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
1416 Ninth Street
Sacramento, CA 95814

Public Hearing: Date: February 22, 2018
Location: Associated Builders & Contractors
19466 Flight Path Way
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.
ATTACHMENT A

Consideration of Public Comments

Proposed Changes to:
Definitions & Abbreviations (14 CCR §790) and
Oil Spill Contingency Plans for Inland Facilities (14 CCR §817.04)

The Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) thanks all commenters who submitted comments on the proposed changes to these regulations.

OSPR held two public hearings and three comment periods. The first 45-day public comment period was December 30, 2017 through February 22, 2018. The subsequent 15-day public comment periods were May 23, 2018 through June 6, 2018, and October 11, 2018 through October 25, 2018. OSPR received comments from the public hearings and from one or more of the three public comment periods relevant to the regulatory sections identified above as well as three other companion rulemakings. OSPR did not receive any comments from the last public comment period. Those companion rulemakings are for Inland Facility Drills and Exercises (14 CCR §820.02); Financial Responsibility (14 CCR §§791-798); and Inland Ratings of Oil Spill Response Organizations (14 CCR §§819-819.07).

The following reflects all comments received, as they pertain only to the rulemakings identified at the top of this page.

A list is provided of the people or organizations making comments, both written and verbally. Each is assigned a two-digit identifier. The comment summaries and responses are organized by the subsection being addressed. At the end of each comment summary are one or more comment keys. The comment keys match the two-digit identifier followed by a number referring to the marked-up copies of the written comments, and the transcribed verbal comments received at the public hearings, all of which are included in the rulemaking record.

Duplicate or similarly related comments and irrelevant comments have been aggregated in separate tables at the end of each comment period.
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   2. Second Comment Period (5/23 – 6/06/18) ................................................................. 19
   3. Third Comment Period (10/11 – 10/25/18) ............................................................... 21
I. List of Commenters

The following have provided written comments.

| W1. | Airlines for America, Nancy N. Young, Vice President, Environmental Affairs; letter dated 2/09/18 |
| W2. | E&B Natural Resources, Amy Roth, Public and Government Affairs Director; letter dated 2/19/18 |
| W3. | BNSF Railway Company, Patrick M. Brady, General Director, Hazardous Materials Safety; letter dated 2/22/18 |
| W4. | Macpherson Oil Company, Tim Lovley, Director HSE; letter dated 2/22/18 |
| W5. | Chevron, Michael Rubio, Manager, CA State Government Affairs; letter dated 2/22/18 |
| W6. | Whitney Leake, Patriot Maritime Compliance; email dated 5/23/18 |
| W7. | Dale Strieter, Patriot Environmental Services; email dated 5/24/18 |
| W8. | Harry Fujii, MSRC; email dated 6/05/18 |
| W9. | Airlines for America, Nancy N. Young, Vice President, Environmental Affairs; letter dated 6/06/18 |
| W10. | Airlines for America, Nancy N. Young, Vice President, Environmental Affairs; letter dated 10/19/18 |

The following have provided verbal comments at one or both of the public hearings.

VS refers to the verbal comments made at the public hearing held in Sacramento on February 13, 2018.
VB refers to the verbal comments made at the public hearing held in Bakersfield on February 22, 2018.

| VS1. | Willie Rivera, California Independent Petroleum Association |
| VS2. | Chris Hall, Drilling and Production Company |
| VS3. | Kristen Kang, Commercial Global Insurance Services of California |
| VS4. | Nic Winslow, BNSF Railway |
| VS5. | Harry Fujii, MSRC |

| VB1. | Dale Strieter, Patriot Environmental Services |
| VB2. | Kristen Kang, Commercial Global Insurance Services of California |
| VB3. | Tim Lovley, McPherson Oil Company |
| VB4. | Chris Hall, Drilling and Production Company |
II. Comments

Comments and suggested modifications are summarized and responded to below.

1. **First Comment Period – (45-Day)**

The following consist of comments received from the first 45-day comment period, December 30, 2017 – February 22, 2018.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Summary of Comments</th>
<th>Agency Response</th>
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<tbody>
<tr>
<td>Definition of “Environmentally Sensitive Area” or “Environmentally Sensitive Site” [§790(e)(4)]</td>
<td>Certain definitions impermissibly require plan holders to develop geographic response plans (GRP); really, it is the federal and state governments’ responsibility to develop GRPs. [Comments W3-(2.1); (2.2)]</td>
<td>OSPR rejects this suggestion/comment. The comment is not relevant to the definition; the definition contains no requirements. The comment is more directed at section 817.04.</td>
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<tr>
<td>Definition of Facility [§790(f)(1)]</td>
<td>Oil received into a dedicated airport fuel management system for on-airport use would not be considered part of the supply chain of oil as defined in subsection 790(f)(1). Receipt, storage and management of fuel used at an airport is not production-related and the act of transfer into an aircraft and airport equipment is not considered resale or redistribution. [Comment W1-(1)]</td>
<td>OSPR concurs with this comment that oil received into a dedicated airport fuel management system for on-airport use will not be considered part of the “supply chain of oil.” Instead, the receipt of fuel transferring custody into a dedicated airport fuel management system for fueling operations makes the airport entities (which include the airport entity itself, airlines, airline and aircraft fuel service providers) the “end users” as defined in the regulations. OSPR concurs with this comment. Provided the on-airport mobile refuelers are not selling the oil or petroleum products, then they are an end user and OSPR's regulations are not applicable to them. Alternatively, if the AST or UST laws exempt these refuelers, then they are exempt.</td>
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The express terms of the OSPR Act provide that aboveground and underground storage tanks (ASTs/USTs), including on-airport mobile refuelers already subject to California regulation, are exempt from such provisions. [G.C. §8670.3(g)(2)] [Comment W1-(2)]
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<td>Definition of Geographic Response Plan [§790(g)(4)]</td>
<td>The definition of “geographic response plan” (GRP) suggests that private industry is responsible for developing GRPs. [Comment W3-(2.2)]</td>
<td>OSPR accepts this comment and has made revisions to the definition as indicated below. These revisions accomplish two goals. First, it clarifies that this document is created by either a state or federal entity, and is not created by the private sector. Second, these revisions clarify that a geographic response plan has a narrow focus. This is consistent with the federal intention for GRPs as stated in the U.S. Environmental Protection Agency’s Area Contingency Planning Handbook (2013) (ref. pages 3, 6, and 22) (g)(4) “Geographic Response Plan” means a plan addressing specific oil spills to waters of the state other than marine waters, which includes response strategies and tactics for protecting specific sites/areas with especially difficult or complex issues if impacted by an oil spill into waters of the state, and which is developed in partnership with the state or federal government and in coordination with other local agencies, and private stakeholders, the U.S. Coast Guard, and the U.S. Environmental Protection Agency, as part of the Region 9 Regional Response Team. This proposed revision will be noticed to the public for a 15-day comment period.</td>
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<tr>
<td>Definition of Oil In Bulk [§790(o)(5)]</td>
<td>Suggestion to revise the definition of “oil in bulk” to include oil in a tank car. [Comment W3-(2.3)]</td>
<td>OSPR accepts this suggestion and revises the definition to: “Oil In Bulk” means any volume of oil carried in the cargo tanks of a vessel or in a tank car. Bulk oil does not include oil carried in packaged form, and does not include residue or clingage remaining in the cargo tanks or tank car after the cargo oil has been discharged/offloaded. During a bunkering or lightering operation, bulk oil may also be that oil which is</td>
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<tr>
<td>Definition of Oil In Bulk [§790(o)(5)] <del>continued</del></td>
<td>transferred to or from a marine portable tank or independent tank on board a vessel. This proposed revision will be noticed to the public for a 15-day comment period.</td>
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<tr>
<td>Definition of Railroad [§790(r)(1)]</td>
<td>Suggestion to revise the definition of “railroad” from a train that carries oil as cargo to a train that carries oil in bulk. [Comment W3-(2.4)] OSPR accepts this suggestion and revises the definition to: “Railroad” means a railroad, railway, rail car, rolling stock, or train that carries oil as cargo in bulk. For consistency with this revision, OSPR has made the same revision throughout section 817.04. These proposed revisions will be noticed to the public for a 15-day comment period.</td>
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<tr>
<td>Definition of Regional Response Team [§790(r)(4)]</td>
<td>Suggestion to revise the definition of “regional response team” to describe the membership of the Regional Response Team and its mandate to develop area contingency plans. [Comment W3-(2.5)] OSPR rejects this suggestion/comment. The term is used in the regulations in the context of approval of the use of dispersants and other applied response technologies (§886.1). The suggested revisions would change the scope of the term beyond its present use in the regulations.</td>
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<tr>
<td>Definition of Risk and Hazard Analysis [§790(r)(11)]</td>
<td>Suggestion to revise the definition of “risk and hazard analysis” to include risk analysis studies applicable to railroads. [Comment W3-(2.6)] OSPR rejects this suggestion/comment. No justification or explanation for this change was provided in the comment, nor were any examples provided of what analyses would be appropriate.</td>
<td>OSPR rejects this suggestion/comment. Section 817.04(k)(1) addresses this issue.</td>
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<tr>
<td>Topic</td>
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<td>Definition of Supply Chain of Oil [§790(s)(21)]</td>
<td>Suggestion to exclude railroad transport of oil in bulk and operationally used oil from the definition of “supply chain of oil”. [Comment W3-(2.7)]</td>
<td>OSPR rejects this suggestion/comment. Transportation and distribution of bulk oil (crude or processed) by train is a prime example of the supply chain in action. Oil used for operational purposes, such as diesel fuel in an engine, is excluded from the supply chain because it has reached the end-user.</td>
</tr>
<tr>
<td>Contingency Plans [§817.04]</td>
<td>Certain definitions impermissibly require plan holders to develop geographic response plans (GRP); really, it is the federal and state government’s responsibility to develop GRPs. [Comments W3-(2.1); (2.2)]</td>
<td>OSPR rejects this suggestion/comment. The regulation does not require plan holders to create geographic response plans. The OSPR Administrator is statutorily required to adopt and implement regulations governing the adequacy of oil spill contingency plans. [See Gov. C. §8670.28(a)] The regulations must provide for the “best achievable protection of the waters and natural resources of the state”. [See Govt. C. §8670.28(a), §8670.29(h)] The regulations “shall, at a minimum, ensure” several elements, including: “Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.” [Gov. C. §8670.28(a)(9)] Note that this mandate establishes minimum regulatory requirements. OSPR is directed to establish relevant planning requirements that accomplish best achievable protection. It is reasonable, and within the intent of the statute, to require plan holders to identify resources at risk that are not otherwise identified in a state or federally created geographic response plan.</td>
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<td>Topic</td>
<td>Summary of Comments</td>
<td>Agency Response</td>
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<tr>
<td>Contingency Plans [§817.04]</td>
<td>General appreciation of OSPR's efforts to meet requirements of SB 861. Written comments submitted by email.</td>
<td>OSPR neither accepts nor rejects this comment. Responses to commenters written comments germane to the regulations are identified by W4.</td>
</tr>
<tr>
<td>Contingency Plans [§817.04]</td>
<td>Suggestion that industry be permitted to consolidate plans. [Comment W2-(2)]</td>
<td>OSPR rejects this comment/suggestion. OSPR's inland contingency plan regulations already expressly allow for this (§817.04(e)(3)(A)).</td>
</tr>
<tr>
<td>Contingency Plans [§817.04]</td>
<td>The contingency plan content requirements relevant to environmentally sensitive areas or sites are contained in databases that are confidential, or of which public access is limited, or non-existent. [Comment W3-(2.1)]</td>
<td>OSPR staff helps plan holders access this data for use in developing their plans. Additionally, revisions have been made to subsection 817.04(k) that remove the obligation to describe sensitive areas or sites.</td>
</tr>
<tr>
<td>Contingency Plans - Purpose and Scope [§817.04(a)(2)]</td>
<td>Suggestion that planning standards should not be requirements. [Comment W3-(3.1)]</td>
<td>OSPR rejects this suggestion/comment. The intent of this comment is not clear. Pursuant to Gov.C. §8670.28, “the regulations shall provide for the best achievable protection of the waters and natural resources of the state, as well as for the public health and safety. This would include ensuring standards set for response, containment, and cleanup equipment and operations…” These standards are requirements; they are planning requirements. They establish minimum expectations at a spill unless the exigencies of a spill would not allow following the planning standards.</td>
</tr>
<tr>
<td>Contingency Plans - Applicability [§817.04(b)(1)]</td>
<td>Suggestion to revise applicability of an inland facility based on where the covered equipment is located on the facility in relation to the quarter mile threshold, rather than the boundary lines of the facility. [Comment W5-(1)]</td>
<td>OSPR rejects the suggested revision as proposed, but has added clarifying language to the “Exemptions” subsection (817.04(c)(1)(B)) as follows: <strong>(B) Equipment, tanks, or pipelines within one quarter mile of inland waters do not handle, transport, or store oil as part of the supply chain of oil. If equipment, tanks, or pipelines within one quarter mile are part of the supply chain of oil, than an exemption may not be granted unless there are other grounds for an exemption.</strong></td>
</tr>
</tbody>
</table>
| Contingency Plans - Applicability  
[§817.04(b)(1)] ~continued~ | Suggestion to add multiple facility/blanket plan language to the general applicability section of §817.04(b)(1). [Comment W3-(3.2)] | This proposed revision will be noticed to the public for a 15-day comment period. OSPR rejects this suggestion/comment. Multiple facility/blanket plans are covered at section 817.04(d). Also, multiple crossings of rivers, creeks, dry washes, etc., by a railroad or pipeline can be addressed in a single plan, evaluating the risks and offsite consequences from each location as appropriate. Each crossing does not require a separate contingency plan. |
| Contingency Plans - Applicability  
[§817.04(b)(3) & (b)(3)(A)] | Suggestion to revise non-applicability of an inland facility based on the location of the equipment on an inland facility. [Comment W5-(2)] | The suggested revision is to revise non-applicability to include equipment located equal to a quarter mile from inland waters of the state. That is the threshold for applicability, thus OSPR would object to this proposed revision. Similar to the comment at §817.04(b)(1), OSPR rejects the suggested revision as proposed, however, has added clarifying language to the “Exemptions” subsection (817.04(c)(1)(B)) as follows: **(B) Equipment, tanks, or pipelines within one quarter mile of inland waters do not handle, transport, or store oil as part of the supply chain of oil. If equipment, tanks, or pipelines within one quarter mile are part of the supply chain of oil, than an exemption may not be granted unless there are other grounds for an exemption.** This proposed revision will be noticed to the public for a 15-day comment period. |
| Contingency Plans - Applicability  
[§817.04(b)(3)(C)1.] | Suggestion to include further language to the applicability exceptions for aboveground oil production tanks. [Comment W5-(3)] | OSPR rejects this comment and suggestion as unnecessary. If an exemption does not apply, then the applicability criteria of ¼ miles still applies – either the |
| Contingency Plans - Multiple Facility Plans [§817.04(d)(3)] | Suggestion that multiple facility plan requirements should treat railroads as a "linear transportation facility". [Comment W3-(3.3)] | OSPR rejects this comment and suggestion as unnecessary. No explanation is offered why this is needed, or why the regulations do not adequately address whatever the perceived concern is. A railroad can use one contingency plan to address risks posed at multiple locations along the track. |
| Contingency Plans - Plan Submittal and Format [§817.04(e)(2)(A)] | Inland facility acquisitions, change in ownership and equipment becoming operational do not have a 30 day lead-time. Recommend OSPR allow for 90 days. Also, 817.04(u)(3)(B)(4) allows for 90 days for a change of ownership. [Comment W4-(1)] | OSPR rejects this comment/suggestion. While vague, OSPR believes what the commenter is intending to convey is a recommendation of 90 days after a change, such as a change in ownership, to comply with the requirement to produce details of the change. OSPR feels thirty days prior to acquisition or becoming operational is reasonable. |
| Contingency Plans - Plan Submittal and Format [§817.04(e)(3)(B)] | Would like to clarify that, under the emergency regulations, it is acceptable to reference materials already documented in other plans, such as those required under CCR, Title 14, Division 2, Chapter 4 (AB 1960 Implementation Regulations). [Comment W5-(4)] | OSPR rejects this comment; it is a comment directed at the emergency regulations, not the current version of the proposed regulations. However, OSPR's current rulemaking regulations makes allowances for the inclusion of documents from other agency plans. See §817.04(e)(3)(A) & (B). |
| Contingency Plans - Introductory Material [§817.04(h)(1)(E)] | Suggestion to require only the signature of the Qualified Individual on the statement under penalty of perjury, and remove the executive signature requirement. [Comment W4-(2)] | OSPR rejects this comment/suggestion. The signature of a company executive is required to verify that the person signing the contingency plan indeed has the authority of the company to serve in this capacity. The Qualified Individual cannot bind the company, and in most cases, is not an employee of the company. |
| Contingency Plans - Inland Facility Description and | Suggestion to revise the Reasonable Worst Case Spill (RWCS) calculation so that only one RWCS calculation methodology applies to an individual inland facility based on the facility definition in which it falls (e.g., facility is within or outside ¼ mile of state waters. This is clearly stated in (A) of this same subsection. | OSPR accepts this comment/suggestion and has revised the language by adding subsection §817.04(j)(6) as follows: |
| Reasonable Worst Case Spill Volume [§817.04(j)(4)] | transmission pipeline, production facility, railroad, etc.). [Comment W5-(5)] | **(6) If the contingency plan covers multiple types of facilities, then the plan holder’s reasonable worst case spill volume for the plan shall be the largest volume.**
This proposed revision will be noticed to the public for a 15-day comment period. |
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<td>Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(1)]</td>
<td>Suggestion to use the term “linear transportation facility” to describe railroads. [Comments W3-(3.4); VS4-(a)]</td>
<td>OSPR rejects this comment and suggestion as unnecessary. No explanation is offered why this is needed, or why the regulations do not adequately address whatever the perceived concern is.</td>
</tr>
<tr>
<td>Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(2) &amp; (3)]</td>
<td>OSPR’s inland facility contingency plan regulations impermissibly require plan holders to identify environmentally sensitive areas, develop protection strategies, and develop geographic response plans (GRPs). Really, it is the federal and state governments’ responsibility to develop GRPs. Suggestion to revise these subsections to state the plan holder should complete a waterway planning distance calculation and not an environmental sensitivity analysis. [Comments W3-(1.2); (1.3)]</td>
<td>OSPR rejects this comment/suggestion. The regulation does not require plan holders to create geographic response plans. The OSPR Administrator is statutorily required to adopt and implement regulations governing the adequacy of oil spill contingency plans. [See Gov. C. §8670.28(a)] The regulations must provide for the “best achievable protection of the waters and natural resources of the state”. [See Govt. C. §8670.28(a), §8670.29(h)] The regulations “shall, at a minimum, ensure” several elements, including: “Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.” [8670.28(a)(9)]</td>
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A railroad can pose a risk to water within a quarter mile of waters of the state at thousands of locations throughout the state. Separate risk analyses should not be required. [Comment VS4-(a)]

OSPR rejects this comment and suggestion as unnecessary. A railroad can use one contingency plan to address risks posed at multiple locations along the track (§817.04(d)).
Suggested revision to §817.04(k)(2) that the offsite consequence analysis only evaluate “major perennial” streams or waterways that are associated with “sensitive environments” within a 6-hour “planning distance”; and that “facility-specific on-water source control and containment strategies” be required. [Comment W3-(3.5)]

At §817.04(k)(2), suggest eliminating the requirement to describe environmentally sensitive areas and resources at risk if they are depicted on maps in the plan, and suggestion to eliminate the need to describe potential environmental consequences because there are too many unknowns. [Comment W3-(3.6)]

Note that this mandate establishes minimum regulatory requirements. OSPR is directed to establish relevant planning requirements that accomplish best achievable protection. It is reasonable, and within the intent of the statute, to require plan holders to identify resources at risk that are not otherwise identified in a state or federally created geographic response plan.

OSPR rejects this comment and suggestion as unnecessary. No explanation is offered why this is needed, or why the regulations do not adequately address whatever the perceived concern is. Also, the phrases “major perennial”, “sensitive environments”, and “source control” are significant concepts without a suggested description or function within the regulations.

OSPR accepts this comment and makes the following revisions:

(k)(2) For hazards identified with the ability to cause an oil spill into waters of the state, the contingency plan owner or operator shall include conduct an offsite consequence analysis for a reasonable worst case spill. The analysis must identify and describe environmentally sensitive areas and other resources at risk to be protected, describe potential environmental consequences, and describe collection and protection strategies. (3) The offsite consequence analysis must include a trajectory or series of trajectories, identifying the potential direction, rate of flow, and time of travel of the reasonable worst case spill from the facility to waters of the state and downstream, accounting for natural and manmade pathways and barriers. This determinationThe analysis shall assume reasonably foreseeable adverse
Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(2) & (3)]
~continued~

At §817.04(k)(3), suggest a revision that the offsite consequence analysis only depict resources at risk as presented on Region IX Regional Response Team (RRT) geographic response plan (GRP) maps. [Comment W3-(3.8)]

At §817.04(k)(3), eliminate the waters of the state non-standard definition described as “at least 3 inches deep for more than 182 days a year, the analysis must consider the highest flow or current in the waterway for six hours”, as this information was not available on any OSPR, ERMA, or NHD. [Comment W3-(3.9)]

weather conditions, pessimistic water and air dispersion (including produced water), and other adverse environmental conditions. For risks to inland waters designated as perennial in the National Hydrography Dataset, that is at least three inches deep for more than 182 days a year, the analysis must consider the highest flow or current in the waterway for six hours.

It should be noted, while the illustrated revisions reflect an elimination of “identify” and “describe”, the intent is to eliminate only the requirement to “describe”. Identification of the environmentally sensitive areas and resources at risk are still a requirement (see revised (k)(3)).

This proposed revision will be noticed to the public for a 15-day comment period.

OSPR rejects this comment/suggestion. The RRT does not develop the GRP maps. The contingency plan must depict the environmental resources that are at risk from a spill from the plan holder’s facility regardless of whether there are state or federal maps depicting these resources.

OSPR accepts part of this comment/suggestion as it relates to eliminating the description of “at least 3 inches deep for more than 182 days a year”. OSPR has made revisions to this subsection, and others. See response in table below under Repetitive/Similarly Related Comments.

As for flow and current data, this information is available within layers of the National Hydrography Dataset in ERMA. Stream may be characterized using
| Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(4)(C)] | Suggestion to revise the language to reflect the risk and hazard analysis identify the sites and areas if they are accessible, identifiable and known. [Comment W4-(3)] | OSPR accepts this comment/suggestion and revises the language as follows: 

*Known historical and archaeological sites, and areas of cultural or economic significance to Native Americans.* 

This proposed revision will be noticed to the public for a 15-day comment period. |
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<td>Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(5)]</td>
<td>Suggest that the contingency plan describe and map “facility specific on-water source control and containment strategies.” [Comment W3-(3.10)]</td>
<td>OSPR rejects this comment/suggestion. The intent of this comment is not clear. No explanation is offered for what this phrase means, or why this is needed.</td>
</tr>
<tr>
<td>Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(6)]</td>
<td>OSPR’s inland facility contingency plan regulations and certain definitions (§790) impermissibly require plan holders to develop geographic response plans (GRPs); really, it is the Federal and State government’s responsibility to develop GRPs. [Comments W3-(1.1); VS4-(a)]</td>
<td>OSPR rejects this comment/suggestion. The regulation does not require plan holders to create geographic response plans. The OSPR Administrator is statutorily required to adopt and implement regulations governing the adequacy of oil spill contingency plans. [See Gov. C. §8670.28(a)] The regulations must provide for the “best achievable protection of the waters and natural resources of the state”. [See Govt. C. §8670.28(a), §8670.29(h)] The regulations “shall, at a minimum, ensure” several elements, including: “Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.” (Gov. C. §8670.28(a)(9)) Note that this mandate establishes <em>minimum</em> regulatory requirements. OSPR is directed to establish relevant planning requirements that accomplish best achievable...</td>
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<tr>
<td>Contingency Plans - Risk and Hazard Analysis and Offsite Consequence Analysis [§817.04(k)(6)]</td>
<td>Suggestion that the plan holders develop “on-water source control and containment strategies.” [Comment W3-(3.11)]</td>
<td>protection. It is reasonable, and within the intent of the statute, to require plan holders to identify resources at risk that are not otherwise identified in a state or federally created geographic response plan. OSPR rejects this comment/suggestion. The intent of this comment is not clear. No explanation is offered for what this phrase means, or why this is needed.</td>
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<td>Contingency Plans - Response Resources, Response Times, and Daily Recovery Rates [§817.04(l)(1)]</td>
<td>Suggestion to clarify that the contingency plan can merely rely on an agreement with a rated oil spill response organization for response equipment and response times. [Comment W3-(3.12)]</td>
<td>OSPR partially accepts and partially rejects this comment. The regulations currently allow for reliance on the equipment of a rated oil spill response organization (at §817.04(m)(4) and (n)(7)). Nevertheless, a clarifying edit is made (see below). However, if the comment is suggesting that by contracting with a rated oil spill response organization the plan holder is relieved of ensuring the minimum amount of equipment can arrive on-scene within the designated timeframes, we reject that suggestion. The plan holder has the obligation to ensure proper, timely response to their spill. California law requires a plan holder to “maintain a level of readiness that will allow effective implementation of the applicable contingency plans.” [Govt. C. § 8670.28.5] §817.04(l)(2) The type and amount of response resources, and the time frames for on-scene deployment are specified in the Response Times, &amp; Containment, Recovery &amp; Storage Rate Tables in subsections (m) and (n) of this section. The amount of response resources required by these tables are planning standards to address the plan holder’s reasonable worst case spill; additional resources may be required based on the circumstances of an actual spill. The owner or operator may either provide the necessary response resources or rely on a rated oil spill response organization.</td>
</tr>
</tbody>
</table>
| Contingency Plans - Terrestrial Response Resources [§817.04(m)(1)(A)] | Suggestion to include wording to identify the 182 days of flow of 3 inches or less is calculated as an average over a 5 year period. [Comment W4-(4)] | OSPR partially accepts and partially rejects this comment and suggestion. Revisions to the language have been made as follows:

(m)(1)(A) If an owner or operator’s inland facility poses an oil spill risk to inland waters designated as intermittent or ephemeral in the National Hydrography Dataset that is less than three inches deep, or inland water that is more than 3 inches deep but for less than 182 days a year, then the contingency plan only needs to demonstrate a contract or other approved means for the response resources and capabilities to contain and store a reasonable worst case spill volume into or threatening the dry portions of the waterway (e.g., bed, bank, channel areas). These resources must be available within the time frames described in the Terrestrial Response Times, Containment, Recovery & Storage table below. Terrestrial services do not require dedicated response resources.

This proposed revision will be noticed to the public for a 15-day comment period. |

| Contingency Plans - Terrestrial Response Resources [§817.04(m)(2)(A)3.] | The requirement to provide personnel to maintain a response effort of 14 days is longer than a terrestrial response is expected to last. Suggest revising to “based on the estimated time to respond to the calculated worst case spill.” [Comment W4-(5)] | OSPR both accepts and rejects this comment/suggestion and makes the following revisions:

(m)(2)(A)3. A description of how sufficient personnel to maintain a response effort of at least 14 calendar days would be rotated, retained, or acquired. |
| Contingency Plans - Terrestrial Response Resources \[§817.04(m)(2)(A)3\]. | (n) Inland On-Water Response Resources (2)(A)3. A description of how sufficient personnel to maintain a response effort of at least 14 calendar days would be rotated, retained, or acquired.

These proposed revisions will be noticed to the public for a 15-day comment period. |
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<td>Contingency Plans - Terrestrial Response Resources [§817.04(m)(2)(D)]</td>
<td>Identifying oil as a hazardous waste here may limit the options for disposal, reclamation, and or use. Suggestion to replace “hazardous materials” with “materials released”. [Comment W4-(6)]</td>
</tr>
<tr>
<td>Contingency Plans - Terrestrial Response Resources [§817.04(m)(2)(D)(3)]</td>
<td>Suggestion to revise the language to “The description shall account for known potential adverse environmental conditions…” [Illustration added] [Comment W4-(7)]</td>
</tr>
<tr>
<td>Contingency Plans - Readiness, Movement, and Cascading of Response Resources</td>
<td>Suggestion to delete the obligation to ensure response resources in the contingency plan are functional and available, and replace this with reliance on a contract with a rated oil spill response organization. [Comment W3-(3.17)]</td>
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<td>OSPR rejects this comment/suggestion. The requirement is to identify the locations of disposal sites for hazardous materials, including oil, generated during a spill response effort. OSPR is not interested in the disposal locations for “materials released” which could include other materials that may not be hazardous, or may not even be released from the facility.</td>
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<td>OSPR rejects this comment/suggestion. The comment is really directed at 817.04(m)(3). Government Code section 8670.28(a)(7) requires the offsite consequence analysis to “assume pessimistic water and air dispersion and other adverse environmental conditions.” Although a plan holder may only have terrestrial requirements, e.g. operating next to a dry wash, a “pessimistic” analysis would consider a reasonable worst case spill into the wash when a “gully washer” of a rainstorm was occurring. Although terrestrial equipment is required for planning purposes, a spill during such a storm event may necessitate hiring on-water response resources. The offsite consequence analysis should anticipate this possibility.</td>
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<td>OSPR rejects this comment/suggestion. The plan holder has the obligation to ensure spill response will occur properly and timely. This may require a plan holder to work with its retained oil spill response organization.</td>
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<td>[§817.04(q)(1)]</td>
<td>California law requires a plan holder to “maintain a level of readiness that will allow effective implementation of the applicable contingency plans.” [Govt. C. § 8670.28.5]</td>
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<td>Oil Spill Technical Advisory Committee membership [G.C. §8670.29(h)]</td>
<td>The Technical Advisory Committee Rail member was not given an opportunity to provide input on the Inland Facility Regulations as directed by statute. [Comment W3-(1.4)] The OSPR Technical Advisory Committee (TAC) consists of 14 positions. As prescribed by law, 8 of these positions are appointed by the Governor, 3 by the Senate Rules Committee, and 3 by the Speaker of the Assembly. OSPR has no control over when these appointments are made, nor how quickly vacancies are filled. Four individuals, including James Farner of BNSF, were appointed by the Governor to the Committee on February 21, 2018. The public comment period for these regulations, which was established months earlier, closed the following day. Regardless of the TAC appointment, BNSF and other railroads were engaged during this rulemaking process.</td>
</tr>
<tr>
<td>Economic Analysis</td>
<td>How did OSPR come to conclusions it did concerning the economic analysis? Why was a Standardized Regulatory Impact Assessment not developed? [Comment VS1-(b)] The threshold for conducting a Standardized Regulatory Impact Assessment (SRIA) is that the economic and fiscal impacts are greater than $50 million/year. In this case, the total estimated economic benefits was $7.7 million/year and the estimated costs were $4.1 million in the first year and $2.0 million/year thereafter. This includes the economic impacts for the regulations on contingency plans, financial responsibility, drills and exercises, and oil spill response organizations combined. While there is some question over who is bearing the economic costs (see next comment below), that does not change the total cost figure, which is still well below the threshold for a SRIA. The expected fiscal impacts on state and local government agencies are minor.</td>
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</table>
OSPR’s regulations add to the cost of operations. OSPR’s economic analysis needs to take into consideration personnel time and recovery of the resources, and that production in California is declining. [Comment VS2-(a)]

Oil producers are price takers, not price makers. They do not have the ability to pass on the costs to the consumer. OSPR’s economic analysis is not accurate for producers. [Comment VS2-(a); VB4-(b)]

This comment is responded to by way of revisions to the Economic Impact Assessment in the Amended Initial Statement of Reasons.

This comment is responded to by way of revisions to the Economic Impact Assessment in the Amended Initial Statement of Reasons.

Suggestion that OSPR articulate the changes in the regulatory text over the last two years. [Comment VS1-(c)]

OSPR rejects this comment/suggestion. OSPR has provided a fact sheet summarizing the major differences between the emergency regulations readopted on August 11, 2017 and the proposed permanent regulations being in this rulemaking action. The fact sheet is available on OSPR’s proposed regulations webpage at the following address: https://www.wildlife.ca.gov/OSPR/Legal/Proposed-Regulations

Repetitive/Similarly Related Comments

The following comments are either repeated by multiple parties, or are of similar content, so are aggregated here for efficiency.

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<td>Contingency Plans</td>
<td>Suggestion to eliminate the distinction of a waterway that is either 1) at least 3 inches deep for more than 182 days a year, or 2), with a 3 inch depth for more or less than 182 days a year. Further, to allow for reliance on the National Hydrography Dataset and the California Major Hydrography data layers as depicted in the Southwest Environmental Response Management</td>
<td>OSPR accepts these comments/suggestions and has made revisions to the proposed regulations to each of these subsections, as well as a new provision at subsection 817.04(b)(1)(B). Without printing the revisions to each of the sections commented on, the core revisions being suggested are as follows:</td>
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Application (ERMA) for the designations of these waterways as either “perennial” or “intermittent”/“ephemeral”, respectively. [Comments W3-(2.8); (3.7); (3.9); (3.13); (3.14); (3.15); (3.16)]

For risks to inland waters designated as perennial in the National Hydrography Dataset that is at least three inches deep for more than 182 days a year...

If an owner or operator’s inland facility poses an oil spill risk to inland waters designated as intermittent or ephemeral in the National Hydrography Dataset that is less than three inches deep, or inland water that is more than 3 inches deep but for less than 182 days a year...

(b)(1)(B) To determine if the requirements of this subchapter are applicable to a particular inland facility, owners and operators may rely on the National Hydrography Dataset and the statewide quarter mile buffer data layer, as depicted in the Southwest Environmental Response Management Application, on the National Oceanic and Atmospheric Administration’s website, incorporated by reference herein.

These proposed revisions will be noticed to the public for a 15-day comment period.

Irrelevant Comments

The following comments are not germane to the proposed regulations; as such, OSPR rejects these comments.

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<tr>
<td>Contingency Plans [§817.04]</td>
<td>OSPR should consider coordinating with the many other response agencies regulating industry to agree on standardized content and format for contingency plans. [Comment W2-(1)]</td>
</tr>
<tr>
<td>Certificates of Financial Responsibility [§791-798]</td>
<td>All comments related to sections 791-798: [Comments VS1-(a); VS2-(b),(c); VS3-(a),(b),(c); VB2-(a),(b),(c); VB4-(a),(d)] These comments are addressed in the related rulemaking.</td>
</tr>
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### Oil Spill Response Organizations [§819-819.07]

All comments related to sections 819-819.07: [Comments VS5-(a),(b),(c); VB1-(a),(b),(c); VB3-(a); W4-(b)]

These comments are addressed in the related rulemaking.

### Drills and Exercises – Inland Facilities [§820.02]

All comments related to section 820.02: [Comments VB3-(a); W4-(9),(10),(11)]

These comments are addressed in the related rulemaking.

### Senate Bill 861

General complaints about how Senate Bill 861 was passed. [Comment VB4-(c)]

### Oil Spill Technical Advisory Committee Membership

Inquiry as to when the vacancies on the Oil Spill Technical Advisory Committee will be open and available. [Comment VS1-(d)]

### Federal Preemption

BNSF’s basis for challenge includes, but is not limited to, preemption under the United States Constitution’s Supremacy Clause, the Federal Railroad Safety Act, the Interstate Commerce Commission Termination Act, as well as those statutes, regulations, rulemakings, and enforcement that flows from them. [Comment W3-(3.18)]

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2. **Second Comment Period – (15-Day)**

Upon consideration of the comments received from the first comment period, OSPR made revisions to Sections 790 and 817.04 and submitted the revisions for an additional 15-day comment period. The following summarize the comments received from the 15-day comment period, May 23, 2018 – June 6, 2018.

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</thead>
<tbody>
<tr>
<td>Definition of Barge [§790(b)(3)]</td>
<td>The definition of “barge” now means “tank barge”. [Comment W6-(1)]</td>
<td>OSPR rejects this comment as untimely. The definition of barge has not been revised in this rulemaking, nor the preceding emergency rulemaking.</td>
</tr>
<tr>
<td>Definition of Mobile Transfer Unit [§790(m)(5)]</td>
<td>The word “marine” has been removed from the definition. [Comment W7-(1)]</td>
<td>OSPR rejects this comment as untimely. This revision was made during the 45-day comment period.</td>
</tr>
</tbody>
</table>
### Definition of Tank Barge [§790(t)(2)]
The definition of “barge” now means “tank barge”. [Comment W6-(1)]

OSPR rejects this comment. The definition of tank barge has not been revised in this rulemaking, nor the preceding emergency rulemaking.

### General Definitions & Abbreviations [§790]
Suggest revisions to four definitions. [Comment W8-(a),(b),(c),(d)]

OSPR rejects these comments/suggestions as untimely.

### Contingency Plans – [§817.04]
All suggested revisions at various subsections. [Comment W8-(f) through (k)]

OSPR rejects these comments/suggestions as untimely.

### Repetitive/Similarly Related Comments
The following comments are either repeated by multiple parties, or are very closely related so are grouped here for efficiency.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Summary of Comments</th>
<th>Agency Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Facility [§790(f)(1)]</td>
<td>Oil received into a dedicated airport fuel management system for on-airport use would not be considered part of the supply chain of oil as defined in subsection 790(f)(1). Receipt, storage and management of fuel used at an airport is not production-related and the act of transfer into an aircraft and airport equipment is not considered resale or redistribution. [Comment W9]</td>
<td>OSPR concurs with this comment. It restates that which has already been addressed in the 45-day comment period. There is no change. (See discussion above)</td>
</tr>
</tbody>
</table>

### Irrelevant Comments
The following comments are not germane to the proposed regulations; as such, **OSPR rejects these comments.**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Summary of Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil Spill Response Organization Ratings - [§819.02]</td>
<td>All comments related to sections 819-819.07: [Comments W7-(2), (3); W8-(f) through (t)] These comments are addressed in the related rulemaking.</td>
</tr>
</tbody>
</table>
3. **Third Comment Period – (15-Day)**

OSPR made revisions to Sections 790 and 817.04 and submitted the revisions for an additional 15-day comment period. The following summarize the comments received from the 15-day comment period, October 11, 2018 – October 25, 2018.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Summary of Comments</th>
<th>Agency Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Definitions &amp; Abbreviations</td>
<td>Support for OSPR’s proposed rulemaking(s). [Comment W10]</td>
<td>OSPR accepts this comment; no change necessary.</td>
</tr>
<tr>
<td>[§790]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificates of Financial Responsibility [§791-798]</td>
<td>All comments related to sections 791-798 [Comments W8-(e)] These comments are addressed in the related rulemaking.</td>
<td></td>
</tr>
</tbody>
</table>