

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

Adding Section 820.02
to
Title 14, California Code of Regulations
Regarding Drills and Exercises 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:** October 31, 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, and Revised Economic and Fiscal Impact Statement (STD Form 399): 15-Day Continuation of Public Comment Period

After the 45-day comment period, a small number of modifications were made to the originally proposed text of the regulations. The modified text, Amended Initial Statement of Reasons (ISOR), 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 noticed for the 15-day comment period are as follows. **Note: the following do not include minor spelling or grammatical corrections/edits.**

Subchapter heading – Subchapter 3.7. Drills and Exercises – Inland Facilities

Addition of the subchapter heading ensures that this section falls logically in numerical order and easily located in print form in the California Code of Regulations.

Subsection (a)

In subsection (a)(1), after the 15-day comment period, a non-substantive edit was made correcting ‘subchapter’ to ‘chapter’ for accurate citation.

Subsection (b)

In subsection (b)(1)(B), (B)(2)(B), and (b)(3)(B), after the 15-day comment period, a non-substantive edit was made correcting the reference to section 817.04(g). The accurate citation is subsection 817.04(d).

Subsection (d):

Clarification is provided for the “days” reference as calendar days.

Subsections (f) & (g):

A change in the term “discharge(d)” to “spill(ed)” in keeping uniform with the regulations as a whole, as well as defined terms; and minor grammatical edits.

Subsection (k)

In subsection (k)(2)(D), after the 15-day comment period, a non-substantive edit was made correcting reference to 817.04(e)(1) to the accurate citation of 817.04(f). The words “of this subchapter” were removed as unnecessary. These were non-substantive changes.

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 noticed to and 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.**

Subsection (a)

In subsection (a)(1) a non-substantive revision were made to correct reference to “subchapter” to “chapter”.

In subsection (a)(3), revisions were made to eliminate language that may be considered unclear or overly broad.

Subsection (b)

In subsections (b)(1)(B), (b)(2)(B) and (b)(3)(B), citation cross-reference is corrected.

Subsection (d)

In subsection (d)(3), unnecessary and limiting language is eliminated.

In subsection (d)(6), revisions were made to eliminate language that may be considered unclear or overly broad.

Subsection (g)

A non-substantive edit is made to the subheading for consistent use of terminology.

Subsection (j)

Subsection (j)(5) is deleted. There are no drill or exercise substitutions beyond what is already identified in this subsection.

Subsection (k)

In subsection (k)(2)(D) citation reference is corrected.

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. None of the documents apply to this rulemaking.

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.

VI. Alternatives Determination:

Based on the information the 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 8670.10, 8670.28, 8670.29, 8670.30 and 8670.31. 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:
Drills and Exercises – Inland Facilities (14 CCR §820.02)

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 section stated 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 Oil Spill Contingency Plans and Definitions & Abbreviations (14 CCR §817.04 and §790); 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 rulemaking 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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I. List of Commenters

The following have provided **written** comments.

W1.	Macpherson Oil Company, Tim Lovley, Director HSE; letter dated 2/22/18
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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.

Topic	Summary of Comments	Agency Response
Drills and Exercises- Inland Facilities [§820.02(a)(2)(C)]	The requirements for Tier III facilities uses agency and operator efforts and capital on low risk low probability of spill into water. Suggestion to categorize plan holders with an oil spill response organization (OSRO) into Tier III. [Comment W1-(9)]	OSPR rejects this comment/suggestion. Generally facility personnel or a hired spill management team (SMT) fills the incident command roles. They will be accomplishing these exercise objectives. The OSRO performs the actual cleanup activities, but often also fills roles in the Operations section of the incident command. Generally the OSRO's will not be filling the incident command positions that would accomplish these exercise objectives. Also, the potential spill size is a better indicator of issues to be addressed by the people managing the spill, than whether or not an OSRO is on retainer or has been hired.
Drills and Exercises- Inland Facilities [§820.02(j)(3)(A)(1)a.]	The requirement that an OSPR representative must have responded to the spill and observe and verify the equipment deployment in order to qualify as a substitution for a drill or exercise, limits the availability of the credit. Proper deployment can occur without OSPR being on site, observing and verifying. Suggest adding the ability to receive credit using a certified statement from another agency responding to the spill and who witnessed the equipment deployment. [Comment W1-(10)]	OSPR rejects this comment/suggestion. It is critical that an OSPR representative be at the spill response or equipment deployment to verify that actions were completed, consistent with OSPR drills and exercises standards. Based on this verification, drills and exercises credit can be issued. This standard has been in place for marine spill drill credit since 2013 and has not proven to be a undue burden to industry. OSPR is the only state agency that requires oil spill drills and exercises for purposes of testing preparedness measures outlined in industry contingency plan requirements. It would be inappropriate for another state agency, not intimately familiar with OSPR requirements to "attest" that a deployment or exercise

		should obtain credit. This approach to drills and exercises credit would not be in keeping with the best achievable protection standards, as required by statute.
Drills and Exercises- Inland Facilities [§820.02(j)(3)(A)(2)(d)(B)]	The ability to be granted credit for one spill but every three years adds costs in time and capital to both spill response agencies and operators, and does not reduce risk. Suggestion to provide credit any time. [Comment W1-(11)]	OSPR rejects this comment/suggestion. It is important for OSPR staff to exercise with plan holders, to practice working through issues, and have one-on-one face time with the plan holder's staff and contractors. If a plan holder is spilling so often to receive credit through spills more frequently than every three years, then there may never be exercises. Through exercises OSPR may be able to identify and address operational issues.
Economic Analysis	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.

<p>Economic Analysis ~continued~</p>	<p>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)]</p> <hr/> <p>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)]</p>	<p>This comment is responded to by way of revisions to the Economic Impact Assessment in the Amended Initial Statement of Reasons.</p> <hr/> <p>This comment is responded to by way of revisions to the Economic Impact Assessment in the Amended Initial Statement of Reasons.</p>
<p>Changes in versions</p>	<p>Suggestion that OSPR articulate the changes in the regulatory text over the last two years. [Comment VS1-(c)]</p>	<p>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</p>

Irrelevant Comments

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

Topic	Summary of Comments
<p>Oil Spill Contingency Plans – Inland Facilities and Definitions & Abbreviations [§§817.04 & 790]</p>	<p>All comment related to sections 817.04 and 790: [Comments W1-(1) through (7); VS4-(a)] These comments will be addressed in the related rulemaking.</p>

Contingency Plans [§817.04]	Comments related to sections 817.04 [Comments: VB3-(a)] These comments will be addressed in the related rulemaking.
Certificates of Financial Responsibility [§791-798]	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 will be addressed in the related rulemaking.
Oil Spill Response Organization Ratings [§819-819.07]	All comments related to sections 819-819.07: [Comments VS5-(a),(b),(c); VB1-(a),(b),(c); VB3-(a); W1-(8);] These comments will be 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)]

2. Second Comment Period – (15-Day)

OSPR made revisions to Section 820.02 and submitted the revisions for an additional 15-day comment period from May 23, 2018 through June 6, 2018. There were no comments received from the 15-day comment period relative to Section 820.02.

3. Third Comment Period – (15-Day)

OSPR made revisions to Section 820.02 and submitted the revisions for an additional 15-day comment period from October 11, 2018 through October 25, 2018. There were no comments received from the 15-day comment period relative to Section 820.02.