Oiled wildlife rehabilitation is required by statute (Government Code sections 8574.7(c)(7); 8670.12(a), 8670.13(a), and 8670.37.5). Oiled wildlife recovery planning has been required for marine plan holders for many years. Subsection (o) is modeled from those requirements to provide efficiency and consistency for the statewide program, and because of the demonstrated efficacy of oiled wildlife recovery planning in the marine environment. The OWCN is considered one of the best wildlife response networks in the world, and plan holders can simply indicate use of the OWCN. However, if there is another approach for effective oiled wildlife recovery and care, then a plan holder can submit that in their contingency plan for review.

#### Subsection (p)

Purpose: Subsection (p) describes what must be included in a contingency plan for the use of oil spill cleanup agents and applied response technologies, such as dispersants.

Necessity: Planning for the possible use of oil spill cleanup agents is required by statute (Government Code sections 8670.7(f)(g), 8670.12, and 8670.13.1). For many years the marine contingency plan provisions have allowed plan holders the option of including oil spill cleanup agents and applied response technologies as a planning option. Subsection (p) is modeled from this for efficiency and consistency in the statewide program.

Subsection (p)(1) allows a plan holder to describe cleanup agents or applied response technologies they may want to use, such as dispersants, but buying or contracting for such agents and technologies for planning is not required. However, if any cleanup agents or technologies are listed, they must be pre-approved for use in California. And, this subsection requires the plan holder to acknowledge that the decision to use cleanup agents or applied response technologies in state waters rests with the OSPR Administrator and other federal trustee agencies.

What is important is that the plan holder understands how the decision is reached to use cleanup agents or applied response technologies, even if none are listed in the contingency plan. Subsection (p)(2) requires the contingency plan to describe the



process for getting approval to use cleanup agents or applied response technologies. The intent is for plan holders to understand how the decision to use or not use these agents or technologies is made.

#### Subsection (q)

Purpose: Subsection (q) describes how a plan holder must plan to be ready for a spill if some listed equipment or staff will not be available. If key equipment or personnel will not be available, the plan holder must identify alternative options and notify OSPR.

Necessity: The readiness of an operator to effectively implement the contingency plan is required by statute (Government Code section 8670.28.5 and 8670.29(a)). It is understood that equipment may become unavailable for a variety of reasons. This subsection explains the detail needed to plan for such unavailability to ensure that response capabilities are not jeopardized.

The requirement for 24 hour notice for removal of major equipment for an inland facility is the same as marine facility requirements, at section 817.02(d)(5)(D)1. and (e)(2)(C)1. One day's notice aligns with the Administrator's requirement to provide best achievable protection to state waters. This puts the Administrator on notice to determine whether adequate coverage remains in the area or whether additional resources need to be identified.

**The text at (q)(1) is revised to clarify the response resources are plan holder owned and controlled as opposed to contracted response resources from an oil spill response organization. Additional revisions also make more clear that those response resources shall be available, deployable, and operational not just for a spill response, but also for purposes of testing a plan holder's response readiness at an exercise or drill.**

**A non-substantive corrective edit is made at (q)(2)(A).**

Subsection (q)(3) explains what is required before response resources may be moved from one area to respond to a spill in another area. There may be times when it is necessary to move response resources from one area to another to respond to a significant oil spill. However, the Administrator needs to ensure that sufficient response resources are available to address a reasonable risk within the area where response resources would be moved from. This can be a significant issue, particularly if the response resources would be moved out of California. The Administrator is mandated with ensuring there is adequate spill response capability throughout California. Thus, the Administrator must be consulted before response resources are moved to respond to a spill out of the area covered by the plan holder's plan.

**Subsection (q)(3)(A) is absorbed into (q)(3); subsection (A) is unnecessary. There is also a typographical edit made. These are non-substantive revisions.**

### Subsection (r)

Purpose: The purpose of subsection (r) is to specify how a spill should be managed.

Necessity: The contingency plan must indicate use of an incident command system (ICS) for spills. (Government Code section 8670.29(b)(2)) Plan holders may tailor their incident management approach to include unique concerns they may have for their facility. Responders to a spill must be able to participate in managing an incident using an organized chain-of-command structure. It is crucial that all responders can efficiently identify issues and implement solutions using a common problem-solving structure and process. For more than two decades, OSPR has used ICS for oil spills, which has evolved into the federal guidance manual known as the *Incident Management Handbook* (IMH). The IMH is a document published by the U.S. Coast Guard and the U.S. Environmental Protection Agency, and is the management structure guide used by federal on-scene coordinators at incidents. The IMH provides the preferred structure for oil spill management. The plan holder must be able to integrate its organization with the organization that the federal and state responders will use.

In subsection (2), the plan holder must think about how the safety of responders and the public will be handled. The California Department of Industrial Relations requires incident safety assessment during cleanup; this is commonly known as HAZWOPER. Any basic ICS should include a position responsible for safety during an incident (e.g. IMH "Safety Officer" position).

In subsection (3), pre-identified incident management and staging locations are required. This is to ensure the plan holder and private responders will have an initial list of places from which to manage the spill or stage response operations. This avoids wasting precious time during the first minutes or hours of an incident trying to identify suitable locations. Many of these locations are pre-identified in area contingency plans and regional response plans.

The IMH does not need to be included in this regulations package pursuant to 1 CCR 20(c), because: use of it is not being required; the document is clearly identifiable; it would be cumbersome, unduly expensive, and otherwise impracticable to print the IMH in the CCR (the IMH is 380+ pages); the document can be readily obtained from the U.S. Coast Guard or U.S. Environmental Protection Agency, or from the internet including OSPR's website, or OSPR can provide an electronic copy upon request.

### Subsection (s)

Purpose: Subsection (s) describes the basic training requirements for plan holder personnel that would have a role in managing an oil spill incident or actually doing the cleanup work.

Necessity: All plan holder personnel are required by statute to have applicable training, including safety training (Government Code sections 8670.28(a)(3) and 8670.29(b)(9))

and (d)(4)). Incident command system training is common industry practice, and some courses are offered on-line at no cost. HAZWOPER is required by the California Department of Industrial Relations for anyone who might be exposed to a hazard or chemical at an oil spill. HAZWOPER is modeled from federal Occupational Safety and Health Administration worker safety requirements. Records are required to be kept for three years because statute requires plan holders to provide training on elements of the plan at least annually, with all elements of the plan subject to a drill at least once every three years (Government Code section 8670.29(b)(9)).

#### Subsection (t)

Purpose: Subsection (t) requires plan holders to participate in oil spill exercises and drills. Exercises and drills help maintain competency. The minimum requirements for exercises and drills are described in section 820.02, which is being promulgated in a separate, contemporaneous rulemaking by OSPR.

Necessity: Plan holder drills are required by statute (Government Code section 8670.29(b)(9)). The Administrator is required to establish performance standards for drills (Government Code section 8670.10(a)(2)). This subsection makes tabletop exercises and equipment deployment drills part of the contingency plan, and cross-references to the specific requirements for exercises and drills.

#### Subsection (u)

Purpose: Subsection (u) describes the frequency with which approved contingency plans must be updated with OSPR, and the situations requiring updates.

Necessity: Every contingency plan (marine or inland) must be resubmitted every five years, as required by Government Code section 8670.31(f). Operator's situations change regularly, and updates must be reported to OSPR (Government Code section 8670.29(g)). And, operators must maintain a level of readiness that will allow prompt and effective implementation of the plan (Government Code section 8670.28.5 and 8670.29(a)).

Subsection (u) is necessary to help ensure that response capabilities are maintained. This subsection is modeled from the marine regulation, at section 816.05 and 817.04(f).

In (u)(3), like the marine regulations at 816.05(a)(2), OSPR requires 24-hour notice if there is a significant change, such as when equipment goes down or other situations would indicate that the operator's ability to adequately respond might be compromised. This helps ensure best achievable protection. **A non-substantive edit is made to correct the actual title of the Table.**

In (u)(4) OSPR is requiring notice of changes in ownership, which is similar to the marine **facility** regulations at **section** 816.01(b)(1). Requiring notice of ownership

changes 90 calendar days prior to the change gives OSPR three months to work with the new facility owner or operator to ensure continuity of coverage. This is actually a grant of 30 additional calendar days, compared to the marine facility requirement, section 816.01(d). And, it works in conjunction with subsection ~~(d)~~(e)(2), discussed above, requiring documentation of minimal coverage be provided at least 30 calendar days before the ownership change. Review and approval of the new operator's contingency plan can be delayed if operators do not advise OSPR sufficiently ahead of the transition. Moreover, the existing operator would certainly want to be promptly released from planning responsibilities. **The edits reflected here are to the ISOR only; the regulatory text required no revision.**

In (u)(5) the reasons for resubmission of a plan are explained, which modeled from the marine provisions at section 816.05(a)(1)(C).

Subsection (u)(6), provides how resubmissions will be processed and reviewed.

In (u)(7), the plan holder is provided with a process to appeal OSPR's direction to resubmit a contingency plan. The time frames and process are provided in (f)(4), for consistency.

#### Subsection (v)

Purpose: Subsection (v) describes enforcement and compliance options available if the contingency plan requirements are not followed.

Necessity: Statute and long-standing OSPR regulations describe the civil, criminal, and administrative violations relating to the Act and these regulations, and the process for addressing violations. (Government Code sections 8670.57 through 8670.69.9; Title 14, Code of Regulations sections 873 through 874.6).

#### Subsection (w)

Purpose: The severability language provides guidance to a Court reviewing these regulations.

Necessity: "Severability" clauses are common and provide certainty to both OSPR and to the regulated community. This section is necessary to provide guidance to a Court that may be asked to review the validity of provisions of this chapter. Severability language expresses OSPR's intent to preserve remaining viable elements that are not deemed void or invalid by a Court. This subsection advises a Court to not rule on language that is not problematic. If a Court were to find that a provision or the application of a provision of this chapter is invalid, the intent of this section is to preserve the implementation and enforceability of any remaining provisions of this chapter. Without such guidance, the Court may feel it must rule against the entire chapter even for provisions not in question. Depending upon the scope a Court ruling,

this could result in facilities not being required to have any contingency plan for oil spill response and cleanup.

Government Code section 8670.5.5 provides a severability clause for the entire “chapter” that is the authority for this rulemaking. It expressly states, “If any provision of this chapter or the application thereof to any person or circumstances is held invalid....” It is reasonable to interpret section 8670.5.5 as expressing the Legislature’s intent that these regulations also be severable. These regulations are an “application” of the “chapter”. It would be illogical to reason that the statutes are severable, but the implementing regulations could not be. Thus, the severability clause also furthers the Legislature’s intent.

#### Authority and Reference

The Authority cited includes the following sections of the Government Code: 8670.5.5 which provides a severability clause; 8670.7.5 which authorized emergency regulations to implement provisions regarding oil spills from inland facilities; 8670.13 which grants the Administrator the authority to assess and require the best achievable technology in equipment for oil spill prevention, preparedness, and response; and 8670.28 and 8670.29 which describe the minimum content that must be in oil spill contingency plans

The References cited includes the following sections of the Government Code: 8670.7, 8670.10, 8670.25.5 thru 8670.31 and 8670.36 which support the authority for the adoption of and guidelines for oil spill contingency plans, and to which the proposed regulations implement, interpret, and add specificity.

#### **V. Economic Impact Assessment** [Gov. C. §11346.2; §11346.3]

**No changes were made to the overall estimate of economic impact. However, in response to requests made of smaller oil producers during the 45-day comment period, an additional analysis was added, investigating the incidence of the economic impacts. Incidence refers to who bears the cost. The original economic analysis assumed that all of the regulatory compliance costs would be passed on to consumers, and thus estimated that cost to consumers in terms of the increased expense of gasoline for a typical year of driving. The revised economic impact analysis retains that analysis but adds another, investigating regulatory compliance costs in the event they are born entirely by oil producers and cannot be passed on to others. These costs are compared to the producers’ estimated total revenues from oil production.**

(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, about 45 companies are subject to these inland requirements. They will incur some costs of compliance, described in detail below. Across all four of the related regulations, these costs are estimated at \$4 million in the first year (which has already occurred as a result of the emergency regulations) and \$2 million annually thereafter. Because oil demand is highly inelastic, nearly all of these costs are expected to be passed on to consumers. Because there are millions of oil consumers in California, these costs will be spread so thinly across all of them that they will hardly be noticed. For example, the gasoline costs to operate a vehicle for a year is expected to increase ~~39~~ 6 cents **as a result of these regulations. (Note: the 39 cents previously reflected here was a typo and is corrected now to 6 cents) Should costs be born by producers, the total costs of implementing the regulations are expected to be far less than 1% of total revenues for most producers, thus not impacting economic decisions.**

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

With respect to contingency plans, the following cost information was obtained by conversations between OSPR staff and industry representatives. However, there is some reluctance by industry to publicly disclose their costs.

There is an initial up-front cost for creating a contingency plan and a much smaller annual cost to maintain it. Nearly all of the plan holders affected by the proposed regulations prepared plans under the emergency regulations in 2015.

OSPR estimates those costs already incurred during the emergency regulation phase, as well as the future costs of maintaining a plan.

Inland facilities are varied: oil well oil operators with a few wells, global oil companies with hundreds of wells, nationally-run oil transport pipelines, oil storage tank farms, refineries, and railroads. Due to this variability, costs were estimated according to the size of the inland facility, based on the Reasonable Worst Case Spill (RWCS) volume calculated in their contingency plan. Six orders of magnitude were considered, ranging from a RWCS volume of less than 10 barrels of oil to less than 1,000,000 barrels.

In addition to the RWCS volume, the costs of contingency planning vary depending on whether the inland facility has already developed a spill control plan and whether the plan is prepared by in-house staff or outside contractors. OSPR contacted and requested some facilities within each tier to provide the cost of preparing their contingency plan. In total, 11 of 43 inland facilities responded to OSPR's inquiry, allowing an average cost per plan to be estimated for each tier.

The average cost for each tier, based on the survey respondents, was multiplied by the number of plans within each tier, yielding a total estimated cost for all facilities within that tier. The total cost, across all tiers for all 43 facilities combined, for the preparation of a contingency plan to meet the emergency regulations, was \$2.24 million (*Table 1*).

<b>Table 1: Estimated Cost of Contingency Plan Development</b> (based on plans submitted for the Emergency Regulations)			
<b>RWCS Volume</b>	<b>Number of Plans</b>	<b>Average Cost of Plan</b>	<b>Total Cost</b>
<10 Bbls	10	\$14,200	\$142,000
<100 Bbls	11	\$29,333	\$322,663
<1000 Bbls	7	\$45,000	\$315,000
<10,001 Bbls	3	\$80,000	\$240,000
<100,000 Bbls	10	\$114,500	\$1,145,000
<1,000,000 Bbls	2	\$38,000	\$76,000
<b>Total</b>	<b>43</b>		<b>\$2,240,663</b>

As expected, costs increase with each of the first five tiers. However, they decreased with the last tier. These are the largest companies, with large facilities, and they were able to build upon contingency plans they had already prepared under federal pipeline or facility regulations.

The preparation of these plans was essentially a one-time cost. Contingency plans must be re-submitted every five years if there are no updates after the date of approval. There is no charge to submit a plan. However, operators do periodically change their operations such as adding a pipeline, shutting down an oil well, or changing their clean up contractor. In such cases, plans must be updated, but the cost of a plan update is generally low compared to the original costs listed in Table 1. Based on discussions with industry, OSPR estimates that the cost of updating a plan averages about \$5,000 and occurs about once every three years, for an average of \$1,667/year. Across all 43 facilities, this totals \$71,667 per year,

In order to fulfill the goals of their contingency plans, all of the facilities contract with an oil spill response organization (OSRO) for either terrestrial cleanup or on-water cleanup capability. Based on discussions with industry, the cost of maintaining this retainer is approximately \$5,000/year. Applied to all 43 facilities, this totals to \$215,000/year.

All of the larger facilities and some of the smaller ones also have a retainer with a spill management team (SMT) to assist them in managing an oil spill response. Based on discussions with industry, this cost is approximately \$4,000/year. Conservatively, we apply this to all those companies with a RWCS volume greater than 100 barrels, as it is

unlikely smaller operators would use an SMT. Thus, the \$4,000/year SMT cost is applied to 22 of the 43 plan holders, for a total cost of \$88,000/year.

Combining the cost of original plan development (Table 1) with these annual plan maintenance costs and retainers for OSROs and SMTs, we estimate the total up-front and annual costs (Table 2). For the purposes of this analysis, we adjust all industry totals assuming there will be 45 plan holders (not 43 as there were when we conducted our inquiry).

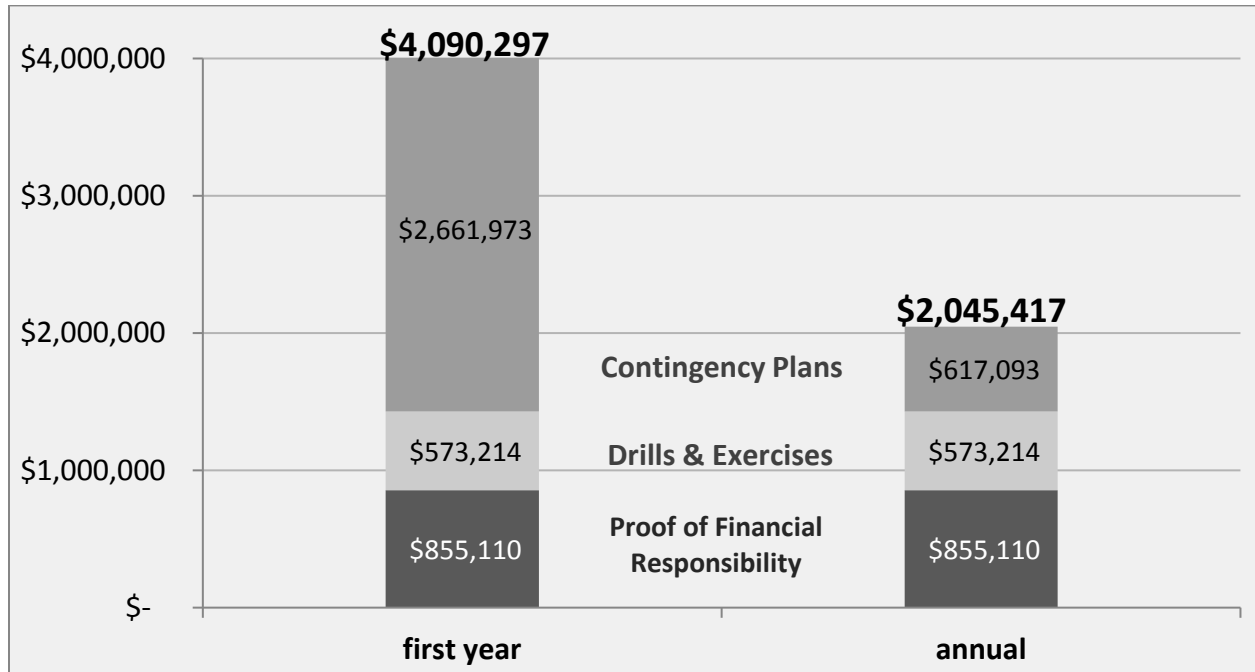
<b>Table 2: Total Cost to Develop and Maintain Contingency Plans</b>		
	<u>First year</u>	<u>Annual</u>
C-Plan development	\$2,240,663	
C-Plan maintenance		\$71,667
OSRO retainers	\$215,000	\$215,000
SMT retainers	\$88,000	\$88,000
Sub-Totals	<u>\$2,543,663</u>	<u>\$589,667</u>
<b>Totals (45 plan holders)</b>	<b>\$2,661,973</b>	<b>\$617,093</b>

#### *Cumulative Impact*

At this time, OSPR is also promulgating regulations for inland facilities regarding: 1) oil spill drill and exercise requirements, 2) demonstration of financial responsibility to pay for cleanup and damages, and 3) ratings of oil spill response organizations. 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 four rulemakings (contingency planning, drills and exercises, financial responsibility and oil spill response organization ratings) 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**



*Definitions – Section 790*

The changes to the definition section do not result in any costs.

*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
- Oil spill response organizations: 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~~ **all four of the regulatory packages** 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~~**55**/barrel, the value of this annual production is ~~\$8.5~~**9.4** billion. The estimated total cost of complying with these regulations, across all facilities and companies, is ~~\$2,661,973~~**2,045,417** ~~(in the first year, and substantially less thereafter)~~ **annually**. Assuming these costs are all incurred in one year (which is unlikely), this is ~~0.031~~**0.022**% ~~(just over three hundredths of one percent)~~ of the total revenues of oil production. If applied to the cost of production, these costs would add ~~\$0.0157~~**0.012** ~~(just over a penny and a half)~~ **about 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 year of contingency plan development has 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.

**The question of who bears the increased cost of production—and how much is passed on to consumers—is a function of the supply and demand curves, which vary at different places in the supply chain. Moreover, both supply and demand are more elastic over time, as producers and consumer have time to modify their practices according to new price signals. This analysis evaluates two scenarios: 1) increased costs fully passed on to consumers; and 2) increased costs by smaller producers not passed on to consumer.**

**First, we examine the scenario where all costs are passed on to consumers.** ~~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~~ are 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~~ 0.044% (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~~ 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.

<b>Table 3: Total Estimated Cost of Proposed Regulations Across all Facilities in Year 1</b> (based on high-end estimates)			
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	<del>0.031</del> <u>0.028</u> %	\$0.0157
Drills and Exercises (annual costs)	\$573,214	<del>0.007</del> <u>0.006</u> %	\$0.0034
Financial Responsibility (annual costs)	\$855,110	<del>0.010</del> <u>0.009</u> %	\$0.0050
<b>TOTAL</b>	<b>\$4,090,297</b>	<del>0.048</del> <u>0.044</u> %	<b>\$0.0241</b>

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.

**Next, we examine the scenario in which smaller producers are unable to pass on their costs to consumer and instead bear all the costs themselves. Because small producers sell to larger producers, pipelines, and refineries, they may have a limited ability to pass on the increased costs associated with regulatory requirements, at least in the short run.**

For this evaluation, OSPR assumed that small producers are those inland facility plan holders not affiliated with companies that own pipelines or refineries. There are 20 of these. While we have no information on their costs of production, we can estimate their gross revenues by multiplying their annual production of crude oil by the price of crude oil. We then assumed that all of the costs of the regulations are born by each company and not passed on. We compared that cost to their estimated annual revenues to provide a measure of the economic burden of complying with the regulations.

Across the 20 inland producers, crude oil production ranged from 61 to 65,000 bbls/day. Assuming a value of \$55/bbl, all but three of the plan holders likely have annual gross revenues greater than \$10 million/year. All exceed \$1 million/year. For costs, we used the highest estimate of annual costs for contingency planning (\$1,667/year), insurance premiums (\$8,900 to \$50,000, depending on size of operation), participation in drills and exercises (\$5,000/year), and retaining an OSRO (\$5,000/year). For all but the smallest plan holder, the maximum estimated cost of regulatory compliance was less than 1% of total revenues. For the smallest plan holder, the maximum cost of compliance was 1.7% of total revenues. For most, the costs were much smaller relative to revenues. For all but three plan holders, the costs were less than 0.5% of revenues.

We also compared this to the natural volatility in the market that oil producers experience. For all plan holders, the effect of a \$1/bbl change in the price of crude oil (e.g. from \$55/bbl to \$54/bbl) would have a greater impact than the total maximum estimate of the costs of regulatory compliance. For all but six plan holders, the cost of regulatory compliance was equal to or smaller than the impact of a seven-cent drop in the price of a barrel of crude oil. This is well within the daily average variability in the price of crude oil and thus unlikely to affect business decisions. The costs for most plan holders are probably less than that described here, as this analysis used only the high-end cost estimates.

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

Because these regulations may result in additional business activity (e.g., the use of contractors), it is possible that support companies may hire additional staff to meet the demand. This effect, however, is likely to be very small, given the small number of companies affected.

*(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 response to the previous question in (b) regarding support contractors.

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

See the response to the previous question in (b) regarding support contractors.

*(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 (Government Code section 8670.2). Oil spill contingency plans facilitate quicker, more efficient response to oil spills.

These regulations regarding contingency plans 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:

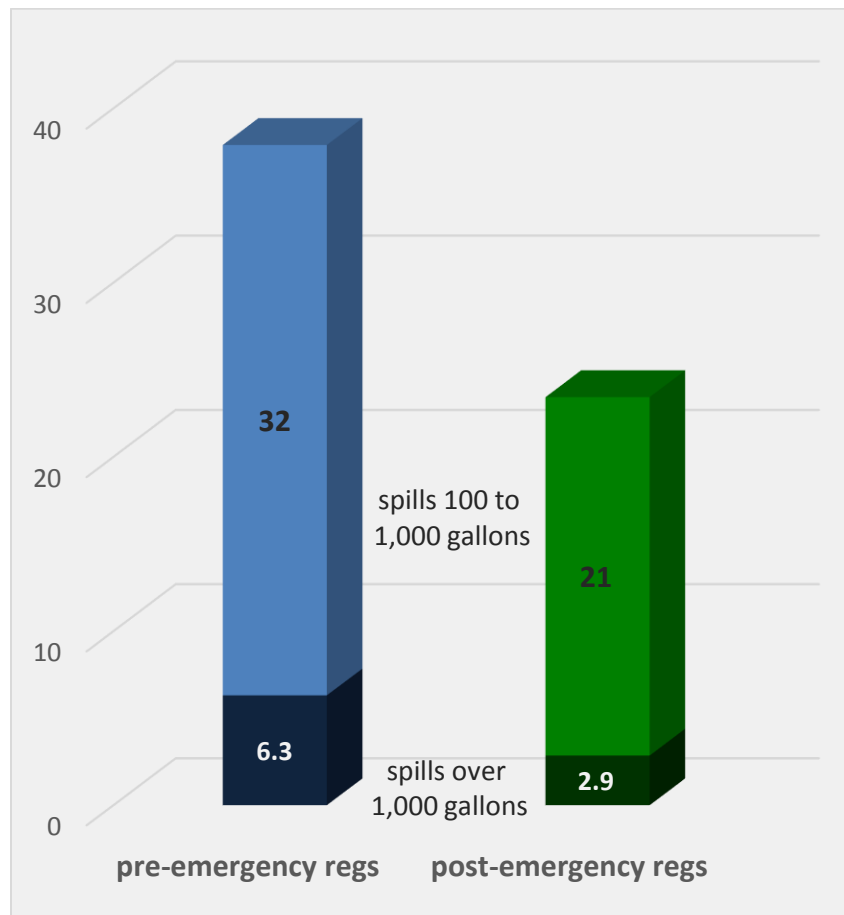
1. The reduction in small and medium-sized spills since the implementation of the emergency regulations.
2. The reduction in the risk of large spills.
3. The added risk of an oil spill due to an increase in the transport of crude by rail.

### *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.

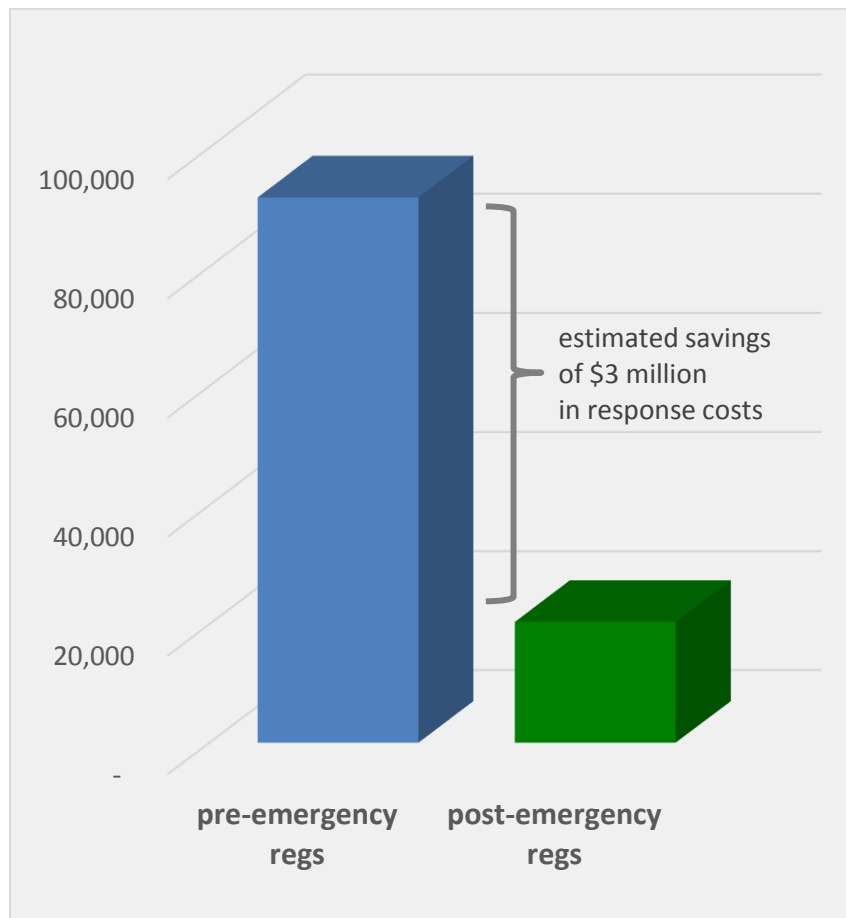
Normalizing to a 12-month period to use comparable annual figures, the total number of inland oil spills to water (of 10 gallons or more) has stayed about the same (123/year before the emergency regulations went into effect and 135/year after). However, the spills are now smaller than previously. The 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 contingency plans, drills and exercises, financial responsibility, and oil spill response organizations 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. Oil spill contingency plans ensure at least a minimum level of resources will be used to cleanup oil spills in inland waterways, thus benefiting the communities potentially affected by a spill. The benefit is when there is a spill there should be people and equipment responding to the incident that are ready to perform, providing Californians with a faster initiation of cleanup activities. If there is a spill from a company that is not required to have an oil spill contingency plan, there may be initial delay getting response equipment and personnel to the incident.

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

Not directly. However, oil spill contingency plans 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?*

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 to which they pose a risk. Thus, these regulations protect the environment by promoting a pre-planned response to an oil spill.

**VI. 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](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*.

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

The oil spill contingency plan requirements are created by statute, which OSPR is required to implement. There are no reasonable regulatory alternatives. However, the regulations do expressly allow operators to submit existing oil spill contingency plans they have, such as those created pursuant to federal requirements, if supplemented with these specific California requirements.

**VIII. 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 type of oil recovery equipment it wants to use as long as the equipment is appropriate for the task, appropriate for the environment in which it will be used, and is fully functional and operational.

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

The proposed regulations do not duplicate or conflict with federal regulations. The U.S. Environmental Protection Agency, the federal Pipeline and Hazardous Materials Safety Administration, and the Federal Railroad Administration administer similar oil spill contingency plan requirements. However, the proposed regulations have been crafted to not conflict with federal spill prevention laws or regulations, where jurisdiction clearly is federal (e.g., railroads, pipelines). The proposed regulations generally are more comprehensive or protective than the federal spill preparedness and response requirements.

**X. 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