

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

**TITLE 14. CALIFORNIA CODE OF REGULATIONS  
CERTIFICATION OF SPILL MANAGEMENT TEAMS  
(Sections 830.1 – 830.11)**

**DEFINITIONS AND ABBREVIATIONS  
(Section 790)**

**OIL SPILL CONTINGENCY PLANS  
(Sections 815.05, 815.07, 816.02, 817.02, 817.03, 817.04,  
818.02, 818.03, 825.05, 825.07, 826.02, 826.03, 827.02)**

**NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the California Department of Fish and Wildlife, Office of Spill Prevention and Response (OSPR) proposes to adopt new sections 830.1 through 830.11, including two new Applications for Certification, and to amend sections 790, 815.05, 815.07, 816.02, 817.02, 817.03, 817.04, 818.02, 818.03, 825.05, 825.07, 826.02, 826.03, 827.02, of subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to the Certification of Spill Management Teams (SMT), and related changes to General Definitions and Abbreviations and Oil Spill Contingency Plans. OSPR invites interested persons to present comments, statements, or arguments with respect to the regulations during the written comment period.

**PUBLIC HEARING**

**As a result of the coronavirus pandemic and the Executive Order of the Governor of California to protect public health by limiting public gatherings and requiring physical distancing, OSPR has not scheduled a public hearing on this proposed action.** However, pursuant to Government Code section 11346.8, OSPR will hold a virtual public hearing, via electronic communication, if a written request is received at the address below from any interested person or his or her authorized representative no later than fifteen (15) calendar days before the end of the 45-day comment period.

**SUBMISSION OF WRITTEN COMMENTS**

Any interested person or his or her authorized representative may submit to OSPR written comments relevant to the proposed regulatory action. **The written comment period closes at 11:59 p.m. on Monday, September 14, 2020.** All written comments must be received by OSPR by then in order to be considered. Written comments may be submitted by mail or e-mail, as follows:

Department of Fish and Wildlife  
Office of Spill Prevention and Response  
P.O. Box 944209  
Sacramento, California 94244-2090  
E-mail: [OSPRRegulations@wildlife.ca.gov](mailto:OSPRRegulations@wildlife.ca.gov)

## AUTHORITY AND REFERENCE

Government Code sections 8670.5, 8670.29 and 8670.32 grant the Administrator of OSPR the authority to adopt regulations and guidelines for the proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.5, 8670.10, 8670.28, 8670.29 and 8670.32.

## INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

### *Existing Law*

The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (Act) of 1990 requires owners or operators of certain facilities and large vessels that handle oil to have an oil spill contingency plan for potential oil spill threats they pose to waters of the state. Within these plans, plan holders must identify a spill management team (SMT) to staff and manage a spill response. SMTs are personnel that staff the organizational structure for managing some or much of a response to an oil spill. These teams can be the plan holder's own employees or those affiliated with plan holder companies, contractors, or a combination of these.

Since 1991 the Administrator of the Office of Spill Prevention & Response (a Governor appointee and Chief Deputy Director of the Department of Fish & Wildlife) has been responsible for all oil spill planning, preparedness, and response in the state. Government Code section 8670.7. The Administrator has a statutory obligation to provide the best achievable protection of natural resources and state waters. Plan holders that have oil spill contingency plan requirements also bring incident management personnel to oil spills, but currently the performance of those teams is not required to be evaluated or verified before they can be referenced in a contingency plan or participate in oil spill responses.

In 2017, Assembly Bill 1197 was enacted to enable the Administrator to have direct regulatory oversight over SMTs, by classifying their capabilities and evaluating their performance through inspections, exercises, or by other means. Such a program would ensure consistent and increased capabilities of SMTs in managing an oil spill response and in turn, move such response efforts towards the best achievable protection of the State's natural resources.

### *Spill Management Team Certification (sections 830.1 – 830.11)*

These new sections for certification requirements of SMTs are modeled from the current oil spill response organization ratings requirements. Building upon that program, adoption of the proposed SMT certification regulations will generally:

- Clarify what a "team" is comprised of.
- Establish criteria for SMTs to become certified based on the SMT's capacity to respond to and manage spills effectively.
- Establish criteria for SMTs to successfully accomplish objectives of announced and unannounced exercises.
- Establish timeframes for designated personnel to arrive on-scene.

- Establish training requirements.
- Provide for an application process to commence the certification process.

*General Definitions and Abbreviations (section 790, 815.05, 825.05)*

The proposed amendments to section 790 are included in this rulemaking (title 14, Subdivision 4, Chapter 3, Sections 830.1 through 830.11) to avoid the definitions being their own separate rulemaking and for ease of reference. Adoption of the proposed amendments to the definition's regulations will generally:

- Add definitions to identify and delineate different types of response team members.
- Revise common definitions to reduce the limitation of the definition to only one class or group.
- Consolidate common definitions into one section (790).

*Vessel, Marine, and Inland Contingency Plans (sections 815.05, 815.07, 816.02, 817.02, 817.03, 817.04, 818.02, 818.03, 825.05, 825.07, 826.02, 826.03, 827.02)*

Proposed amendments to the various contingency plan requirements for vessels, marine facilities, and inland facilities are made for consistency with the mandates of Government Code sections 8670.29 and 8670.32.

*Policy Statement Overview and Anticipated Benefits of the Proposed Action*

Adoption of the spill management team certification regulations will implement, interpret, and provide specificity not found in the Act.

In 2013, OSPR began conducting unannounced exercises focusing on incident management objectives to indirectly evaluate SMTs through plan holder oil spill contingency plans. The goal was to better understand the state of spill response readiness of these teams. OSPR documented that the quality and consistency of SMTs' ability to accomplish the exercise objectives varied, with significantly more failures at unannounced exercises than for announced exercises. However, currently OSPR can only hold SMTs accountable indirectly through the plan holders. If a contracted SMT does poorly at an unannounced or announced exercise, then the plan holder is out of compliance, not the team.

The proposed regulations will provide a direct mechanism for evaluating spill management teams' ability to respond by establishing minimum requirements for training and/or experience of personnel, time frames for personnel to arrive on-scene, and criteria for a successful completion of exercise objectives, based on classification levels derived from reasonable worst-case spill volumes contained in plans for which spill management teams provide services. The classification system and associated criteria will establish standards that will ensure consistency and adequacy of spill management teams' response capabilities.

The benefits of the proposed regulations ensure there are spill management teams that are trained to be ready for fast, effective response and management of oil spills and move oil spill response towards the best achievable protection of the State's natural

resources. Ultimately, these regulations will protect the state from incurring greater environmental damage, than if this program did not exist.

#### *Evaluation of Inconsistency or Incompatibility with Existing Regulations*

The proposed regulations are not inconsistent or incompatible with existing state or federal regulations or statutes. After conducting a review for any state or federal regulations or statutes that would relate to the certification of spill management teams, OSPR concludes that there are none requiring the certification of spill management teams. The U.S. Coast Guard requires federal facility and vessel plan holders to identify an SMT, but they do not classify or certify SMTs. (33 CFR 154.1035(b)(3)(iv); 33 CFR 155.1035(d))

### **DOCUMENTS INCORPORATED BY REFERENCE**

The following documents, hereby incorporated by reference in the proposed new Certification of Spill Management Team regulations, are available on OSPR's [website](#) and upon request.

- Typing Characteristics table of the U.S. Coast Guard *Incident Management Handbook* (2014)
- Exercise Notification form DFW 1964 (07/15/20)
- Application for Certification of Plan Holder Spill Management Team form DFW 1005 (new 07/14/20)
- Application for Certification of External Spill Management Team form DFW 1006 (new 07/13/20)

The following documents, hereby incorporated by reference in the amended Oil Spill Contingency Plan regulations, are available on OSPR's [website](#) and upon request.

- Application for Certification of Plan Holder Spill Management Team form DFW 1005 (new 07/14/20)
- Application for Certification of External Spill Management Team form DFW 1006 (new 07/13/20)

### **DETERMINATIONS REGARDING THE PROPOSED ACTION**

OSPR has made the following determinations, as required by Government Code section 11346.5(a)(5), (6), (7), (9) and State Administrative Manual section 6601:

*(a) Mandate upon local agencies and school districts: None*

*(b) Costs or savings to any state agency: None*

*(c) Costs or savings to any local agency: None*

*(d) Costs or savings to any local agency or school districts which must be reimbursed in accordance with part 7, division 4 (commencing with section 17500) of the Government Code: None*

- (e) *Other non-discretionary costs or savings imposed upon local agencies:* None
- (f) *Costs or savings in federal funding to the state:* None
- (g) *Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:*

These regulations will not have a significant statewide adverse economic impact. See the Economic and Fiscal Impact Statement (Form STD 399).

- (h) *Cost a representative private person or business would necessarily incur in reasonable compliance:*

Hiring a certified external SMT and/or providing training for in-house staff are potential costs to a plan holder. Most plan holders already have SMTs, whether internal or external, as part of their oil spill contingency plan. Contracted SMTs will initially bear the cost of meeting the certification requirements. These costs will then be passed on as retainer fee increases to their clients who are the plan holders. Combined, the total expected cost to oil producers, rail, pipeline, and tank vessel operators is estimated to be \$12.078 million. Assuming this is passed on to consumers, the estimated impact to individuals will be an increase in fuel expenditures of \$1.14 per vehicle per year. Refer to the Economic and Fiscal Impact Statement (Form STD 399) for details.

- (i) *Significant effect on housing costs:* None

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Pursuant to Government Code sections 11346.2 and 11346.3, and State Administrative Manual section 6601, with regard to the proposed regulations, OSPR determines the following:

- *Whether this is a “major regulation”, having an economic impact on businesses and individuals exceeding \$50,000,000 in any 12-month period between the date the regulation is estimated to be filed with the Secretary of the State through 12 months after the regulation is fully implemented.*

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

- *Effects of the regulation on the creation or elimination of jobs within the State of California.*

These regulations may result in additional business activity (for example, the use of contractors). Plan holders may rely on their own staff (“in-house”) spill management team, however, in the event they do not have adequate resources, plan holders may contract with individual spill management team members to supplement their own, or contract with entire spill management teams in order to comply with these regulations.

- *Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State of California.*

By creating an SMT certification program, OSPR is defining a service that businesses may provide, in turn, likely leading to the creation of more business than would otherwise exist without these regulations.

- *Effects of the regulation on the expansion of businesses currently doing business within the State of California.*

By creating an SMT certification program, OSPR is defining a service that businesses may provide, in turn, likely leading to expansion of California businesses.

- *Benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment.*

Having requirements for certification, which include resources and timelines, will ensure that contracted SMTs are capable of effectively respond to and manage responses to oil spills, thus potentially eliminating or mitigating the severity of the impact of a spill on the environment. In turn, this benefits the health and welfare of California residents, worker safety, and the state's environment.

- *Business Reporting Requirement.*

None.

- *Effect on small business.*

This regulatory action will affect small business. Approximately 51 California oil producers qualify as small businesses with fewer than 100 employees and annual gross receipts of \$15 million or less, or about 4% of the 1,255 potentially impacted plan holders. For all but the smallest plan holders, the impact of the estimated cost increase of regulatory compliance is less than 0.05% of their average revenues. The smallest producers would experience a cost increase of 0.12% of their average revenue.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), OSPR must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of OSPR, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The requirement for SMTs to be certified is created by statute (Government Code section 8670.32) and is required to be implemented by OSPR. There are no reasonable alternatives.

OSPR invites interested persons to present reasonable alternatives to the proposed regulations during the written comment period.

## **AVAILABILITY OF DOCUMENTS / OSPR CONTACT PERSON**

OSPR will have the entire rulemaking file available for inspection and copying at its office at the address below. As of the date this notice is published in the California Notice Register, the rulemaking file consists of this notice, the text of the regulations, the Initial Statement of Reasons, any documents incorporated by reference, as indicated in this notice, and the Economic and Fiscal Impact Statement (Form STD 399). Please direct inquiries concerning the regulatory process or requests for copies of the proposed text (“express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations (if any), or other information upon which the rulemaking is based to the following:

Department of Fish and Wildlife  
Office of Spill Prevention and Response  
Attention: Christine Kluge  
P.O. Box 944209  
Sacramento, CA 94244-2090  
Phone: (916) 375-4676  
Email: [Christine.Kluge@wildlife.ca.gov](mailto:Christine.Kluge@wildlife.ca.gov)

The backup contact person is Rachel Fabian at (916) 375-4321 or [Rachel.Fabian@wildlife.ca.gov](mailto:Rachel.Fabian@wildlife.ca.gov).

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

This notice and related rulemaking documents identified above can be accessed on the ‘[Proposed Regulations](#)’ page on OSPR’s website (<https://wildlife.ca.gov/OSPR/Legal/Proposed-Regulations/SMT-Certification>).

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

At the close of the 45-day comment period, and considering all timely and relevant comments received, OSPR may adopt the proposed regulations substantially as described in this notice. If OSPR makes modifications which are sufficiently related to the originally proposed text, the modified text (with the changes clearly indicated) will be made available to the public for at least 15 days prior to the date of adoption. Any such modifications will also be posted on OSPR’s website identified above. Please send requests for copies of any modified regulations to the attention of the contact person(s) as indicated above. OSPR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available on OSPR’s website and may be requested from the contact person(s) named in this notice.

*END*