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

ADDENDUM TO
INITIAL STATEMENT OF REASONS
including
ECONOMIC IMPACT ASSESSMENT

Title 14, California Code of Regulations
Adopt Sections 830.1 through 830.11
Regarding Spill Management Team Certification
and
Amend Sections 815.07, 817.02, 817.03, 818.02,
818.03, 817.04, 825.07, 827.02
Regarding Definitions and Oil Spill Contingency Plans

Date of Initial Statement of Reasons: July 21, 2020

Date of this Addendum to Initial Statement of Reasons: January 15, 2021

In response to public comments received during the 45-day comment period, modifications to the proposed regulations were made to the express terms of the regulations and the two Applications for Certification (forms DFW 1005 and DFW 1006). The regulatory text modifications pertain to sections 830.1, 830.2, 830.3, 830.4, 830.5, 830.6, 830.7, 830.9, and 830.10. Corresponding revisions are also made to sections 815.07, 817.02, 817.03, 818.02, 818.03, 817.04, 825.07, and 827.02. Additionally, in response to comments requesting re-evaluation of the economic impacts resulting from the proposed regulations, OSPR has made modifications to the Economic Impact Assessment within this document, consistent with the revised Economic and Fiscal Impact Statement (form STD 399). Finally, documents relied upon and documents incorporated by reference are added.

This Addendum to the Initial Statement of Reasons addresses only the changes to each of the above-named documents, statements of necessity for new regulatory provisions, and other clarifying statements. Revisions made to the two application forms are identified in Addenda to the Purpose and Necessity Statements attached at the end of this document.

Pursuant to Government Code section 11347.1, OSPR will provide public notice of the Addendum to the ISOR, for a minimum of 15 calendar days.

Revisions to Section 830.1 – Purpose, Scope, and Applicability

Subsection (a)(2)

Edits are made to clarify that a plan holder may identify a single spill management team capable of responding in all geographic areas where the plan holder operates, and that a spill management team operating in multiple geographic areas may apply using a single application.

Subsection (b)(1)

The deadline to submit an application for spill management team certification is extended from 30 days to 90 days after the effective date of the regulations.

Revisions to Section 830.2 – Certification Requirements

Subsection (a)(4)

The word "tabletop" is removed for brevity.

Revisions to Section 830.3 – Spill Management Team Classifications

Subsection (a)

The phrase "and the time frames for objectives they must achieve during a successful tabletop exercise or spill response" is removed because tiers to not determine these requirements. This description was applicable to a pre-rulemaking draft and was included in error. Removing this text corrects the error.

Subsection (c)(3)(B)

The word "or" is added.

Subsection (c)(3)(C)

Purpose: This subsection amends the spill management tier classification to include spill management teams providing services specifically to mobile transfer units, which would be in Tier III regardless of reasonable worst-case spill volume.

Necessity: During the selection of the reasonable worst-case spill volume delineating Tiers II and III (249 barrels), it was OSPR's intent for mobile transfer unit spill management teams to fall into Tier III based on the largest mobile transfer unit truck volume listed in mobile transfer unit contingency plans (238 barrels). However, a small number of mobile transfer units have reasonable worst-case spill volumes of approximately 500 barrels because they transfer oily wastewater from vessel cleaning operations into portable liquid storage tanks. Public comments from these plan holders asserted that the proposed regulations would disproportionately affect them by requiring them to have Tier II spill management teams, with greater requirements for personnel and training than mobile transfer units conducting transfers of undiluted petroleum products whose truck volumes place them in Tier III. OSPR recognizes the reduced risk of oily wastewater relative to undiluted petroleum product and has made this adjustment to ensure that spill management team requirements for mobile transfer units are commensurate with the risks they pose.

Revisions to Section 830.4 – On-Scene Requirements

Subsection (a)(1)(A)3., (a)(1)(B)3., (a)(2)(A)3., (a)(2)(B)3., (a)(3)(A)3., and (a)(3)(B)3.

References to subsection 830.5(d) are removed from each of these subsections. Subsection 830.5(d) requires generally that personnel have any applicable health and safety training required under law, but it does not impose any specific requirement. Comments received during the 45-day comment period indicated that referencing 830.5(d) along with other training requirements caused confusion regarding the substance of that subsection.

Subsections (a)(1)(D), (a)(2)(D), (a)(3)(D), and (b)

Subsections (a)(1)(D), (a)(2)(D), and (a)(3)(D) are reworded to mitigate confusion surrounding the minimum number of personnel required on spill management teams of each tier. Subsection (b) is deleted and instead incorporated into each of these subsections to further improve clarity.

Subsection (a)(3)(E)

The addition of "state" is included to clarify the applicability to only California waters of the state, also defined as state waters.

Subsection (b)

Purpose: This added subsection exempts spill management teams that provide services to plan holders by contract from providing personnel to perform the Assistant Public Information Officer position and clarifies that a plan holder contracting with such a team must account for this required position on an Application for Certification of Plan Holder Spill Management Team form DFW 1005 (new 11/12/20).

Necessity: This adjustment corrects an error in the originally proposed regulations. The exemption for contracted spill management teams from providing the Assistant Public Information Officer position was incorporated into the regulatory package during pre-rulemaking activities and is reflected in the Application for Certification of External Spill Management Team form DFW 1006 (new 07/13/20) filed with the Notice of Proposed Rulemaking. The exemption provision was made in response to input from the regulated community that contracted spill management teams do not typically provide this position because plan holders tend to rely on their own staff or a preferred public relations firm. The provision was omitted from the original regulatory text in error. This adjustment corrects the error and provides clarification that a plan holder must account for this required position.

Revisions to Section 830.5 –Training and Experience Requirements

Subsection (a)(1)

Subsection (a)(1) is amended to eliminate the requirement for training courses to be accomplished in the same setting (classroom, online) as those described in the Federal Emergency Management Agency's or the U.S. Coast Guard's training guides. This adjustment is made in consideration of limitations to in-person activities posed by the Covid-19 pandemic.

Subsection (a)(2)

Subsection (a)(2) is amended to allow for all of the position-specific courses listed in subsections 830.5(j) and (k) to be conducted either in person or led virtually by an instructor. This adjustment is made in consideration of limitations to in-person activities posed by the Covid-19 pandemic.

Subsection (b)(1)

Subsection (b) is renumbered to (b)(1) in light of the addition of (b)(2).

Subsection (b)(2)

Purpose: This added subsection establishes that the Administrator may request documentation of trainer qualifications and establishes a time frame a spill management team must provide said records.

Necessity: This subsection was added to provide clarity regarding trainer qualifications as specifically requested by public comments. Trainer qualifications are addressed in subsection 830.5(b)(1), which is modeled after the California Occupational Safety and Health Administration's (Cal OSHA) *Hazardous Waste Operations and Emergency Response* (HAZWOPER) regulations (Title 8 CCR, section 5192), as was suggested by the regulated community during pre-rulemaking. The subsection states that instructors must either have formal education or credentials for teaching the courses, or they must have skills and experience necessary for teaching, such as experience in real responses undertaking the duties, responsibilities, and processes covered in the courses they are teaching.

Like Cal OSHA, OSPR expects spill management teams to self-certify that trainers leading their courses are qualified. If there is an indication that unqualified instructors are leading training courses, such as personnel displaying a lack of knowledge of basic incident command system terms and concepts, the Administrator may request documents demonstrating that trainer qualifications reasonably meet the standards described in subsection (b)(1). Fifteen days was selected for consistency with time periods for spill management teams to submit information in response to requests or determinations by the Administrator (e.g., subsections 830.6(c)(2)(B)2., 830.7(b)(2))).

Subsection (c)

The reference to subsections (d) through (*l*) is amended to refer to subsections (e) through (*l*) to mitigate confusion regarding the substance of subsection (d), as described above in subsection (a).

Subsection (d)

This subsection is revised to clarify that spill management personnel are required to have any health and safety training required by existing law. As discussed above in the amendments to section 830.4, this provision does not implement a specific requirement beyond requirements of existing law. The subsection is reworded and the reference to the specific example in the California Code of Regulations is removed. These

adjustments provide clarity, as several comments received during the 45-day comment period indicated that the intent of this subsection was not clear.

Subsection (e)(2)

Subsection (e)(2) are revised to eliminate the condition that participation in an exercise or spill response must occur in California to count toward the required refresher training.

Subsection (i)(4)

Edit is made to eliminate the condition that participation in an exercise or spill response must occur in California to count toward the required refresher training. Additionally, in response to public comments, the incident command system refresher requirement for cascading response personnel is reduced from 16 to eight hours.

Subsections (f), (g), (h), (j), (k), and (l)

These subsections are amended to remove references to subsection 830.5(d). As discussed above, these references are removed from various subsections in section 830.4 to clear up confusion regarding subsection 830.5(d). The references in subsections (k) and (*l*) are to 830.5(b) rather than 830.5(d); this was a copy-editing error introduced during drafting of the initial rulemaking package.

Subsections (j), (k), and (l)

Purpose: These subsections are similarly amended throughout and add provisions that establish levels of experience performing incident command system positions in real emergency responses that may be substituted for exercise performance to fulfill training requirements for cascading response positions. Amendments are also made to the provisions describing required position-specific training courses throughout each of these subsections.

Necessity: These subsections allow cascading response personnel to achieve the qualification requirements through a combination of training and experience managing real responses. The cascading response position qualifications in the proposed regulations are structured into a "training track," whereby personnel become qualified by completing training courses and participation in an exercise, and an "experience track," whereby personnel become qualified by performing their positions in real emergency responses. The amended subsections allow for the exercise participation included on the "training track" to be substituted for performance in a real response. These changes were made in response to a public comment requesting that OSPR allow for experience in real responses to substitute for the required exercise participation in the training track. There changes make the regulations more complex, but OSPR deems the request to be reasonable, so provisions accounting for this have been added throughout subsections 830.5(j), (k), and (*l*).

In each paragraph 1. of subsections (1) through (8), within (j), (k), and (*l*), the threshold for the volume is changed to that which may be "imminently threatened to spill" rather than having been directly spilled to water. Additionally, "facilities or vessels" is stricken out as unnecessary.

In the added provision of each paragraph 2. of subsections (1) through (8), within (j), (k), and (*l*), experience managing emergency responses that may be substituted for exercise participation on the "training track" are quantified as number of hours performing incident command system positions during responses of specified complexity, measured according to the incident typing scale in the U.S. Coast Guard's *Incident Management Handbook* (2014). This is consistent with the way that the experience substituting for all required training courses (the "experience track") is quantified.

For the incident command system positions identified in each paragraph 2., of subsections (1) through (8), within (j), (k), and (*l*), the equivalent experience is quantified as 12 hours acting as the lead or the Deputy or Assistant to the lead for the respective incident command system positions in incidents of various complexities, as categorized in the U.S. Coast Guard's *Incident Management Handbook* (2014). Twelve hours of participation is longer than participation in a typical exercise length of about eight hours, but the 12 hours was selected because the planning cycle during exercises is artificially compressed, allowing for completion of most or all of the cycle. Progression through the planning cycle and the attendant meetings, briefings, and plans, is a critical component of participation in an exercise or response that personnel must experience. Therefore, the 12 hours is selected despite being lengthier than a typical exercise.

In subsection (j), paragraph 1. (for Tier I spill management teams), the volume cap for the exercise scenario is reduced from 78,125 barrels to 31,250 barrels to be more consistent with the 24-hour containment and recovery planning volume required in high-volume ports, as described in OSPR's marine facility and vessel oil spill contingency plan regulations (sections 817.02 and 818.02). The caps are even lower for Tiers II and III spill management teams, but they are unchanged because they correspond to the upper boundaries of the tier designations.

In subsection (j), the equivalent experience for each position is quantified in paragraph 2. as 12 hours acting as the lead or Deputy or Assistant to the lead for the respective incident command system positions in incidents of complexity equal to a Type 3 incident, as categorized in the U.S. Coast Guard's *Incident Management Handbook* (2014). Type 3 incidents are selected for cascading response positions in Tier I because they require a robust incident command structure, including the participation of state and/or federal incident commanders.

Within (j) and (k), in (1) through (8) of each subsection (A), references to position-specific course lengths are removed because equivalencies for courses not offered by the Federal Emergency Management Agency or the U.S. Coast Guard are already addressed in subsection 830.5(a)(1). This adjustment eliminates the need to revise the proposed regulations if either of these agencies modifies the lengths of the required position-specific courses.

In subsection (k), the equivalent experience for each position is quantified in paragraph 2. as 12 hours acting as the lead or Deputy or Assistant to the lead for the respective incident command system positions in incidents of complexity equal to a Type 4 incident, as categorized in the U. S. Coast Guard's *Incident Management Handbook* (2014). Type 4 incidents were selected for cascading response positions in Tier II because they include multiple resources, including the staffing of command and general

staff positions (i.e., designated cascading response positions) that are included in the proposed regulations.

In subsection (*l*), the equivalent experience for each position other than Incident Commander is quantified in paragraph 2. as 12 hours acting as the lead or Deputy or Assistant to the lead for the respective incident command system positions in incidents of complexity equal to a Type 4 incident. Type 4 incidents were selected for cascading response positions in Tier III because they include multiple resources, including the staffing of command and general staff positions (i.e., designated cascading response positions) that are included in the proposed regulations. Type 5 incidents were included for Incident Commander but were not selected for other positions because the other positions are not typically staffed during a response to a Type 5 incident. The first sentence in subsection (*l*) is deleted as duplicative to that which is already stated in (*l*)(1)(A).

Section 830.6 – Exercise Objectives Required for Full Certification

Subsection (a)

Subsection (a) is amended to reduce the maximum volume required for a spill management team's certification exercise scenario from 78,125 to 31,250 barrels, and to allow for the volume threshold to be that which may be "imminently threatened to spill" in the scenario. The reduction in the volume cap for the exercise scenario from 78,125 barrels to 31,250 barrels is more consistent with the 24-hour containment and recovery planning volume required in high-volume ports, as described in OSPR's marine facility and vessel oil spill contingency plan regulations (sections 817.02 and 818.02).This adjustment better aligns the referenced volumes with the on-scene arrival time (24 hours) required for cascading response positions.

Subsection (a)(1)

Subsection (a)(1) includes nonsubstantive citation edits.

Subsections (a)(2) and (a)(3)

Subsections (a)(2) and (a)(3) are renumbered (a)(1)(A) and (a)(1)(B), respectively. Subsection (a)(1)(A) has a revision to the version date of the Exercise Notification form DFW 1964. OSPR is withdrawing the 2020 revised form in this rulemaking and reverting back to the prior version, 2014. The edits made to that form were minor and reverting back to the older 2014 version will eliminate confusion and interference with a separate rulemaking action within the coming months that may more significantly revise or entirely eliminate this form.

Subsection (a)(2)

Purpose: This added subsection establishes the criteria for which a spill management team may request credit for accomplishing the objectives required for certification during a spill response.

The response must occur in California and representatives of OSPR must also respond and form a unified command with the spill management team representing the

responsible party. The spill response must last at least 24 hours, all required objectives must be achieved, and either an ICS Form 201-Incident Briefing or an incident action plan must be completed and approved by the unified command. Additionally, the response must be conducted in accordance with appropriate response plans and at the direction of OSPR and the federal on-scene coordinator if the unified command includes a federal agency.

Necessity: The original express terms of the regulatory text allowed credit only for reasonable worst-case volume spills, but OSPR expanded the eligibility for spill response credit in response to public comments. This subsection defines the circumstances under which a spill management team may request credit for achieving the objectives during a spill response.

The requirement for the response to occur in California and to involve the formation of a unified command including OSPR (subsections (a)(2)(A) and (B)) is in accordance with the statutory directive that the Administrator must observe a spill management team's performance in California before issuing a certification (Gov. Code 8670.32(c)). All of the required objectives must be achieved because they comprise critical response management and support actions within the first 24 to 48 hours of a spill, thus a spill management team must be able to demonstrate their ability to complete each of them during a single incident. The requirement for the response to last 24 hours is included (subsection (C)) to ensure sufficient time for the development and execution of response objectives and strategies, staffing incident command system positions, and delivery of support functions such as the establishment of an initial incident command post.

Completion and approval of either an incident action plan or an ICS Form 201-Incident Briefing (subsection (D)) is required to ensure that response actions and plans are developed and accomplished in cooperation with OSPR representatives. An ICS Form-201 is specified because this is the standard form used to document incident status, current and planned actions, objectives, response organization, and resources. Either a U.S. Coast Guard ICS Form 201 (rev. 06/13) or a U.S. Environmental Protection Agency ICS Form 201 (rev. 05/18) may be used, as they include essentially the same information. The requirement for the response to be carried out in accordance with the appropriate response plans and directions of OSPR and federal on-scene coordinator (subsection (E)) is included because these conditions are mandated by state law (Gov. Code 8670.27(a)). The requirement for a spill management team to submit timely documentation and a credit request (subsection (F)) is necessary because OSPR must be able to assess whether all of the required objectives were achieved during the response.

Subsection (a)(4)

Subsection (a)(4) is renumbered (a)(3).

Subsection (b)

This subsection title is renamed from "Exercise Objectives" to "Certification Exercise Objectives" for clarity.

Subsection (b)(3)(B)

This subsection is reworded to allow for the common operating picture to be posted virtually, and for response data to be stored either on-site or in server-based online data storage. A revision is also made to the identification of the individuals who should have access to the data.

Subsection (c)

Purpose: This added subsection establishes requirements for documentation and credit requests for an exercise or spill response.

Subsection (c)(1) describes the procedure for submitting documentation and requires that spill management teams provide documentation to support a request for credit, as well as maintenance of the documentation for three years from the date of the exercise or response.

Subsection (c)(2) describes the procedure for requesting credit. Spill management teams send documentation to the OSPR SMT email within 60 calendar days of the exercise or spill response, along with identifying information (name and assigned spill management team number), and the Administrator will review the documentation and ascertain whether objectives were successfully completed. Subsection (c)(2) also establishes procedures for insufficient documentation and failure to achieve an objective at an exercise.

Necessity: The original express terms of the regulatory text were originally silent on procedures for documentation and credit requests for performance of certification objectives. OSPR deemed this insufficient and added subsection (c) to correct this deficiency.

Subsection (c) adapts language describing documentation and credit requests requirements in OSPR's Drills and Exercises regulations (sections 820.01 and 820.01). Documentation is necessary so that OSPR can verify that objectives were successfully achieved at an exercise or response. It is necessary for spill management teams to maintain documentation so the Administrator can review a spill management team's certification every three years as mandated by law (Gov. Code 8670.32(d)) and verify compliance with requirements such as the triennial participation of spill management personnel in California (subsections 830.5(e)(3) and (i)(5)).

The 60-day and 15-day periods for submission of credit requests and additional documentation, respectively, were selected to align with the spill management team certification renewal requirement every three years, and to correspond with these time frames in the Drills and Exercises regulations (sections 820.01 and 820.01) to maintain consistency between the programs. A facility owner or operator must provide for training and exercises on elements of the contingency plan at least annually, with all elements of the plan subject to a drill or exercise at least once every three years (Government Code section 8670.29(b)(9)). Maintaining documentation for three years provides OSPR with time to review the records and allows for comparison of spill management team performance over time.

The time allowed for the Administrator to review and make a determination regarding credit for objectives is 60 days, which is shorter than the 90-day (marine) and 180-day (inland) periods in the Drills and Exercises regulations. The Spill Management Team program will process fewer credit requests per year than the Drills and Exercises program, so a shorter time frame was selected to promote efficiency of the approval process.

The requirement for spill management teams to perform an additional exercise within 180 days if required objectives are not achieved was selected for consistency with the process and time frame included in the Drills and Exercises regulations (sections 820.01 and 820.01).

Revisions to Section 830.7 – Application Submission and Review

Subsection (a)(1)

Subsection 830.7(a)(1) is amended to clarify that a plan holder may form a certified spill management team using a combination of their own employees and other sources of personnel. This was stated in the original express terms of the regulatory text at subsection 830.1(a)(3), but it is added here due to confusion expressed in comments received during the 45-day comment period. Additionally, the time period for application submittal is lengthened from 30 to 90 days after the proposed regulations become effective. This adjustment is consistent with the update made to subsection 830.1(b)(1).

Subsections (a)(2) and (a)(3)

Subsection (a)(2) is amended to clarify that plan holders forming a certified spill management team including personnel not employed by the plan holder must submit an Application for Certification of Plan Holder Spill Management Team form DFW 1005 (new 11/12/20). This sentence is added to mitigate confusion regarding the application process for plan holders forming spill management teams from a combination of sources of personnel. A nonsubstantive edit is made to the version date of the form DFW 1005 which also has revisions which are discussed in the Addendum to the Purpose and Necessity Statements attached to this Addendum to Initial Statement of Reasons.

Additionally, subsection 830.7(a)(2) is split into two subsections. The last sentence of the subsection (a)(2) is moved down and numbered (a)(3) to improve readability.

Subsection (b)(1)

The word “tabletop” is removed from subsections (b)(1), (b)(1)(A), and (b)(1)(B) for brevity.

Subsection (c)(2)

This subsection is amended to clarify the condition that a spill management team must both achieve the objectives described in section 830.6 as well as the required training described in section 830.5 in order to receive a full certification.

Subsection (d)(2)

Nonsubstantive edit is made to update the version date of the application form DFW 1005 which also has revisions which are discussed in the Addendum to the Purpose and Necessity Statements attached to this Addendum to Initial Statement of Reasons.

Revisions to Section 830.8 – Certification Revision Request, Renewals, and Updates

Nonsubstantive edits are made throughout section 830.8 updating the version date of the application form DFW 1005 which also has revisions and are discussed in the Addendum to the Purpose and Necessity Statements attached to this Addendum to Initial Statement of Reasons.

Revisions to Section 830.9 – Significant Change in Spill Management Team Resources

Subsection (c)

This subsection is amended to clarify that a change in personnel that reduces a spill management team's ability to respond consistent with its certification (e.g., staffing shortage or qualifications) is defined as a significant change requiring notification to the Administrator. Staffing changes that do not impact a team's ability to respond consistent with its certification, such as changes in the individuals performing specific incident command system positions, are not significant changes requiring notification to the Administrator.

Revisions to Section 830.10 – Certification Modification, Suspension, or Revocation

Subsection (a)(1)

This subsection is amended to clarify deficiencies that would result in a modification to a spill management team's certification by referring to the criteria described in section 830.9.

Amend Sections 815.07, 817.02, 817.03, 818.02, 818.03, 825.07, and 827.02 of Chapter 3

Revisions to Section 815.07 of Subchapter 3 of Chapter 3 – General Requirements

Subsection (a)(2)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(2)(A) has nonsubstantive structural edits.

Subsection (a)(2)(B) is added to clarify that a vessel or facility owner or operator may identify a single spill management team capable of responding in all geographic areas where the owner/operator operates. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(2)(C) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(2)(B) is renumbered (a)(2)(D) and is revised to extend the deadline to submit an application for spill management team certification from 30 days to 90 days after the effective date of the spill management team certification regulations, filed concurrently. An additional revision is made explaining that if a plan holder is forming a certified spill management team including personnel not employed by the plan holder that information must be included on the Application for Certification of Plan Holder Spill Management Team form DFW 1005. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.7(a)(2).

Revisions to Section 817.02 of Subchapter 3 of Chapter 3 – Marine Facility Plan Content (Except For Those Small Marine Fueling Facilities Addressed In Section 817.03 Of This Subchapter)

Subsection (a)(4)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(4)(A) has nonsubstantive structural edits.

Subsection (a)(4)(B) is added to clarify that a facility owner or operator may identify a single spill management team capable of responding in all geographic areas where the plan holder operates. This new provision is consistent with the revisions made to the spill management team certification regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(4)(C) is added to provide that that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(4)(B) is renumbered (a)(4)(D) with no other changes.

Revisions to Section 817.03 of Subchapter 3 of Chapter 3 – Small Marine Fueling Facility Plan Content

Subsection (a)(4)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(4)(A) has nonsubstantive structural edits.

Subsection (a)(4)(B) is added to clarify that a facility owner or operator may identify a single spill management team capable of responding in all geographic areas where the plan holder operates. This new provision is consistent with the revisions made to the spill management team certification regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(4)(C) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(4)(B) is renumbered (a)(4)(D) with no other changes.

Revisions to Section 818.02 of Subchapter 3 of Chapter 3 – Tank Vessel Plan Content (Except For Those Vessels Carrying Oil As Secondary Cargo Addressed In Section 818.03 Of This Subchapter)

Subsection (a)(4)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(4)(A) has nonsubstantive structural edits.

Subsection (a)(4)(B) is added to clarify that a vessel owner or operator may identify a single spill management team capable of responding in all geographic areas where the plan holder operates. This new provision is consistent with the revisions made to the spill management team certification regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(4)(C) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(4)(B) is renumbered (a)(4)(D) with no other changes.

Revisions to Section 818.03 of Subchapter 3 of Chapter 3 – Vessels Carrying Oil As Secondary Cargo (VCOASC) Plan Content

Subsection (a)(4)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(4)(A) has nonsubstantive structural edits.

Subsection (a)(4)(B) is added to clarify that a vessel owner or operator may identify a single spill management team capable of responding in all geographic areas where the plan holder operates. This new provision is consistent with the revisions made to the spill management team certification regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(4)(C) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(4)(B) is renumbered (a)(4)(D) with no other changes.

Revisions to Section 817.04 of Subchapter 3 of Chapter 3 – Inland Facility Oil Spill Contingency Plans

Subsection (e)

Subsection (e)(1)(C) is revised to extend the deadline to submit an application for spill management team certification from 30 days to 90 days after the effective date of the spill management team certification regulations, filed concurrently. An additional revision is made explaining that if a plan holder is forming a certified spill management team including personnel not employed by the plan holder that information must be included on the Application for Certification of Plan Holder Spill Management Team form DFW 1005. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.7(a)(2).

Subsection (h)

Subsection (h)(3)(A) has nonsubstantive structural edits.

Subsection (h)(3)(B) is added to clarify that a plan holder may identify a single spill management team capable of responding in all geographic areas where the owner/operator operates. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.1(a)(2).

The addition of subsection (h)(3)(C) provides that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (h)(3)(B) is renumbered (h)(3)(D) with no other changes.

Revisions to Section 825.07 of Subchapter 4 of Chapter 3 – General Requirements

Subsection (a)(2)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(2)(A) has nonsubstantive structural edits.

Subsection (a)(2)(B) is added to clarify that a vessel or facility owner or operator may identify a single spill management team capable of responding in all geographic areas where the owner/operator operates. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(2)(C) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Subsection (a)(2)(B) is renumbered (a)(2)(D) and is revised to extend the deadline to submit an application for spill management team certification from 30 days to 90 days after the effective date of the spill management team certification regulations, filed concurrently. An additional revision is made explaining that if a plan holder is forming a certified spill management team including personnel not employed by the plan holder that information must be included on the Application for Certification of Plan Holder Spill Management Team form DFW 1005. This new provision is consistent with the revisions made to the spill management team regulations, filed concurrently, at 830.7(a)(2).

Revisions to Section 827.02 of Subchapter 4 of Chapter 3 – Nontank Vessel Plan Content

Subsection (a)(4)

The revisions in this subsection are made throughout all oil spill contingency plan regulation sections filed concurrently in this rulemaking.

Subsection (a)(4)(B) has nonsubstantive structural edits.

Subsection (a)(4)(C) is added to clarify that a nontank vessel owner or operator may identify a single spill management team capable of responding in all geographic areas where the plan holder operates. This new provision is consistent with the revisions made to the spill management team certification regulations, filed concurrently, at 830.1(a)(2).

Subsection (a)(4)(D) is added to provide that a plan holder may draw upon a number of sources to construct a certified spill management team. Allowing spill management teams to be comprised of a variety of sources - a plan holder's own staff or personnel employed by parent companies or affiliates, or entirely contracted, or a combination of these - allows for greater flexibility. This concept was included in the original express

terms of the spill management team certification regulatory text (at 830.1(a)(3)) but was inadvertently omitted from this section.

Economic Impact Assessment *[Gov. C. section 11346.2(b)(2)(A),(5); 11346.3(a)]*

The proposed regulations add new sections 830.1 through 830.11, and make conforming amendments as detailed above. The regulations implement, interpret, and add specificity to the provisions of Government Code sections 8670.29 and 8670.32.

(a) What is the evidence supporting a finding of No Significant Statewide Adverse Economic Impact directly affecting business, including the ability of California businesses to compete with businesses in other states?

These regulations will not have a significant statewide adverse economic impact. Less than 1,100 companies are subject to these requirements, primarily oil producers and certain transporters or handlers of oil, but also a few firms that provide spill management team services. For all combined), the total expected costs are estimated to be $14.234 million per year.

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

Costs

These regulations establish a certification process for Spill Management Teams (SMTs). SMTs may be external companies under contract, in-house staff, staff affiliated with plan holder companies, or any combination thereof. Certifications are voluntary in that external SMTs may offer their services regardless of whether they are certified. However, owners and operators that are required to have contingency plans must specify a certified SMT in their contingency plans. Hiring a certified external SMT and/or providing training for in-house staff are potential costs to a plan holder.

For the purposes of evaluating private sector cost impacts, we focus on new costs associated with training requirements, because the SMTs should already have experience participating in exercises for contingency plan holders under OSPR's current drills and exercise regulations (Title 14 California Code of Regulations sections 820.01 and 820.02). Note that most plan holders already have SMTs, whether internal or external (contracted), as part of their oil spill contingency plan and most of these SMTs already have some level of training and experience. This proposed regulation would require all SMTs listed in contingency plans to become certified, which is accomplished primarily through training and exercise participation, if they will be listed in the contingency plans of plan holders.

External (contracted) firms that provide SMT services will initially bear the cost of meeting the certification requirements in order to be listed in the contingency plans of existing clients. Attaining certification is also an investment on their part because it will create business opportunities. Additionally, some out-of-state SMTs may hire additional staff in California to meet the increased demand from plan holders wanting to maintain compliance with the regulations. The results from the SMT survey conducted by OSPR

approximate the annual cost of additional training to be in the range of $40,000 – $50,000. SMTs that choose to hire new personnel could face additional annual costs of approximately $150,000. These costs will then be passed on as increased retainer fees to their clients who are the plan holders, which OSPR approximates as a $2,000 per year increase.

As of 2019, approximately 101 facility SMTs and 18 vessel SMTs operate in California. These SMTs were contacted by the Office of Spill Prevention and Response (OSPR) as part of a survey to ascertain their expected costs from these proposed regulatory requirements. In total, two external (contracted) spill management teams and three plan holders with internal SMTs responded to OSPR's inquiry. Based on discussions with industry representatives in 2018, the cost of maintaining an SMT contract for a contingency plan holder is approximately $5,000 per year.

Plan holders with internal SMTs are directly impacted by the costs associated with the requirements for personnel and for additional training. Based upon the survey results OSPR received from plan holders in the tier classification with the most intensive personnel and training requirements, we expect the additional annual costs to internal SMTs to be approximately $160,000 for hiring additional personnel to meet the staffing requirements and $250,000 to meet the training requirements of these regulations, for a total of $410,000 in additional annual costs. These projected costs represent an upper limit, since they reflect the most robust training and personnel requirements included in the proposed regulations, and personnel must only take the required incident command system courses once. We do not have analogous cost estimates from plan holders in lower tiers that require fewer trained personnel, but we presume that they will be less.

The impacted plan holders are involved in the production, transport, and distribution of crude oil and refined products, as well as commercial shipping in proximity of state waters. California receives about two-thirds of its oil from out of state (mostly via tankers coming from Alaska or overseas), and a third of its oil from domestic production within California. Most of the domestic production is from inland facilities. Nearly all of the oil consumed in California is refined in the state and then distributed for sale throughout the state. Using the consolidated definition of small business, there are a total of 33 plan holders that qualify as small businesses (i.e., those that are independently owned, not dominant in their field, and have fewer than 100 employees) impacted by these regulations. Eight of these are oil producers, and 25 are involved in the marine terminal and mobile transfer unit (MTU) business.

In general, businesses from outside of California do not compete with California refineries or transporters (although facilities within California may be owned by a larger corporation based outside of California). Producers do compete on the global market with all oil producers worldwide; however, because they are located locally, they have a strong economic advantage over out-of-state competitors due to minimal transportation costs. All domestic California oil production is consumed within California.

For context, the increased costs incurred by oil production companies associated with the 2018 statewide regulations that required inland facilities meeting applicability requirements to have contingency plans, conduct drills and exercises, and demonstrate financial responsibility (Title 14 California Code of Regulations sections 817.04; 820.02; 791 through 798, respectively) did little to affect their ability to compete with businesses

from outside the state. While OSPR does not have data at the individual company level, we can examine the impact across the oil production industry. Annual California crude oil production was approximately 170 million barrels in 2018 (U.S. Energy Information Administration, Annual Crude Oil Production 2018). Assuming a market value of $66.77 per barrel based on the average 2018 value for a barrel of California Midway-Sunset (U.S. Energy Information Administration, California Midway-Sunset Price Data), the value of this annual production was approximately $11.35 billion. The estimated total cost of complying with the 2018 regulations, across all facilities and companies, was $4,090,297 for initial implementation and $2,045,417 per year thereafter.

Assuming the costs of initial implementation were all incurred in the first year, this was 0.036% of the total revenues of oil production in 2018. The ongoing annual cost of $2.045 million would represent about 0.018% of the total revenues of oil production in 2018. If applied to the cost of production, these costs would add $0.024 (about two cents) to the price of a barrel of oil in the first year and $0.012 (about a penny) to the price of a barrel of oil thereafter. Given the normal variability in the price of oil, and the transport price advantage that producers in California have over their overseas competitors (several dollars per barrel), the cost of implementing the 2018 regulations was unlikely to affect their ability to compete with other producers from out of state.

Using a similar analysis for the implementation of these proposed SMT certification regulations, we anticipate that the cost of implementation will be passed along from external SMTs to the plan holders. Our analysis examines the contrast between the potential costs of these regulations to oil producing plan holders with their expected revenues based upon oil production and pricing data and estimates the impact of these costs as a percentage of the producers' revenues. The process of contrasting the projected costs with estimated revenues is repeated for those plan holders who do not produce oil, such as railroads, pipelines, MTUs, marine facilities, and vessel operators.

Tables 1 and 2 below present the 79 on-shore oil-producing companies whose California production exceeded 10,000 barrels in 2018, categorized by volume produced. Because OSPR's contingency planning requirements only apply to facilities that may impact state waters, only 23 of these companies hold contingency plans for oil production facilities in California. The remaining 56 companies either do not have facilities within proximity of state waters or have received an exemption from OSPR. In order to provide a conservative upper limit for the potential costs imposed by these regulations, our analysis includes all 79 companies whose 2018 production exceeded 10,000 barrels of oil, overestimating the number of impacted production companies by a factor of three. Although 18 of these production plan holders are in the lowest SMT tier and only four are in the highest tier, we performed the analysis using cost estimates for the highest tier classification, which includes 50% more personnel than the lowest tier, as well as more intensive training requirements. As a result of these means of overestimation, our analysis should be considered a robust ceiling for the potential impacts of the estimated cost increase.

Categorizing oil producers by volume produced allows for more accurate cost estimation for larger producers who have designated in-house SMTs, while the smaller firms are expected to retain external (contracted) SMTs as a cost saving measure to avoid the increased expenses for hiring additional SMT staff and providing the required training. Since a vast majority of oil producing plan holders produce over 9,000 barrels a

year, the smallest category begins at 10,000 barrels a year, while the largest category is over 10 million barrels a year. Revenues are calculated using a price of $40 per barrel based on the most recent forecast for the 2021 per barrel value of California Midway-Sunset in order to account for the economic downturn caused by the coronavirus pandemic (U.S. Energy Information Administration, Short-Term Energy Outlook). It is important to note that this estimate is lower than the forecasted price of oil for 2022, which the U.S. Energy Information Administration estimates will rise to approximately $50 per barrel in its Short-Term Energy Outlook.

The figures presented in Table 2 are based on the limited feedback OSPR received from industry in the 2019 survey described above. The figures reflect estimated cost increases that production plan holders may incur from training their own staff to meet SMT certification requirements (top production category), retaining an SMT for the first time (second and third categories), or increased SMT retainer fees (bottom three production categories). The cost of an SMT retainer includes compensation for the added training that external SMTs must undergo, as well as the costs to participate in required exercises. Costs are expected to be higher for the top production category as the companies either have in-house SMTs or a combination of in-house and external SMT personnel to meet the requirements of a Tier I certification, and thus are directly paying for labor costs for trained SMT staff. The smaller producers are most likely to have Tier III plans, which require fewer personnel and are more easily covered by a contracted SMT. As mentioned previously, we expect the annual costs to be up to $160,000 for plan holders hiring additional personnel to meet staffing requirements, and $250,000 to meet the training requirements, for a total of $410,000 in annual costs for maintaining an in-house SMT based upon the survey results OSPR received. As noted above, only 23 of the 79 companies included in Tables 1 and 2 are plan holders, so these costs are conservatively overestimated.

Table 1: Estimated Revenues Based on Production

Annual Production in Barrels	Number of Firms	Average Production	Total Average Revenue	Average Revenue
Greater than 10 million	2	27,090,210	$2,167,216,800	$1,083,608,400
Greater than 1 million	9	4,190,012	$1,508,404,320	$167,600,480
Greater than 500,000	10	651,537	$260,614,800	$26,061,480
Greater than 100,000	14	218,585	$122,407,600	$8,743,400
Greater than 50,000	5	69,464	$13,892,800	$2,778,560
Greater than 10,000	39	23,792	$37,115,520	$951,680
Total	79		**$4,109,651,840**	

Table 2: Estimated Cost Increase to Producers from Proposed SMT Regulations

Annual Production in Barrels	Number of Firms	SMT Cost/Retainer Increase	Total Cost Increase	Average Cost Increase as % of Average Revenue	Cost per Barrel
Greater than 10 million	2	$410,000	$820,000	0.038%	$0.02
Greater than 1 million	9	$7,000	$63,000	0.004%	$0.002
Greater than 500,000	10	$7,000	$70,000	0.027%	$0.01
Greater than 100,000	14	$2,000	$28,000	0.023%	$0.01
Greater than 50,000	5	$2,000	$10,000	0.072%	$0.03
Greater than 10,000	39	$2,000	$78,000	0.210%	$0.08
Total	79		**$1,069,000**	0.026%	

For the purpose of this analysis, based upon the 2019 survey results, we assume that external SMTs will pass on to their clients the increased staffing and training costs they incur to meet the proposed SMT certification requirements by increasing their retainer rates from $5,000 per year to $7,000 per year. Larger production plan holders that maintain their own SMTs may see increased costs associated with additional staffing to meet minimum personnel requirements, or for contracting with external SMTs to compensate for personnel shortfalls. Some production plan holder with an annual production above 500,000 barrels but less than 10 million barrels may elect to contract with an SMT for the first time to meet the requirements and would pay the full retainer cost of $7,000 rather than just the $2,000 increase. The average estimated cost increases for each production category are used to calculate an estimated $1.069 million in total costs for the industry.

While we have no information on the costs of production, we can estimate gross revenues by multiplying the annual production of crude oil by the price of crude oil. We then assumed that all of the costs of the regulations are borne by each company and not passed on to consumers. We compared those costs to the estimated annual revenues to provide a measure of the economic burden of complying with the regulations (Table 2).

For all but the smallest producers (those producing 10,000 barrels to 50,000 barrels of oil per year), the impact of the estimated cost increase of compliance with these regulations is less than 0.1% of their average revenues. The smallest producers would experience a cost increase of 0.21% of their average revenue. The additional cost for

most producers, regardless of size, is probably less than that described here, as this analysis assumes only high-end cost estimates. Additionally, producers with in-house SMTs may decide to reduce their costs by hiring external SMTs instead, which eliminates the need to maintain a certified SMT and thus eliminates the associated labor costs.

We also compared these cost increases to the natural volatility in the market that oil producers experience. For all producers, the effect of a $1 per barrel change in the price of crude oil (e.g., from $40 per barrel to $39 per barrel) would have a greater impact than the total maximum estimate of the costs of regulatory compliance (Table 2). To calculate the impact on producers, we divided the cost increases in Table 2 by the average production in Table 1 to calculate the per barrel effect. For producers in the top five production categories the cost of regulatory compliance is equal to or smaller than the impact of a $0.03 drop in the price of a barrel of crude oil, while producers in the lowest category would potentially face an impact similar to an $0.08 drop in the price of a barrel of crude oil. This is well within the daily average variability in the price of crude oil and thus unlikely to affect business decisions.

Other plan holders, such as pipeline operators, railroads, MTUs, marine facilities, and vessels would incur similar cost increases associated with in-house SMT training and personnel requirements or from increased SMT retainer costs. As mentioned above, the cost for an SMT retainer includes compensation for the training that an SMT must undergo, as well as the cost for participating in required exercises. Larger companies which maintain in-house SMTs, such as class I railroads, marine facilities with Tier I plans, and large pipelines, are expected to have costs similar to the those for larger oil producers with in-house SMTs, as they must meet the same training and must hire the appropriate personnel to meet the staff requirements for their SMTs. Vessels typically contract with one or two SMTs to cover their fleets. No vessel plans currently retain more than two SMTs, but in order to capture a conservative upper estimate, we used the cost increase for maintaining three SMT retainers to generate the estimate in Table 3. It is expected that MTUs will behave as companies contracting with an SMT for the first time and would thus pay $7,000 annually to retain a new contracted SMT. Marine facilities that are not in the Tier I category are expected to pay the estimated retainer increase of $2,000 for their contracted SMT. Class III railroads are expected to pay the retainer fee increase of $2,000 as well. As with Table 2, the expected cost for maintaining in-house SMT staff or retaining a contracted SMT are based on the results of OSPR's 2019 survey of existing SMTs.

As most of the companies with contingency plans for pipelines, railroads, MTUs, marine facilities, and vessels are large and have revenues comparable to, if not higher than those of inland producers, it is reasonable to assume that the economic impacts of the increased costs to comply with these regulations would be similarly miniscule. An estimation of the cost increases and impact of those costs on revenues is presented in Table 3.

Table 3: Estimated Revenue, Cost Increases, and Impact to Rail, Pipeline, MTUs, Marine Facilities, and Vessel Operators

	Number of Firms	Average Revenue	Cost Increase	Cost as % of Revenue
Class I Rail	2	$22,615,000,000	$410,000	0.002%
Class III Rail	4	$6,437,316	$2,000	0.031%
Large Pipeline	6	$107,750,000,000	$410,000	0.0004%
Medium Pipeline	1	$116,620,000	$2,000	0.00171%
Small Pipeline	5	$8,880,892	$2,000	0.023%
Vessel Owner	918	$211,556,423	$6,000	0.00284%
Large MTU	7	$676,770,000	$7,000	0.00103%
Small MTU	26	$14,250,000	$7,000	0.04912%
Tier I Marine Facility	10	$84,550,000,000	$410,000	0.00048%
Non-Tier I Marine Facility	13	$1,750,000,000	$2,000	0.00011%
Totals		**$1,759,483,460,406**	**$13,165,000**	**0.00075%**

As seen in Table 3, the impact of the expected costs on average revenues is not expected to exceed 0.05% for any operator type. The total expected cost to all rail, pipeline, MTUs, marine facilities, and vessel operators is $13.165 million. Combined with the total expected cost of $1.069 million to oil producers (Table 2), the total expected costs across all impacted plan holders are estimated to be $14.234 million.

Assuming that production plan holders decide to pass the cost of complying with the proposed regulations on to the consumer, the likely outcome would be an increase in gasoline prices, which would primarily impact automobile drivers – but quite insignificantly. To apply this total to the annual cost of driving a car, we assume that the average vehicle is driven 12,000 miles per year, gets 17.5 miles per gallon, and thus requires 686 gallons of gasoline per year. The annual crude production in California was estimated at 170 million barrels in 2018 (U.S. Energy Information Administration, Annual Crude Oil Production 2018). Applying the total cost of compliance for oil producers to the estimated production of 170 million barrels yields a per barrel increase of $0.08 per barrel (8 cents a barrel). A price increase of $0.08 per barrel translates to $0.002 per gallon (1 barrel = 42 gallons). Applied to the 686 gallons needed to drive for a year, this would add $1.37 to the annual gas budget per vehicle.

The total cost to oil producers to adjust their in-house SMT personnel or incur increased contracted SMT retainer fees is expected to be around $1.069 million annually (Table 2). The total cost to railroads, pipelines, mobile transfer units (MTUs), marine facilities, and vessel operators is expected to be around $13.165 million (Table 3). Combined, the total expected costs are estimated to be $14.234 million.

In terms of the size of the businesses impacted, 33 plan holders qualify as small businesses (i.e., those that are independently owned, not dominant in their field, and have fewer than 100 employees) based in California. Eight of these plan holders are producers, five are marine facilities, and 20 are MTUs. Class III railroads and small pipeline operators are excluded due to their nature of having relative monopolies over the infrastructure they provide and often being owned by holding companies, which make them dominant in their fields and not independently owned. This leaves 1,037 "typical" businesses out of the 1,071 total estimated impacted businesses (Table 4).

The eight producers are expected to pay the $2,000 retainer fee increase, for a total expected cost of $16,000. Only one marine facility operator that qualifies as a small business is expected to have a Tier I plan and would be expected to switch to an external SMT for a cost of $7,000, while the four lower tiered marine facility operators that qualify as small businesses are expected to pay the $2,000 retainer increase, for a total expected cost of $15,000. The 20 MTUs that qualify as small businesses are expected to pay the full cost of $7,000 to retain a new external SMT, for a total expected cost of $140,000. Across all industries the total expected cost for small businesses is estimated to be $171,000, with the total expected cost of $14.234 million per year borne by all industry members.

Table 4 presents the total estimated cost increases across all impacted industries and shows each industry's share of the cost increase. Multiple industries are involved in the production and distribution of oil within California, including production facilities, railroads, vessels, pipeline operators, and MTUs. All of these industries must comply with California regulations for contingency planning. Our analysis assumes that external SMTs pass along the increased cost associated with complying with these proposed regulations by increasing the retainer fees charged to contingency plan holders, and that plan holders with in-house SMTs will incur increased personnel costs to meet the requirements of the proposed regulations.

Table 4: Estimated Cost Impacts Across All Industries

Industry	Number of Firms	Total Costs	Industry Share of Total Costs
Class I Rail	2	$820,000	5.76%
Class III Rail	4	$8,000	0.056%
Oil Production	79	$1,069,000	7.51%
Pipeline Operator	12	$2,472,000	17.37%
Vessel Owner	918	$5,508,000	38.70%
Large MTU	7	$49,000	0.34%
Small MTU	26	$182,000	1.28%
Tier I Marine Facilities	10	$4,100,000	28.80%

Industry	Number of Firms	Total Costs	Industry Share of Total Costs
Non-Tier I Marine Facilities	13	$26,000	0.18%
Totals	**1071**	**$14,234,000**	

The total cost across all industries is expected to be $14.234 million. Despite making up approximately 86% of the firms impacted, vessel owners only bear 38.7% of the total cost to industry. The impact of these costs on an average firm's revenue can be seen in Tables 2 and 3 within the analysis in section A. Summarizing those results, oil producers would experience cost impacts of less than 0.026% of their average revenues, while operators of railroads, pipelines, MTUs, marine facilities, and vessels would experience cost impacts of less than 0.0009% of their average revenues.

Benefits

These regulations will provide benefits to the health and welfare of California residents by ensuring a minimum level of skills and competence to manage a spill in California's waterways. Training and exercise requirements prepare and test the ability of SMTs to respond to and effectively manage an oil spill. These regulations will benefit the state's environment and communities by ensuring that oil spill responses are efficiently and competently managed.

We use the large, well-documented 2015 Refugio spill that occurred near the Santa Barbara coast to estimate the benefits using the cost of cleaning up the spill, the potential reduction in the volume spilled (represented as a range of a 1% to 10% reduction), and the annual probability of a large marine spill. For the sake of the analysis, we assume that a 1% reduction in the volume spilled corresponds to a 1% reduction in the costs of the spill.

Benefits per year = (cost of Refugio spill multiplied by the potential reduction in spill volume from using an SMT) multiplied by the probability of a large marine spill per year.

There have been two large marine spills above 1,000 barrels since OSPR began collecting spill data in 2008. Thus, the annual probability of a large marine spill occurring between 2008 and 2019, which is the range for the data used in this analysis, is 0.167. The costs for Refugio included $64.5 million in cleanup and response costs (California Oil Spill Response Cost Study, November 2019). It should be noted that these costs do not include figures for third party claims and the natural resource damage assessment settlement, and thus are a conservative representation of the actual costs associated with the Refugio spill. Using the formula above, we can estimate the annual benefit from a 1% reduction of oil spilled: *($64,500,000 multiplied by 0.01) multiplied by 0.167 per year = $107,715 per year.*

Similarly, we can estimate the benefit of a 10% reduction in the volume spilled: *($64,500,000 multiplied by 0.1) multiplied by 0.38 per year = $1,077,150 per year.* Taking the mean of both estimates gives us an average annual benefit of $592,432.50.

We take a similar approach with estimating the benefits from the reduction in the volume of oil spilled during a large inland spill (greater than 1,000 barrels) to water. For

the sake of this analysis, we assume the probability based on the six largest (over 1,000 barrels) inland spills to water that were documented by OSPR from 2008 to 2019. This is an annual probability of 0.5. As with the marine spills, we assume that a 1% reduction in the volume spilled corresponds to a 1% reduction in the response costs for the spill. For this analysis, we multiplied response costs by potential spill volume reductions to derive estimated benefits, unlike the case study approach used above, which used cleanup costs for a specific spill for which total cleanup costs are known.

The mean spill size for a large spill over 1,000 barrels during this period was 2,017.94 barrels. OSPR's certificate of financial responsibility regulations establish inland facilities' financial responsibility for spill cleanup as a function of a facility's reasonable worst-case spill volume (RWCS), applying a per barrel amount contingent on the facility's proximity to state waters designated as either ephemeral, intermittent, or perennial in the National Hydrography Dataset (14 CCR Section 791.7). Facilities potentially impacting intermittent or ephemeral inland waters must demonstrate financial responsibility equating to their reasonable worst-case spill volume times $6,000; and facilities that may impact perennial waters must demonstrate financial responsibility equating to their reasonable worst-case spill volume times $10,000. Based on these figures, an average response cost of $8,000 per barrel is used for our estimation since our analysis does not distinguish among impacts to perennial, intermittent, or ephemeral waters. To derive the average cost of a large inland oil spill we use the following equation:

Benefits per year = (average large spill volume multiplied by the potential reduction in spill volume from using an SMT multiplied by the per barrel response cost of an inland spill) multiplied by the probability of a large inland spill per year.

We can estimate a 1% reduction as: *(2,017.94 barrels times $8,000per barrel times 0.01) multiplied by 0.5 = $80,717.60 per year.* A 10% reduction can be estimated as: *(2,017.94 barrels multiplied by $8,000 per barrel multiplied by 0.1) multiplied by 0.5 = $807,176 per year.* Taking the mean gives us an average benefit of $443,946.80 per year.

Finally, we apply this approach to small (greater than one barrel and less than 1,000 barrels) inland and marine spills, which happen at a much greater frequency. We use the following generalized equation to derive the benefit from the potential reduction in the volume of oil spilled during one of these small spill events:

Benefits per year = (average small inland or marine spill volume multiplied by the potential reduction in spill volume from using an SMT multiplied by the per barrel response cost of an inland or marine spill) multiplied by the annual average number of small inland or marine spills to water.

We again utilize the cleanup cost of $12,500 per barrel for marine spills and $8,000 per barrel for inland spills based on OSPR's current per barrel financial responsibility requirements. We used OSPR's spill data going back to 2008 to calculate the average number of marine and inland spills greater than 1 barrel and less than 1,000 barrels to derive the annual probability of a small spill occurring, as well the average volume spilled for small marine and inland spills. Between 2008 and 2019 there was an annual average of 88 inland spills to water in the range of 1 – 1,000 barrels, with an average

spill volume of 512.82 barrels. During this same period there was an annual average of 32 marine spills to water, with an average spill volume of 244.72 barrels.

Using this information, we can estimate the benefit from a 1% reduction in small inland spill volumes as: *(512.82 barrels multiplied by 0.01 multiplied by $8,000 per barrel) multiplied by 88 = $3,610,252.80*. The benefit of a 10% reduction in volume can be estimated as: *(512.82 barrels multiplied by 0.1 multiplied by $8,000 per barrel) multiplied by 88 = $36,102,528.00.* Taking the mean yields an estimated benefit of $19,856,390.40.

For marine spills, the estimated benefit from a 1% reduction in small spill volumes is expressed as: *(244.72 barrels multiplied by 0.01 multiplied by $12,500 per barrel) multiplied by 32 = $978,880*. The benefit from a 10% reduction to the volume spilled during small marine spills can be estimated as: *(244.72 barrels multiplied by 0.1 multiplied by $12,500 per barrel) multiplied by 32 = $9,788,800.* Taking the mean yields an estimated benefit of $5,383,840.

Table 5: Total Estimated Annual Statewide Benefits from Potential Spill Reduction

Spill Type	1% Spill Reduction	10% Spill Reduction	Mean Benefit
Large Inland	$80,717.60	$807,176	$443,946.80
Small Inland	$3,610,252.80	$36,102,528	$19,856,390.40
Large Marine	$107,715	$1,077,150	$592,432.50
Small Marine	$978,880	$9,788,800	$5,383,840
Total Benefit	**$4,777,565.40**	**$47,775,654.00**	**$26,276,609.70**

A 1% reduction in the total annual volume spilled from all spill types listed in Table 5 from the use of certified SMTs would result in a total potential annual benefit of about $4.78 million. A 10% reduction in the annual volume spilled would result in a potential annual benefit of about $47.78 million. The mean total potential annual benefit from these regulations is about $26.28 million.

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

By creating a certification program for spill management teams, OSPR is creating a stable market opportunity in which companies may participate and provide a service defined and approved by OSPR. This will likely lead to more spill management teams and more associated jobs than without the regulations.

(c) Will there be any effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State?

See the answer above. By creating a spill management team certification program, implementing the provisions of Assembly Bill 1197, OSPR is defining a service that

businesses may provide and likely lead to the creation of more business than would otherwise exist without the regulations.

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

Plan holders with in-house spill management teams may hire more personnel to fill certain staff requirements. External (contracted) spill management teams may hire additional staff to meet increased demand.

(e) Will there be any benefits to the health and welfare of California residents, worker safety, and the State's environment?

OSPR anticipates benefits to the health and welfare of California residents and the State's environment by ensuring strategies for effective and efficient management of spill response, thus benefiting the communities affected by a spill, enhancing worker safety, and better protecting the environment. Training and exercise requirements prepare and test the ability of SMTs to respond to and effectively manage an oil spill. These regulations will benefit the state's environment and communities by ensuring that oil spill responses are efficiently and competently managed.

(f) Will there be any other benefits of the regulations?

This regulation will help move oil spill response towards the best achievable protection of the State's natural resources through advancing spill response preparedness by ensuring improved and standardized levels of training, resources, and staffing of spill management teams.

Studies, Reports, or Documents Relied Upon *[Government Code section 11346.2(b)(3)]*

The following technical, theoretical, and/or empirical studies, reports, or documents relied upon are added to the rulemaking file. These documents are linked to the sources to the extent that they are available online. All documents are available from OSPR upon request.

- Revised Economic and Fiscal Impact Statement (STD 399)
- Average Oil and Gas Well Production data (2018), compiled by Department of Fish and Wildlife, Office of Spill Prevention and Response
- Revenue Data of Non-Producer OSPR Plan Holders (2020), compiled by Department of Fish and Wildlife, Office of Spill Prevention and Response

Documents Incorporated by Reference

The following documents incorporated by reference in the Spill Management Team Certification regulations are added to the rulemaking file and are available on OSPR's web page and upon request.

- Incident Briefing, form ICS 201 (United States Coast Guard rev. 06/13, and United States Environmental Protection Agency rev. 05/18)

- Exercise Notification form DFW 1964 (04/01/14)

The 2020 version of this form that was submitted with the notice of proposed rulemaking is being withdrawn and we are reverting back to the prior version, 2014. The edits made to that form were minor and reverting back to the older 2014 version will eliminate confusion and interference with a separate rulemaking action within the coming months that may more significantly revise or entirely eliminate this form.

Addendum to Purpose and Necessity Statements for
Application for Certification of Plan Holder Spill Management Team
Form DFW 1005 (new 11/12/20)

In response to public comments received during the 45-day comment period, modifications to the originally proposed form DFW 1005 were made. Only those modifications are discussed here.

Page 1

Title/Date of Form
The date of the form is updated to the most current version.

Purpose Statement
The word "all" is added in the first sentence for clarification, and language is added at the end of the sentence to make clear the requirement that plan holders must complete this application even if some or all of the plan holder's designated spill management team is contracted from other sources.

A. Application Type
"Section" is more accurately revised to "subsection". Language is added instructing applicants requesting a certification revision or update to fill out only those sections of the application being revised or updated.

Additional language and a fillable field are added prompting applicants requesting a certification revision, renewal, or update to enter their previously assigned SMT number. This is added to assist OSPR staff with processing applications and tracking the status of certifications.

Page 2

C. Description of Spill Management Team Services (continued from page 1)
2. Indicate the contingency plan(s) for which the applicant is requesting certification.
Purpose: Language is added to include types of waterways a plan holder impact in their operations with instructions to indicate all impacted water types. A corresponding column is added to the table for applicants to indicate the type(s) of waterway which may be impacted.

Necessity: The types of waterways impacted determines which tier requirements a plan holder's spill management team must fulfill, because the reasonable worst-case spill volumes delineating the tiers differ for plan holders impacting marine waters versus inland waters. Additionally, plan holders falling into Tier III are exempt from providing cascading response personnel if only intermittent or ephemeral waterways are impacted. Requesting this information will assist OSPR staff in assessing whether the application is filled out completely and in accordance with the appropriate tier requirements. This content is added to the applications for consistency with the requirements in the regulations at sections 830.4 and 830.5.

The waterway types added at C.2. are also added to the legend under the table. The section of the legend describing the tier classifications is updated to reflect that mobile transfer unit spill management teams are in Tier III, which aligns with revisions made to the regulatory text at subsection 830.3(c).

Page 3

D. Basis For Certification

1. Initial Response Personnel

The reference to subsection 830.5(d), which generally requires that spill management personnel have health and safety training required by law, is removed because it caused confusion regarding whether the provision was imposing specific training requirements. The reference is also removed from subsequent sections of this form.

Page 4

D. Basis For Certification (continued from page 3)

2. Cascading Response Personnel

The reference to subsection 830.5(d) is removed, as described above. Language is also added to clarify that plan holders in Tier III that impact intermittent or ephemeral waters only do not have to complete this section.

Page 6

D. Basis For Certification (continued from page 5)

3. Certification or renewal exercise.

The time frame for a spill management team to achieve certification exercises is corrected to align with the requirements identified in the express terms of the regulations initially noticed to the public. This was a copy-editing oversight. Informative content is added providing the citation in the regulations where the applicant may find procedures for scheduling a certification exercise and for spill response credit.

Page 8

Section C

Language is added describing where an applicant can find the waterway designations online to assist them with completing table C.2. The instruction for an applicant to indicate all water types impacted is added.

Section D

References to subsection 830.5(d) are removed as described above. The instructions for Section D are split into three paragraphs to improve readability. The instruction that plan holders in Tier III who only pose impacts to intermittent or ephemeral waters is repeated.

Addendum to Purpose and Necessity Statements for
Application for Certification of External Spill Management Team
Form DFW 1006 (new 07/13/20)

In response to public comments received during the 45-day comment period, modifications to the originally proposed form DFW 1006 were made. Only those modifications are discussed here.

Page 1

Title/Date of Form
The date of the form is updated to the most current version.

A. Application Type
"Section" is more accurately revised to "subsection". Language is added instructing applicants requesting a certification revision or update to fill out only those sections of the application being revised or updated.

Additional language and a fillable field are added prompting applicants requesting a certification revision, renewal, or update to enter their previously assigned SMT number. This is added to assist OSPR staff with processing applications and tracking the status of certifications.

Page 2

C. Description of Spill Management Team Services
3. Indicate geographic area(s) and tiers(s)
The section of the legend under the table describing the tier classifications is updated to reflect that mobile transfer unit spill management teams are in Tier III, which aligns with revisions made to the regulatory text at subsection 830.3(c).

Page 3

D. Basis For Certification
1. Initial Response Personnel
The reference to subsection 830.5(d), which generally requires that spill management personnel have health hand safety training required by law, is removed because it caused confusion regarding whether the provision was imposing specific training requirements. The reference is also removed from subsequent sections of this form.

Page 4

D. Basis For Certification (continued from page 3)
2. Cascading Response Personnel
The reference to subsection 830.5(d) is removed, as described above. Language is added providing the citation in the regulations where the applicant may find information about alternate response personnel. The minimum numbers of personnel are removed

because they apply to the form DFW 1005 Application for Certification of Plan Holder Spill Management Team (new 11/12/20) rather than to this form.

Page 5

D. Basis For Certification (continued from page 4)

3. Certification or renewal exercise.

The time frame for a spill management team to achieve certification exercises is corrected to align with the requirements identified in the express terms of the regulations initially noticed to the public. This was a copy-editing oversight. Informative content is added providing the citation in the regulations where the applicant may find procedures for scheduling a certification exercise and for spill response credit.

Page 7

Section D

References to subsection 830.5(d) are removed as described above. The instructions for Section D are split into three paragraphs to improve readability.