

**STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND WILDLIFE  
OFFICE OF SPILL PREVENTION & RESPONSE (OSPR)**

Amend Section 790  
Adopt Section 817.04  
to  
Title 14, California Code of Regulations  
Regarding Definitions and Abbreviations  
and  
Oil Spill Contingency Plans for Inland Facilities

**FINAL STATEMENT OF REASONS FOR REGULATORY ACTION**

- I. **Date of Initial Statement of Reasons:** December 19, 2017
- II. **Date of Amended Initial Statement of Reasons:** May 22, 2018
- III. **Date of Final Statement of Reasons:** December 14, 2018
- IV. **Dates and Locations of Public Hearings:**

|                 |           |   |
|-----------------|-----------|---|
| Public Hearing: | Date:     | February 13, 2018   |
|                 | Location: | Natural Resources Building<br>1416 Ninth Street<br>Sacramento, CA 95814 |

|                 |           |   |
|-----------------|-----------|---|
| Public Hearing: | Date:     | February 22, 2018   |
|                 | Location: | Associated Builders & Contractors<br>19466 Flight Path Way<br>Bakersfield, CA 93308 |

V. **Update:**

45-Day Comment Period

During the 45-day comment period of December 30, 2017 through February 22, 2018, comments were received from several interested parties. A summary of the comments and responses are included in Attachment A.

**Changes to Text of Proposed Regulation, Amended Initial Statement of Reasons, Addition of Documents Incorporated by Reference, and Revised Economic and Fiscal Impact Statement (STD Form 399): 15-Day Continuation of Public Comment Period**

After the 45-day comment period, modifications were made to the originally proposed text of the regulations. The modified text, Amended Initial Statement of Reasons

(ISOR), addition of documents incorporated by reference, and a revised Economic and Fiscal Impact Statement (STD Form 399) were made available to the public for a 15-day public comment period from May 23, 2018 through June 6, 2018. The notice was sent by electronic mail on May 22, 2018 to all persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

The proposed changes to the regulatory text (in both section 790 and 817.04) noticed for the 15-day comment period are as follows. **Note: the following do not include minor spelling or grammatical corrections/edits.**

### Section 790 - Definitions

- ❖ Throughout this section, the term “discharge” is changed to “spill” for uniformity with the regulations as a whole, as well as defined terms in section 790.
- ❖ Throughout this section, the term “as cargo” is revised to “in bulk” to be consistent with the new revision to the definition of “oil in bulk”.

*Subsection (a)* – definition of “Assets” is moved in alphabetical order. This resulted in the renumbering of other definitions.

*Subsection (a)(7)* – definition of “Area Contingency Plan” is revised to provide clarity as to who is responsible for developing the area contingency plans.

*Subsection (e)(4)* – definition of “Environmentally Sensitive Area” or “Environmentally Sensitive Site” is revised to include an additional source of identifying these areas/sites, as well as to eliminate details considered unnecessary content for inclusion in the definition.

*Subsection (f)(1)* – definition of “Facility” has an edit to clarify each of the types of oil-related activities associated with the supply chain of oil, as defined in (s)(21) that are covered under the definition of facility.

*Subsection (g)* – definition of “Geographic Response Plan” is revised for accuracy and clarity, as well as to eliminate details considered unnecessary content for inclusion in the definition.

*Subsection (i)* – the term “discharge” is changed to “spill” for uniformity with the regulations as a whole, as well as defined terms in section 790.

*Subsection (o)(5)* – terms are revised to add clarity and to avoid confusion with other similar terms.

*Subsection (o)(7)* – definition of “Oil Spill Contingency Plan” is revised to provide a descriptive definition.

*Subsection (o)(12)* – definition of “Operating Environment” is revised to include inland waters to reflect statutory changes pursuant to Senate Bill 861.

*Subsection (s)(21)* – definition of “Supply Chain of Oil” has revisions for clarity and for the purpose of delineating more clearly who is considered the supply chain, and who is the ultimate consumer of the oil.

#### Section 817.04 – Oil Spill Contingency Plans for Inland Facilities

- ❖ Throughout this section, the term “discharge” is changed to “spill” for uniformity with the regulations as a whole, as well as defined terms in section 790.
- ❖ Throughout this section, the term “as cargo” is revised to “in bulk” to be consistent with the new revision to the definition of “oil in bulk” in section 790.
- ❖ Throughout this section, in response to several comments/suggestions, the previous defining characteristics of inland waters “at least three inches deep for more than 182 days” or that is “more than three inches deep, but for less than 182 days” or “less than three inches deep”, have been revised to designations recognized by the U.S. Geological Survey’s National Hydrography Dataset (NHD) as “perennial”, and “intermittent” or “ephemeral”, respectively.

*Subsection (b)* – in response to several comments/suggestions, 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 the Office of Spill Prevention and Response’s (OSPR) contingency planning requirements. Other non-substantive edits are made in subsection (b).

*Subsection (c)* – subsection (c)(1)(B) is added to improve clarity regarding criteria for an exemption from having an oil spill contingency plan.

*Subsection (d)(2)* – “may” is changed to “shall” to align with the existing language in (d)(1).

*Subsection (d)(2)(D)* – “public works” is repositioned in the sentence for better readability, and other grammatical edits are made. These are non-substantive changes.

*Subsection (e)(3)(A)* – “Office of Spill Prevention and Response” is struck out and replaced with “Administrator” to be consistent with the language in the rest of the subsection as well as the regulations as a whole. However, in the modified version of the text that went out for the 15-day comment period the second use of “Administrator” was erroneously stricken out. This was an unintentional strike-out; certainly the sentence would not make sense without it. OSPR is adding it back into the final text to the Office of Administrative Law, but as this is a non-substantive change, it is not necessary to go out for an additional comment period.

*Subsection (e)(4)* – inclusion of acceptable formats of electronically submitted documents is provided for clarity to the term “electronic format”.

*Subsection (f)(1)* – additional terms are included to explain that OSPR performs a thorough review of the contingency plans.

*Subsection (f)(2)(E)* – language is added to clarify those circumstances a plan may be deemed deficient.

*Subsection (f)(4)(B)* – non-substantive repositioning of the text for better readability; does not result in a change in the original regulatory meaning.

*Subsection (g)* – the title is modified to clarify the notification procedures that follow pertain to notifications in the event of an oil spill.

*Subsection (j)* – new subsection (j)(6) is created to provide improved specificity and clarity regarding calculating reasonable worst case spill (RWCS) volume and to separate mutually exclusive categories of facilities.

*Subsection (k)(2)* – in response to several comments/suggestions, edits are made to clarify that the offsite consequence analysis 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). 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 NHD in determining the applicability to OSPR’s contingency planning requirements to their facilities. This change is in response to several comments/suggestions. This source is incorporated by reference.

*Subsection (k)(3)* – the requirement to describe resources at risk is eliminated. Revision is made to provide additional sources for owners and operators to access to assist them in identifying and mapping the resources at risk, as required in a contingency plan. These sources are incorporated by reference.

*Subsection (k)(5), renumbered to (k)(3)(C)* – the requirement to *describe* the on-water collection locations and strategies is eliminated. The *identification* of them is necessary.

*Subsection (k)(6) renumbered to (k)(4)* is revised to make more clear what was already stated; that owners and operators may rely on area contingency plans (ACPs), geographical response plans (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 and unnecessary once “and other sources” was added in.

*Subsection (l)(2)* – 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.

*Subsection (l)(6)* is deleted as duplicative of subsection 817.04(q)(1).

*Subsection (m)(2)* has revisions to account for the change in personnel in a terrestrial response effort depending on the length of the response.

*Subsection (n)* – the title is modified to clarify the content of this subsection pertain to on-water response resources in the inland environment.

*Subsection (n)(2)* has revisions to account for the change in personnel in a terrestrial response effort depending on the length of the response.

*Subsection (q)* – 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 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.

Documents Incorporated By Reference:

The addition of documents incorporated by reference in the rulemaking file are as follows:

- ERMA. 2015. Web Application: Southwest Environmental Response Management Application, National Oceanic and Atmospheric Administration (NOAA)
- Table 1 of NOAA's Shoreline Assessment Manual (Aug. 2013)
- Appendix C of NOAA's Shoreline Assessment Manual (Aug. 2013)
- API's "Options for Minimizing Environmental Impacts of Inland Spill Response" (Oct. 2016)

These items were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during the 15-day comment period. These items will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical. Further, the first bulleted item is not a document; it is a publically available 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 providing fast visualization of the situation and improves communication and coordination among responders and environmental stakeholders.

## Economic Impact Assessment

No changes were made to the overall estimate of economic impact, however in response to requests made during the 45-day comment period, an additional analysis was added, investigating regulatory compliance costs. A revised Economic Impact Assessment was developed and included in the Amended Initial Statement of Reasons, which was made available to the public for comment from May 23, 2018 through June 6, 2018.

## Changes to Text of Proposed Regulation, and Amended Initial Statement of Reasons: Second 15-Day Continuation of Public Comment Period

On June 25, 2018, OSPR filed the proposed regulations with the Office of Administrative Law (OAL) for approval. OAL recommended changes to the rulemaking file documents and/or associated regulations that necessitated an additional comment period. As a result, OSPR withdrew the regulatory package, revised the proposed regulations, and initiated another comment period.

The modified text and an Amended Initial Statement of Reasons (ISOR) were made available to the public for an additional 15-day public comment period from October 11, 2018 through October 25, 2018. The notice was sent by electronic mail on October 10, 2018 to all persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

The proposed changes to the regulatory text noticed for the 15-day comment period are as follows. **Note: the following do not include minor spelling or grammatical corrections/edits.**

### Section 790 - Definitions

*Subsection (a)* – “Area Exercise” was deleted as a term no longer used; “Assets” was renumbered due to the edit at (a)(8).

*Subsection (c)(2)* – “Certificate of Financial Responsibility” was revised to eliminate language that may be considered unclear or overly broad, as well as unnecessary.

*Subsection (c)(11)* – “Contract or Other Approved Means” was restructured to make its original intent more clear. No substantive changes to the language were made. Subsection (c)(11)(B)3. has been removed as unnecessary content for purposes of defining the term.

*Subsection (f)(1)(B)2.* – in the definition of “Facility”, the citation to the Health and Safety Code is corrected.

*Subsection (l)* - “Letter of Approval” was deleted as unnecessary.

*Subsection (r)(1)* – “Railroad” was revised to further clarify its applicability to OSPR’s program.

*Subsection (s)(14)* – “Spill Management Team” was revised to align with statute.

#### Section 817.04 – Oil Spill Contingency Plans for Inland Facilities

*Subsection (b)(1)(B)* – The incorporation by reference to the National Hydrography Dataset was eliminated. OSPR is instead relying on the status conferred upon the expertise of the U.S. Geological Survey to the designation of waterways.

*Subsection (b)(2)* – A revision was made to eliminate language that may be considered unclear or overly broad.

*Subsection (b)(4)* – Language was revised establishing that, in the event of an oil spill that impacts state waters, the Administrator will reevaluate program applicability if previously the requirements were inapplicable or an exemption had been granted to an inland facility. This serves the legislative intent to provide best achievable protection of state waters.

*Subsection (c)(2)(A)* – Revisions were made to clarify that each exemption request does not reset the contingency plan submittal time frame requirement.

*Subsection (d)(1)* - Revisions change “single plan” to “multiple facility plan” to avoid confusion.

*Subsection (e)(1)* was revised to clearly state when applications for contingency plans and certificates of financial responsibility must be submitted.

*Subsection (e)(2)(A)* was revised to eliminate any uncertainty as to the required time frame in which information must be submitted prior to commencement of future operations.

*Subsection (e)(2)(B)* was revised to make clear that upon receipt of, and cursory review of minimal information, OSPR will grant a preliminary approval of a contingency plan.

*Subsection (e)(4)* had revisions to replace the words “acceptable” and “approved” with less ambiguous terms “usable, readable, and searchable”. OSPR will not accept scanned documents or images.

*Subsection (f)(1)(E)* – Subsection (f)(3) is moved here from as the more appropriate location for discussion about the letter of denial or revocation.

*Subsection (f)(2)* – A revision was made to align with the revised language at (e)(2)(B).

*Subsection (f)(2)(E)* – Revisions were made clarifying the criteria for which a previously approved contingency may be considered deficient. “Submitted or” is deleted to avoid confusion with provisions already covered in (f)(1).

*Subsection (g)(1)(F) and (g)(2)(B)* – Revised to clarify that the wildlife care and treatment organization the plan holder identifies and notifies in the event of a spill, must be listed in the contingency plan.

*Subsection (j)(2)(D)* – Revised changing “should” to “shall” for consistent expression of mandatory provisions.

*Subsection (k)(2)* - A revision is made to provide cross-reference to another part of this section where the National Hydrography Dataset designation of waterways may be found.

*Subsection (k)(3)(B)* – Revision was made to clarify the type of contacts associated with resources at risk that must be identified in a contingency plan. “Relevant” is deleted as superfluous.

*Subsection (l)(1)* - Revision was made to more narrowly define the time frame from which arrival and operational deployment of response resources is measured.

*Subsection (l)(4)* – Revision was made providing additional clarification that OSPR acknowledges response time frames may be affected by actual conditions, such as weather, earthquake, unsafe entry conditions, etc.

At subsections (m)(1)(A) and (m)(1)(B), revisions were made to provide a cross-reference where the National Hydrography Dataset designation of waterways may be found.

At subsections (n)(1)(A) and (n)(1)(B), revisions were made to provide a cross-reference where the National Hydrography Dataset designation of waterways may be found.

*Subsection (o)(1)(B)* - Language is added to clarify that a plan holder may designate a wildlife care and treatment organization other than the Oiled Wildlife Care Network, but must identify one or the other in the contingency plan.

*Subsection (p)(2)(A)* was deleted as unnecessary. The response technology reviewing and approving persons are already identified in (p)(1) and (p)(2).

*Subsection (v)* – Revision was made to correct the Government Code section citation.

#### Documents Incorporated By Reference

For simplicity sake and to avoid confusion, the May 22, 2018 *15-Day Notice of Modifications to Text of Proposed Regulations* was generated to serve as one notification on the multiple companion rulemaking actions. The notice identified several documents incorporated by reference and/or relied upon. Clarification is made that while the notice was for all four interrelated rulemaking actions, not all documents identified apply to each rulemaking. The only incorporation by reference applicable to this rulemaking (Contingency Plans for Inland Facilities and Definitions/Abbreviations)



is to the ERMA web application. Subsequently, in the second 15-day comment period (from October 11, 2018 to October 25, 2018), OSPR eliminated its incorporation by reference to this web application, instead conferring status on the expertise of the U.S. Geological Survey.

The documents incorporated by reference were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website. They will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

#### Comments Received During Comment Periods

Summaries of the comments received during the 45-day comment period of December 30, 2017 through February 22, 2018, the 15-day comment period of May 23, 2018 through June 6, 2018, and the second 15-day comment period of October 11, 2018 through October 25, 2018, as well as OSPR's responses to them, are provided in Attachment A.

#### Non-Substantive Changes to Text of Proposed Regulation post 15-day Comment Period

*Subsection 790(r)(7)* – 'Regions', following 'Local Emergency Planning Committee' was changed to lower case.

*Subsection 790(r)(10)(C)* – Revision was made to add 'a' before 'vessel' to render the sentence grammatically correct.

*Subsection 790(p)(4)* – The definition of 'Pipeline' was revised to the existing definition in the California Code of Regulations. Having a definition be consistent with a statutory definition is considered a non-substantive change because a state agency does not exercise its discretion to adopt regulatory language. Within the definition of 'pipeline' is the defining characteristics of 'facility'. 'Facility' already states a criteria and that criteria is re-stated in 'pipeline'. OSPR recognizes that the earlier proposed references to sections 817.01 and 817.04 may cause confusion in defining a pipeline as a facility.

#### **VI. Alternatives Determination:**

Based on the information OSPR currently possesses, and the reasons stated in response to public comments, no reasonable alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons, or equally effective in implementing the statutory policy or law.

The proposed regulations implement, interpret, and make specific Government Code sections 8670.38 through 8670.41. The proposed regulations are necessary to provide specificity not found in the statutes.

**VII. Local Mandate Determination:**

The proposed rulemaking does not impose any mandate on local agencies or school districts.

**VIII. Small Business Impact:**

OSPR has determined that the proposed regulations have no substantial effect to small business. No alternatives were proposed that would lessen any adverse economic impact on small businesses.