

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

Title 14, California Code of Regulations  
Adopt Sections 830.1 through 830.11  
Regarding Spill Management Team Certification  
and  
Amend Sections 790, 815.05, 815.07, 816.02, 817.02, 817.03, 818.02,  
818.03, 817.04, 825.05, 825.07, 826.02, 826.03, 827.02  
Regarding Definitions and Oil Spill Contingency Plans

**FINAL STATEMENT OF REASONS**

- I. Date of Initial Statement of Reasons: July 21, 2020**  
**Date of Addendum to Initial Statement of Reasons: January 15, 2021**  
**Date of Second Addendum to Initial Statement of Reasons: February 26, 2021**  
**Date of Third Addendum to Initial Statement of Reasons: August 9, 2021**
- II. Date of Final Statement of Reasons: December 28, 2021**
- III. Update to the Initial Statement of Reasons:**

The California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) has adopted regulations and standards deemed necessary to implement Assembly Bill 1197 (stats. 2017, ch. 584) to ensure best achievable protection of the state's natural resources. The proposed regulations adopt sections 830.1 through 830.11 to Title 14, California Code of Regulations for Spill Management Team Certification. Additionally, OSPR has made related amendments to sections 790, General Definitions and Abbreviations, and to 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 to the Oil Spill Contingency Plan regulations.

*Public Comment Periods*

The proposed Spill Management Team Certification (hereinafter 'SMT') regulations and amendments to the General Definitions and Abbreviations, and Oil Spill Contingency Plan regulations identified above were noticed for a 45-day public comment period starting August 1, 2020 and ending September 14, 2020 (California Regulatory Notice Register No. Z2020-0721-01). No public hearings were held nor requested.

Following consideration of public comments received from the 45-day public comment period, OSPR determined that modifications were deemed necessary and noticed the public with a 15-day continuation notice (comment period) for the period starting January 16, 2021 and ending February 1, 2021. Following the 15-day

comment period, OSPR made further modifications and noticed the public with a second 15-day public comment period starting February 27, 2021 and ending March 15, 2021.

OSPR submitted the Final Statement of Reasons to the Office of Administrative Law (OAL) on April 9, 2021. Upon receipt of comments from OAL after their initial review it was determined that further clarifying amendments and additional supporting information related to necessity of the regulations were necessary. A third 15-day public comment period was noticed to the public for the period starting August 11, 2021 and ending August 25, 2021.

Summaries and responses to public comments received from all public comment periods are included as Attachment C of this Final Statement of Reasons.

#### **IV. Supplement of Necessity in the Initial Statement of Reasons:**

The Initial Statement of Reasons dated July 21, 2020, is incorporated by reference herein. For select proposed regulations, the following provides enhanced necessity statements supplementing the Initial Statement of Reasons.

- Throughout the proposed regulations are requirements for obtaining an interim certification prior to securing full certification. A more thorough discussion for the necessity of interim certifications is included as Attachment B to this Final Statement of Reasons.
- Subsections 830.4(a)(3)(E) and 830.5(l)(9), provides reduced response requirements for spill management teams that provide services to plan holders that pose a reduced risk to the environment, specifically, risks to state waters that are dry most of the year. The National Hydrography Dataset (NHD) is a digital dataset representing the water drainage network of the United States with features such as rivers, streams, canals, lakes, ponds, coastline, dams, and streamgages. It is the most up-to-date and detailed hydrography dataset for the nation and is managed by the United States Geological Survey. The NHD is housed within the Environmental Response Management Application, commonly referred to as ERMA, which is a web-based Geographic Information System (GIS) tool that assists both emergency responders and environmental resource managers in dealing with incidents that may adversely impact the environment. ERMA integrates and synthesizes various real-time and static datasets into a single interactive map, thus provides fast visualization of the situation and improves communication and coordination among responders and environmental stakeholders. Since this on-line source is owned and managed by the U.S. Geological Survey, is live and constantly updated, OSPR relies on the U.S. Geological Survey for the designation of waterways. The reduced response requirements provided for in the proposed spill management team certification regulations is consistent with other OSPR regulations where the NHD is referenced since 2018 (14 CCR 791.7, 817.04, and 819.01).

- Subsection 830.5(k) describes training requirements for Tier II cascading response personnel. Formal training courses may be substituted for experience managing real spill responses, and experience is quantified as hours on responses of varying complexity, as described in the U.S. Coast Guard's *Incident Management Handbook* (2014). For Tier II Incident Commanders, performance as Incident Commander or Deputy Incident Commander for 84 hours in Type 4 incidents or 120 hours for a combination of Type 4 and Type 5 incidents may substitute for formal training. This time period represents about 7-10 work shifts and three to five operational periods requiring planning and execution of response operations. Type 4 incidents were selected because they include multiple resources, and Type 5 were included in addition to Type 4 incidents for Incident Commanders to acknowledge experience in increasingly complex incidents. For other positions, Type 5 incidents were not included because positions other than Incident Commander are not reliably staffed during in Type 5 incidents. For Tier II cascading response personnel other than the Incident Commander, the experience that may substitute for formal training is performing the lead or Deputy/Assistant position for 84 hours in Type 4 incidents. This is the same number of hours as an Incident Commander would need on a Type 4 response, representing about 7 work shifts and three operations periods. Since the other positions would not respond to a Type 5 spill, the regulations do not include the 120 hours on Type 4 and Type 5 incidents. The original ISOR did not specify why 84 hours responding to Type 4 incidents was selected for positions other than the Incident Commander.
- Subsection 830.7(b)(1)(B) clarifies that personnel do not have to physically mobilize to unannounced exercises called by OSPR for the purposes of verifying on-scene arrival capability. This is because personnel may be located throughout the state or even outside of California and mobilizing the full complement of required personnel would be unduly burdensome to the regulated community due to associated costs and operational disruptions. Spill management teams must submit a mobilization plan as part of an application for certification; this plan describes where personnel are located and how they will generally arrive on-scene in the geographic regions for which certification is requested. When OSPR conducts the unannounced exercise, spill management teams must show how specific individuals will arrive to the location specified in the scenario, based on where the individuals are actually located on the date of the unannounced exercise (e.g., driving from current location to spill location, commercial flight numbers). This is sufficient to ground-truth a spill management team's mobilization plan and verify that personnel can arrive on-scene in accordance with the tier and geographic region for which certification is sought. Therefore, it is not necessary for personnel to mobilize to an unannounced exercise conducted to verify on-scene arrival capability.
- Subsection 830.7(d)(3) specifies that all contingency plans listing a spill management team whose application is denied will be reviewed for deficiency.

The statute (Gov. Code § 8670.29(a)(8)(A)) and the proposed regulations require contingency plan holders to list a certified spill management team in their plans. If a spill management team's application is denied, OSPR must review contingency plans listing the spill management team to evaluate whether the plans still list sufficient spill management team capabilities appropriate to the plan's tier classification. If spill management resources are insufficient, OSPR will require plan holders to take corrective action in accordance with OSPR's contingency plan regulations.

- Subsection 830.7(f) provides a process for spill management team applicants to assert a claim of confidentiality and therefore be withheld from public disclosure. The confidentiality provisions are designed to require legitimate assertions of protection from disclosure. The burden is on the document submitter to flag what information is should be considered confidential or privileged; OSPR would not initially know this. Wholesale claims of confidentiality would put OSPR in the position of deciding for the submitter what is trade secret or other category of protection for specific instances of information. The burden of asserting a privilege of confidentiality is on the person claiming it. Allowing the submitter to simply declare its entire document (e.g., contingency plan, application) is "confidential" defeats the legislative intent of the *California Public Records Act*. Confidentiality provisions can be found throughout various sections of OSPR's regulations.
- Subsection 830.11(b) describes the process to request a hearing as further remedy in the event a request for reconsideration is denied by the Administrator. The hearing process is an extension of the reconsideration process and is necessary in order to provide transparency and due process. The process and the time frames are governed by chapters 4.5 and 5. (commencing with section 11400) of part 1 of division 3 of title 2 of the Government Code. These provisions exist throughout OSPR's regulations in Title 14, California Code of Regulations.
- A separate document providing more thorough necessity statements for the documents incorporated by reference is included as Attachment A to this Final Statement of Reasons.

***First 15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulation, Applications for Certification, Addition of Documents Incorporated by Reference, Addition of Documents Relied Upon, and Revised Economic and Fiscal Impact Statement (STD Form 399)***

Following consideration of public comments received from the 45-day public comment period, OSPR determined that modifications were deemed necessary and noticed the public with a 15-day continuation notice (comment period) for the period starting January 16, 2021 and ending February 1, 2021. The 15-day continuation notice was sent by electronic mail on January 15, 2021 to all persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

Modifications were made to the express terms of the of the Spill Management Team Certification regulations, the two Application forms (DFW 1005 and DFW 1006), the Oil Spill Contingency Plan regulations, the Economic and Fiscal Impact Statement (STD 399), the Economic Impact Assessment (in the Addendum to the ISOR), and the addition of documents incorporated by reference, and documents relied upon. No modifications were made to section 790, General Definitions and Abbreviations.

The necessity for the proposed changes made to the regulations text, including changes to the Applications for Certification (forms DFW 1005 and 1006), for the first 15-day comment period is provided in the First Addendum to the Initial Statement of Reasons dated January 15, 2021, incorporated by reference herein. The revised Economic and Fiscal Impact Statement (STD 399), and documents incorporated by reference and documents relied upon added to the rulemaking file in the first 15-day comment period are also incorporated by reference.

#### *Changes to the Economic Impact Assessment (EIA) within the Addendum to Initial Statement of Reasons for the First 15-Day Comment Period*

Upon consideration of comments from the public as well as from the Department of Finance during the 45-day public comment period, OSPR developed a Revised Economic and Fiscal Impact Statement (STD form 399), incorporated by reference herein, and updated the Economic Impact Assessment within the Addendum to the ISOR and noticed these documents to the public for a 15-day comment period.

OSPR discovered there were a few groups within the industry that were not accounted for in the original economic impact analysis, namely mobile transfer units and marine facilities. Nevertheless, the total number of businesses estimated to be impacted by the regulations reduced from less than 1,300 to less than 1,100. This change reflects a decrease in the number of vessel owners impacted, as the first analysis contained an error. The total number of businesses in the Addendum to the ISOR also includes affected mobile transfer units and marine facilities, neither of which were included in the initial notice version. The percentage of small businesses affected decreased from 4% to 3%. This change reflects fewer inland producers included in the count after a records review. It also includes the mobile transfer unit small businesses that were not previously included.

The costs to businesses were updated. Errors in the numbers of oil producers were corrected, and the costs to producers in the range of categories were updated to reflect the course of action they would be expected to take to comply with the regulations. These changes resulted in the total cost estimate for producers decreasing, and the total cost estimate for non-producing plan holders increasing. This is a result of the addition of plan holder types that had not been included in the first analysis.

These updates resulted in the total anticipated costs to businesses increasing by approximately 15% from the initial analysis presented in the originally analysis.

The description of benefits in the initial analysis included a discussion of observed decreases in the number of spills and volume of oil spilled to inland waters following OSPR's statewide expansion. The estimated benefits of were extrapolated from the decreases to these parameters. In the 15-day comment period, this discussion shifted. Instead, the benefits included a hypothesized reduction in volume spilled and associated benefits were calculated based on large and small volumes of oil spilled to marine and inland environments.

#### *Documents Incorporated By Reference*

Additional documents incorporated by reference included in the rulemaking file and noticed for the first 15-day comment period were as follows:

- Incident Briefing, form ICS 201 (United States Coast Guard rev. 06/13)
- Incident Briefing, form ICS 201 (United States Environmental Protection Agency rev. 05/18)
- Exercise Notification form DFW 1964 (04/01/14)
- Revised Application for Certification of Plan Holder Spill Management Team (DFW 1005), 11/12/20
- Revised Application for Certification of External Spill Management Team (DFW 1006), 7/13/20

These documents were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during the 15-day comment period and thereafter. These items will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

#### *Documents Relied Upon*

Additional documents relied upon included in the rulemaking file and noticed for the first 15-day comment period were as follows:

- 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
- Revised Economic and Fiscal Impact Statement (STD 399)
- Addendum to Initial Statement of Reasons (ISOR), 1/15/21
- Initial Statement of Reasons (ISOR), 7/21/20

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

Following consideration of public comments received from the 15-day comment period, OSPR proposed additional modifications and noticed the public with a second 15-day continuation notice (comment period) for the period starting February 27, 2021 and ending March 15, 2021. The notice was sent by electronic mail on February 26, 2021 to all persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations and Government Code section 11347.1(b).

Modifications were made to the regulations text of the SMT regulations, the Economic and Fiscal Impact Statement (STD 399), and the Economic Impact Assessment (in the Second Addendum to the ISOR). No additional modifications were made to the regulatory text of the General Definitions and Abbreviations, and Oil Spill Contingency Plan regulations, the Application forms (DFW 1005 and 1006), nor the Exercise Notification form (DFW 1964). No additional documents incorporated by reference were added to the rulemaking file during the second 15-day comment period.

The necessity for the proposed changes made to the regulations text for the second 15-day comment period is provided in the Second Addendum to the Initial Statement of Reasons dated February 26, 2021, incorporated by reference herein. The Second Revised Economic and Fiscal Impact Statement (STD 399) is also incorporated by reference.

### ***Documents Relied Upon***

Additional documents relied upon included in the rulemaking file and noticed for the second 15-day comment period were as follows:

- Second Revised Economic and Fiscal Impact Statement (STD 399)
- Second Addendum to the Initial Statement of Reasons, 2/26/21

### ***Changes to the Economic Impact Assessment (EIA) within the Second Addendum to Initial Statement of Reasons for the Second 15-Day Comment Period***

Upon consideration of additional comments from the public as well as from the Department of Finance during the first 15-day public comment period, OSPR developed a Second Revised Economic and Fiscal Impact Statement (STD form 399) and updated the Economic Impact Assessment within the Second Addendum to the ISOR and noticed these documents to the public for a second 15-day comment period.



The revised version developed for the first 15-day comment period estimated the benefits of the regulations based upon hypothesized reductions to the volume of oil spilled. This approach was amended so that benefits were estimated based upon hypothesized reductions to response costs per barrel of oil spilled rather than reductions to volume spilled. This approach was updated to better reflect the means by which retention of certified spill management teams by contingency plan holders could be expected to improve the efficiency and costs of a spill response. This updated approach led to a decrease of estimated benefits from the regulation from \$26,276,610 to \$825,281 in annual benefits.

### *Impact of Regulatory Action*

OSPR has made the following determinations:

*(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.

*(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.

***Third 15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulations, including Applications for Certification, Addition of Documents Incorporated by Reference, and Addition of Documents Relied Upon, and Revised Economic and Fiscal Impact Statement (STD Form 399)***

Following consideration of comments received from the Office of Administrative Law, OSPR made revisions to the proposed regulations text for clarity and noticed the public with an additional 15-day continuation notice (comment period) for the period starting August 11, 2021 and ending August 25, 2021. The 15-day continuation notice was sent by electronic mail on August 10, 2021 to all persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the California Code of Regulations, and Government Code section 11347.1(b).

Modifications were made to the Spill Management Team Certification regulations text, the Oil Spill Contingency Plans regulations text, the Definitions and Abbreviations regulations text, the two Application forms (DFW 1005 and DFW 1006), and the Exercise Notification form (DFW 1964). Additional documents incorporated by reference were added to the rulemaking file.

The necessity for the proposed changes made to the regulations text, including changes to the Applications for Certification (forms DFW 1005 and 1006) and the Exercise Notification form (DFW 1964), for the third 15-day comment period is provided in the Third Addendum to the Initial Statement of Reasons dated August 9, 2021, incorporated by reference herein. The documents incorporated by reference added to the rulemaking file in the third 15-day comment period are also incorporated by reference.

***Documents Incorporated By Reference***

The following additional documents incorporated by reference were added to the Spill Management Team Certification regulations (14 CCR 830.1 – 830.11) for the third 15-day comment period:

- National Preparedness Course Catalog (7/01/2021), Federal Emergency Management Agency
- Incident Command System Training Guide (1/29/2016), United States Coast Guard
- Exercise Notification form DFW 1964 (04/01/14)

These documents were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during the third 15-day comment period and thereafter. These items will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

The following additional documents incorporated by reference were added to the Definitions and Abbreviations regulations (14 CCR 790) for the third 15-day comment period:

- Incident Management Handbook (2014), United States Coast Guard
- Incident Management Handbook (2016), U.S. Environmental Protection Agency

These documents were reasonably available to the affected public from a commonly known or specified source, made available upon request directly from OSPR, and also available on OSPR's website during the third 15-day comment period and thereafter. These items will not be printed in the California Code of Regulations in that doing so would be cumbersome, unduly expensive, or otherwise impractical.

#### *Documents Relied Upon*

Documents relied upon added to the rulemaking file for the third 15-day comment period were as follows:

- Fourth Revised Economic and Fiscal Impact Statement (STD 399)
- Third Addendum to the Initial Statement of Reasons, 8/9/21

During the 45-day public comment period, OSPR identified the following as documents relied upon. Subsequently, in the third 15-day public comment period, OSPR removed reference to these documents; therefore, identification of them as documents relied upon is removed.

- National Incident Management System Training Program (Sept 2011), Federal Emergency Management Agency, Homeland Security.
- National Qualification System Position Task Books (2017), Federal Emergency Management Agency.

- California Oil Spill Response Cost Study (Nov. 2019), Catalyst Environmental Solutions, Environmental Research Consulting, Greene Economics.

Also, during the 45-day public comment period, OSPR identified the following document as a document relied upon in the Spill Management Team Certification regulations. Subsequently, in the third 15-day public comment period, OSPR changed it to a document incorporated by reference, as reflected above. Therefore, identification of it as a document relied upon is removed.

- Incident Command System Training Guide (2016), United States Coast Guard.

### ***Non-Substantive Changes Made to the Text of Proposed Regulations After Close of Third 15-Day Continuation of Public Comment Period***

Minor editorial changes were made to simplify the regulations. These changes are considered changes without regulatory effect because they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

- Changed capitalization of “Initial Response Personnel” to lower case for consistency throughout. [830.4(a)(1)(A) and (B)]
- Corrected punctuation from a semicolon to a period. [830.5(f)(1), 830.5(g)(1), 830.5(h)(1), (2), (3)]
- Made grammatical correction of the form of the word “subsection” from singular to plural. [830.5(f), (g), and (h)]
- Removed duplicated word “course”. [830.5(j)(3)(A)]
- Added “or” to make clearer and support the “either/or” provision in the introductory/leading subsection. Adding “or” is also consistent with the language and structure of similar provisions throughout subsections (j), (k) and (l). Omission of this was an earlier copy edit error. [830.5(j)(4)(A)1. and 830.5(j)(8)(A)1.]
- Corrected capitalization in email address. [830.6(a)(1)(B), 830.7(a)(3)]
- Removed “Chronic” in the referenced Office of Environmental Health Hazard Assessment dataset, reverting to the version cited in the regulations text noticed for the second 15-day comment period. OSPR agreed with public comment that chronic exposure levels are not relevant for an oil spill response. [subsection 830.6(b)(1)(B)]
- Added section symbol (§) in front of each section title. [815.01 – 818.03]

### ***Non-Substantive Changes Made to the Text of Proposed Regulations During Office of Administrative Law Review***

Minor editorial changes were made to simplify the regulations. These changes are considered changes without regulatory effect because they do not materially alter any

requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

- Revised language for improved clarity and consistency within the new spill management team certification regulations that it is plan holders as well as any person or affiliated person who provides personnel to a plan holder certified spill management team that shall submit documentation required of the regulations (e.g., application for certification, application for renewal, requests for revisions, notice of changes, etc.). [830.2(b), 830.4(c), 830.8(a)(1), (a)(2), (b)(1), (b)(3), (c)(1), 830.9(a), 830.10(b)(1)(A), (b)(1)(B), (b)(1)(C), and 830.11(a)(1)]
- Throughout the spill management team certification regulations, added the word “subsection(s)” before citations.
- Throughout the spill management team certification regulations, added the word “certified” before “spill management team” for consistent expression of the subject of these regulations.
- Made typography edits for consistency with equivalent language at 830.5(l)(9). [830.4(a)(3)(E)]
- Added the word(s) “response” and “cascading response” consistent with the defined term “cascading response personnel”. [830.4(a)(3)(E), 830.5(i)(2)]
- Updated the reference to the National Hydrography Dataset consistent with equivalent language elsewhere in the regulations. [830.5(l)(9)]
- Updated the Authority and Reference citations for consistency throughout. [830.3, 830.5, 830.6, 830.7, 830.9, 830.10, 830.11]
- Updated instructional content for improved clarity and consistency with similar instructions. [DFW form 1006 D.2., first and third check boxes]
- General descriptors for the area contingency plan (ACP) boundaries were added for ACP 4 and ACP 5 to be consistent with the descriptors included for ACP’s 1, 2, 3, and 6 on the Spill Management Team Certification applications as well as with the area contingency plans themselves. [790(a)(8), DFW 1005 C.2., and DFW 1006 C.3.]
- Added the citation (14 CCR 790(a)(8)) to where applicants may find a full description of the ACP boundaries for further clarity and transparency. [DFW 1005 and DFW 1006]
- The term “may be required” was changed to “are required” for clarity in these non-regulatory informative provisions. [790(c)(2), (i)(5)]

- “Chapter” is changed to “subdivision” as the more accurate reference to the hierarchal structure of regulations. [790(c)(10)(B)]
- Reference to the Incident Management Handbook was updated to align with the recent addition of the definition of the publication. [790(i)(2), 817.04(r)(1)]
- Removed “Plan” from “Geographic Response Plan Area” for consistency with the same edit made elsewhere earlier. [818.02(f), 818.03(e), 827.02(h)(1), 827.02(i)]

Other minor edits were made to punctuation, grammar, underline, strikeout, and cross references. These changes are not itemized here; they were made to make the regulations consistent and are considered changes without regulatory effect because they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

#### **V. Reasonable Alternatives to the Proposed Regulation and Reasons for Rejecting Those Alternatives:**

In the course of developing the proposed regulations, OSPR considered various alternative approaches to different elements and suggestions received from public comments, and in some areas the originally proposed regulations were revised. Set forth below are the alternatives considered and the reasons each alternative was rejected.

*Proposed Alternative:* Self-Certification. Members of the regulated community requested that they be allowed to self-certify the spill management teams already identified in their approved contingency plans.

*Analysis:* To assess whether this would be an appropriate option, OSPR conducted a review of spill management team information in OSPR approved contingency plans to see if they included details that would satisfy the criteria specified by Assembly Bill 1197. While a few plans provided lists of spill management personnel names and ICS positions, most plans simply included generic organizational charts or listed one to two personnel. None of the plans sufficiently discussed training or timeframes for on-scene arrival. The results of our review indicated that existing plans do not adequately address the spill management team criteria required by AB 1197, and the proposed regulations are necessary to fulfill statutory directives. However, the regulations incorporate several mechanisms to reduce the burden of compliance, such as streamlining the process for businesses that hold multiple contingency plans or operate in multiple regions, the extended timetables for compliance, and the flexibility allowed in meeting performance standards. These measures ensure that the proposed regulations fulfill the statutory mandate, while establishing standards that are achievable by the regulated community.

*Proposed Alternative: Certification Process for Each Geographic Regions.* The regulated community requested that the regulations be structured so that teams will not have to undergo separate certification processes for each geographic region in which they operate.

*Analysis:* To comply with the statutory requirement that the regulations address geographic areas of spill management team coverage (Cal. Gov. Code § 8670.32(j)(1)(A)), teams will be certified by the area contingency planning areas (marine coverage) and response planning areas (inland coverage) in which teams intend to provide services. These regions have been established by the U.S. Coast Guard and OSPR, respectively, for oil spill contingency planning. However, in consideration of the proposal, OSPR adopted a process whereby teams must show how personnel will arrive in all of the areas for which they request certification within the required timeframes, but they are not required to submit separate applications or exercise in each area to earn certification. Additionally, companies that hold multiple contingency plans may apply for certification of their team using a single application. Streamlining the application and certification process consolidates and simplifies both the administrative demands and the number of activities, such as conducting exercises, that businesses operating in multiple regions must perform to comply with the proposed regulations.

*Proposed Alternative: SEMS Training Alternative.* Implement training requirements modeled after California's SEMS training requirements found in Title 19 CCR.

*Analysis:* The regulation suggested as a model for training requirements in the proposed regulations describes requirements for agencies participating in interagency coordination under the Standardized Emergency Management System (SEMS). SEMS centers upon four components: interagency coordination, mutual aid, coordination at the operational area (county) level, and the incident command system. The SEMS framework is based upon the idea that incidents begin locally and are thus managed from the county/operational area level, with coordination and resources supplied at a regional or statewide level when local response capabilities are exceeded. However, oil spill response in California is handled at the state level by OSPR. The SEMS model applies to local and state agencies for all-hazards responses and is not relevant for spill management teams representing a responsible party in an oil spill response.

Under the National Contingency Plan, federal on-scene coordinators from the USCG and/or the US Environmental Protection Agency are mandated to direct response efforts for a discharge or release of oil. These agencies are required to respond in accordance with the National Response Framework, which uses NIMS, whereby a unified command comprised of federal, state, and responsible party incident commanders manages the response organization and activities. This differs from the operational area concept employed by SEMS, although both frameworks require use of ICS. The proposed regulations establish requirements for SMTs representing a responsible party who will fill positions within a unified command under NIMS, so the

proposed regulations use NIMS as the reference framework. Therefore, OSPR rejects this proposed alternative.

The obligation to certify spill management teams comes directly from statute. No alternatives were identified that would have the same regulatory effect. Without the proposed regulations, the Spill Management Team Certification program would not be implemented.

Based on the information OSPR currently possesses, and the reasons stated in the responses to public comments (Attachment C), OSPR has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The provisions adopted by OSPR are the only regulatory provisions identified by OSPR that accomplish the goal of meeting best achievable protection of the state's natural resources by ensuring that spill management teams are certified in managing oil spill responses through maintaining training and exercise standards. The proposed regulations implement, interpret, and make specific Government Code sections 8670.5, 8670.10, 8670.28, 8670.29, and 8670.32. The proposed regulations are necessary to provide specificity not found in the statutes.

**VI. Local Agency or School District Mandate Determination:**

The proposed regulations do not impose any mandate on local agencies or school districts.

**VII. Small Business Impact:**

No alternatives were proposed that would lessen any adverse economic impact on small businesses.



## ATTACHMENT A

### Purpose and Necessity for Documents Incorporated by Reference

The following documents have been incorporated by reference, pursuant to the requirements of Section 20 of Title 1 of the California Code of Regulations, because the proposed regulations require the use of these documents.

#### [Incident Typing Characteristics table \(U.S. Coast Guard Incident Management Handbook \(2014\)\)](#)

Purpose: This table describes the criteria for assigning types to incidents. It is part of the U.S. Coast Guard Incident Management Handbook.

Necessity: It is necessary to incorporate this table by reference because it contains criteria that qualify experience that may substitute for formal training courses required by subsections 830.5(j) through (l) of the proposed regulations.

#### [ICS Form 201 \(United States Coast Guard rev. 06/13 or United States Environmental Protection Agency rev. 05/18\)](#)

Purpose: The ICS Form 201 is used to document the current situation, initial objectives, current and planned actions, organizational structure, and resources related to an incident.

Necessity: It is necessary to incorporate this form by reference because it is an essential form used to document the information described above for an incident that is managed under the incident command system. The ICS 201 serves as the primary record of the incident activities during the early stages of an incident, and it is used as the basis for briefing incoming agencies and responders, as well as stakeholders and the public. Both the United States Coast Guard's and the United States Environmental Protection Agency's forms are incorporated because either agency will serve as the federal on-scene coordinator in the event of an oil spill, depending on the location of the incident. Additionally, OSPR considers either form to be acceptable.

#### [Exercise Notification form DFW 1964 \(04/01/14\)](#)

Purpose: This form is used by plan holders to schedule an exercise or drill in accordance with OSPR's Drills and Exercises program (Title 14, California Code of Regulations sections 820.01 and 820.02). The proposed regulations require the use of this form by spill management teams choosing to conduct a certification exercise in coordination with an exercise of an approved contingency plan through Drills and Exercises.

Necessity: Subsection 830.6(a) describes how spill management teams should schedule a certification exercise. Teams have the option to either conduct a certification through OSPR's Drills and Exercises program (830.6(a)(1)(A)), or to contact OSPR to design and schedule a certification exercise (830.6(a)(1)(B)). When

choosing the former option, teams must submit a form DFW 1964 indicating this by indicating the newly added “spill management team certification exercise” option.

OSPR expects that most spill management teams will opt to conduct certification exercises in conjunction with Drills and Exercises, since plan holders already conduct exercises to comply with sections 820.01 and 820.02. It is therefore necessary to incorporate this form by reference to facilitate the scheduling of certification exercises.

[Application for Certification of Plan Holder Spill Management Team form DFW 1005 \(new 11/12/20\) and Application for Certification of External Spill Management Team form 1006 \(new 07/13/20\)](#)

Purpose: Forms DFW 1005 and 1006 are used by plan holders and external spill management teams, respectively, to apply for spill management team certification.

Necessity: Because the proposed regulations require applicants to use these forms, they are incorporated by reference. The forms are included in the current rule making.

[Federal Emergency Management Agency’s National Preparedness Course Catalog \(7/1/21\)](#)

Purpose: The National Preparedness Catalog is an online reference that houses the standards for the Federal Emergency Management Agency’s (FEMA) training courses that are listed as required courses in the proposed regulations. The document that is incorporated by reference in the proposed regulations is a collection of catalog entries for the required training courses that was compiled during this rule making.

Necessity: The proposed regulations require spill management team personnel to complete specific training courses. These courses are part of the National Incident Management System (NIMS) qualification system for incident management personnel and are offered by FEMA and the United States Coast Guard (USCG). Personnel can either complete the courses offered by FEMA or USCG, or they can take equivalent courses. The proposed regulations specify that equivalent courses deliver the same learning objectives, over the same number of hours, as the courses offered by FEMA or USCG, so it is necessary to incorporate FEMA’s standard by reference. The document was compiled from individual catalog entries because the agency now issues any updates to training course standards in this catalog rather than in a formal document. The course catalog can be accessed on FEMA’s website at <https://www.firstrespondertraining.gov/frts/npccatalog?catalog=EMI>.

[United States Coast Guard’s Incident Command System Training Guide \(1/29/16\)](#)

Purpose: The Incident Command System Training Guide is a document that describes standards for USCG’s Incident Command System training courses that are listed as required courses in the proposed regulations.

Necessity: As described above, the proposed regulations require spill management team personnel to complete specific training courses that are either offered by FEMA

or USCG, or equivalent courses. The proposed regulations specify that equivalent courses deliver the same learning objectives, over the same number of hours, as the courses offered by FEMA or USCG, so it is necessary to incorporate USCG's standard by reference.

## **ATTACHMENT B**

### **Purpose and Necessity for Interim Certification**

The proposed regulations establish a process whereby spill management teams are issued an interim certification upon meeting a subset of requirements for certification, earning a full certification after completing all the requirements. The concept of the interim certification was developed to balance OSPR's statutory obligations under the Government Code as amended by Assembly Bill 1197 with existing programmatic constraints for both OSPR and the regulated community.

The statute requires contingency plan holders to identify a spill management team certified as capable of managing spills of the reasonable worst-case spill volumes (RWCSV) identified in plans (Government Code 8670.29(b)(8)), and it mandates that the proposed regulations establish criteria for spill management team certification that address training, number of personnel, time frames for personnel arrival on-scene, and objectives that spill management teams must complete at an exercise, among other items (Government Code 8670.32(j)). Further, OSPR is prohibited from issuing a certification until observing a spill management team's performance at an actual spill or an exercise in California (Government Code 8670.32(c)).

Because the statute requires the proposed regulations to address a range of spill management team capabilities, including performance of objectives for certification, OSPR devised a two-step process for spill management team certification. After OSPR approves a complete application, which includes verification of training records/plans and the ability of personnel to arrive on-scene in the required time frames (see subsection 830.7(b)), spill management teams will be issued an interim certification. An interim certification allows a spill management team to be listed in contingency plans to fulfill plan holder requirements. It indicates that a spill management team meets the requirements for number of personnel and on-scene arrival time frames (section 830.4) but has not yet demonstrated the objectives (section 830.6), and personnel may not have completed the training requirements (section 830.5). An interim certification will expire if the spill management team does not earn a full certification by demonstrating the training qualifications and objectives within the specified time frame.

Because OSPR cannot issue a certification until observing a spill management team's performance in California, the regulations must provide for spill management teams to achieve the certification objectives at an exercise. It is most efficient for certification exercises to be combined with plan holder exercises conducted through the OSPR's Drills and Exercises program (California Code of Regulations, Title 14 Sections 820.01 and 820.02), since plan holders and spill management teams offering services by contract already participate in these exercises. The statute anticipates this by instructing OSPR to combine exercises for spill management team

certification with other relevant exercises to the extent practical (Government Code 8670.32(e)(1)). Although the proposed regulations allow spill management teams to schedule a separate exercise for certification, OSPR expects that most certification exercises will be combined with plan holder exercises in the Drill and Exercises program. This expectation is based on requests from the regulated community that the proposed regulations refrain from requiring that an additional exercise be conducted for certification, since planning and conducting a reasonable worst-case exercise involves considerable costs and personnel hours. Such a requirement would impact OSPR as well, because OSPR staff not only plan and evaluate exercises, but they also participate in exercises by filling incident command system positions.

An interim certification expires on December 31 of the third full calendar year following the date of issuance, so it is valid for more than three but less than four years. This time frame was selected to accommodate existing plan holder exercise cycles, because a certification exercise should simulate a response to a spill of the applicable RWCSV in accordance with the statute's specification that teams are certified as capable of managing a spill of the RWCSV listed in a plan. Vessel plans must be exercised in California every three years (subsection 820.01(a)(2)), and most facility plan holders exercise reasonable worst-case spill scenarios every three years to comply with federal regulations requiring adherence to the National Preparedness for Response Exercise Program (NPREP) protocols. By implementing this staged process, OSPR can observe a spill management team's performance before awarding certification, while avoiding conducting additional large exercises. The designation of December 31 is to align with the existing annual basis for scheduling exercises through the Drills and Exercises program. The interim certification allows the program for certifying spill management teams to proceed, while not requiring plan holders to deviate from their established exercise cycles. Additionally, it provides sufficient time for spill management teams to complete the training requirements, particularly as the duration of pandemic-related limitations to in-person gatherings remains uncertain.

An interim certification is valid for longer than the three-year period established by the statute (Government Code 8670.32(d)) over which OSPR must review a certification at least once, because a shorter time frame would not allow both for a full plan holder exercise cycle and provide sufficient time for OSPR to review and verify application contents. Because the statute does not mandate a time frame or a specific process for implementing the program and issuing certifications, it is OSPR's prerogative to design a process that addresses the myriad provisions in the statute while considering programmatic constraints and realities. The interim certification enables OSPR to ensure that all criteria for certification are fully addressed, while not requiring additional resource-intensive exercises. Because operationalizing the program is left to OSPR's discretion, the interim certification's length of validity is not subject to the three calendar year review period specified in the statute. After all criteria have been met for certification, spill management teams will earn full certification, which is valid for three calendar years, pursuant to the statute.

The regulated community is familiar with the concept of the interim certification. During pre-rulemaking informal scoping sessions OSPR held, it was adopted into the proposed regulations in response to their concerns about the expense and feasibility of holding additional exercises for certification. The interim certification enables OSPR to reconcile the regulated community's concerns with the requirements of the statute. By implementing a two-step process over the selected time frames, the proposed regulations comply with the statute while establishing a process that is achievable and practical for OSPR and the regulated community.

## **ATTACHMENT C**

### **Consideration of Public Comments**

The Department of Fish and Wildlife's, Office of Spill Prevention and Response (OSPR) thanks all those who provided insight and submitted comments during the rulemaking process.

The following provides a summary of the comments received during four public comment periods and OSPR's responses to same. The first comment period (45-day) was held from August 1, 2020 through September 14, 2020. The subsequent three 15-day public comment periods were from January 16, 2021 through February 1, 2021, February 27, 2021 through March 15, 2021, and August 11, 2021 through August 25, 2021, respectively. OSPR received comments during all public comment periods relevant to the Spill Management Team Certification regulations. No comments were received from any comment period related to the amendments made to the Oil Spill Contingency Plan regulations, filed concurrently. Additionally, no comments were received with regard to two proposed new forms (Applications for Certification of Spill Management Team).

The following summaries and responses are organized by the subsection the commenter identified. Where the section or subsection is unspecified by the commenter, OSPR made every effort to catalog the comment and response where it felt it most applied. Comments from multiple commenters on the same subsection or topic are consolidated and summarized. Comments to other associated rulemaking documents, general non-specific comments, and irrelevant and untimely comments are aggregated in separate tables at the end of each comment period.

A list is provided of the people or organizations who submitted written comments. Each is assigned a two-digit identifier. At the end of each comment is one or more comment keys in brackets. These comment keys correspond to the two-digit commenter identifier followed by a number corresponding to the number marked (by OSPR) on the copies of the written comment letters.



**Table of Contents**

- I. List of Commenters.....24
- II. Comments.....25
  - First Comment Period (45-Day).....25
  - Second Comment Period (First 15-Day).....54
  - Third Comment Period (Second 15-Day).....62
  - Fourth Comment Period (Third 15-Day).....64

## I. List of Commenters

The following provided written comments during the 45-day comment period (August 1, 2020 through September 14, 2020).

Identifier	Commenter
1	American Waterways Operators, letter 9/14/20
2	BNSF Railway Company (BNSF), letter 9/14/20
3	California Independent Petroleum Association (CIPA), letter 9/14/20
4	California Resources Corporation (CRC), letter 9/2/20
5	Chevron, letter 9/14/20
6	E&B Natural Resources, letter 9/9/20
7	ECM Maritime Services, letters 9/11/20 and 6/10/19
8	Gallagher Marine Systems, letter 9/14/20
9	Marathon Petroleum Company, letter 9/14/20
10	Marine Spill Response Corporation (MSRC), email 9/15/20
11	Pacific Tank Cleaning Services, email 9/14/20
12	Ravindra Varma, email 9/5/20
13	Western States Petroleum Association (WSPA), letter 9/14/20

The following provided written comments during the first 15-day comment period (January 16, 2021 through February 1, 2021).

Identifier	Commenter
14	BNSF Railway Company (BNSF), letter 2/1/21
15	Chevron, letter 1/31/21
16	California Resources Corporation (CRC), letter 1/28/21
17	ECM Maritime Services, letter 2/1/21
18	Marine Spill Response Corporation (MSRC), email 1/30/21
19	Witt O'Brien's, letter 2/1/21
20	Western States Petroleum Association (WSPA), letter 2/1/21

The following provided written comments during the second 15-day comment period (February 27, 2021 through March 15, 2021).

Identifier	Commenter
21	BNSF Railway Company (BNSF), letter 3/15/21
22	California Resources Corporation (CRC), letter 3/8/21

The following provided written comments during the third 15-day comment period (August 11, 2021 through August 25, 2021).

Identifier	Commenter
23	Western States Petroleum Association (WSPA), letter 8/25/21

## II. Comments

Comments made to the Spill Management Team Certification regulations are summarized and responded to below. No comments were received on the proposed Application forms DFW 1005 and DFW 1006, nor to the amendments to the Definitions and Abbreviations regulations, nor the Oil Spill Contingency Plan regulations, filed concurrently.

List of Acronyms Used	
CalOSHA	California Occupational Health and Safety Administration
FEMA	Federal Emergency Management Agency
HAZWOPER	Hazardous Waste Operations and Emergency Response
ICS	Incident Command System
NIMS	National Incident Management System
RWCS	Reasonable worst case spill volume
SMT	Spill Management Team
SONS	Spill of National Significance
USCG	United States Coast Guard
US EPA	United States Environmental Protection Agency

### First Comment Period

The following consist of comments received during the 45-day comment period, August 1, 2020 – September 14, 2020.

#### *Section 830.1 – Purpose and Scope*

##### Subsection (a)(2)

CRC requests the ability for plan holders that operate in multiple regional areas to identify a statewide SMT and submit a singular application to cover all areas of operation. [Commenter 4a]

*OSPR Response: OSPR accepts this comment. The proposed regulations and corresponding application forms currently allow for a spill management team to apply for certification in multiple geographic areas using a single application form. OSPR has made revisions at section 830.1(a)(2)) to clarify this and will notice the revisions to the public for a 15-day comment period.*

##### Subsection (b)

Once the regulations are finalized, the timeframe granted to turn in an application is only 30 days. This is not a sufficient amount of time to develop such a complex plan. We believe a minimum of 120 days is a more appropriate time frame. [Commenters 3d; 6j]

*OSPR Response: OSPR partially accepts and partially rejects this comment. OSPR acknowledges that 30 days may not be adequate for plan holders to determine how they will form a certified spill management team, particularly if they have not been*

*engaged in the rulemaking process. However, 120 days is excessive, and would unnecessarily delay the spill management team certification process. In response, OSPR has increased the time between the effective date of the proposed regulations and the due date for applications from 30 days to 90 days. This application period provides sufficient time for plan holders and providers of spill management services to complete their applications without causing undue delays to the certification process. The changes will be noticed to the public for a 15-day comment period.*

**Section 830.2 – Certification Requirements:** No comments were received during the 45-day public comment period.

### **Section 830.3 – Spill Management Team Classifications**

Assigning Tier II SMT classification for MTUs is excessive. The RWCS oil capacity of a Transportable Treatment Unit with an oil and water mixture should not be the same as an oil storage tank of the same volume. Tier classifications should be modified to lower the applicable RWCS volume for Tiers II and III. Small marine facilities and MTUs are substantially affected by these proposed regulations. [Commenter 11a.1, 11a.2]

*OSPR Response: OSPR accepts this comment. Reasonable worst-case spill (RWCS) volume is used as a proxy for risk, and contingency planning based upon worst-case spill volumes is a well-established concept. Amending the definitions of reasonable worst-case spill volumes is beyond the scope of the proposed regulations. However, OSPR recognizes the reduced risk posed by tanks holding a mixture of oil and wastewater compared to tanks holding undiluted oil or refined products. In response to this comment, OSPR has amended the proposed regulations at subsection 830.3(c)(3)(C) to specify that mobile transfer unit spill management teams are in Tier III, which has the fewest requirements. This adjustment will move these plan holders into Tier III, along with the approximately 25 other mobile transfer unit (MTU) plan holders that fall into Tier III based on tank capacities. Because several of the MTU plan holders with RWCS volumes in the Tier III range conduct transfers of undiluted petroleum products, OSPR believes this adjustment ensures that spill management team requirements for MTUs are commensurate with the risks they pose. The changes will be noticed to the public for a 15-day comment period.*

We think the requirement to have 20 individuals trained for key positions in the cascading requirements for Tier 1 should be reduced. Since we are a smaller company, we may not be able to identify 20 individuals for the various roles to meet this requirements. [Commenter 6c]

*OSPR Response: OSPR partially accepts and partially rejects this comment. The minimum requirement for Tier I is 12 personnel, not 20 (see 830.4(a)(1)(D)). OSPR cannot be sure how the commenter arrived at this number, but can guess that they counted the initial response personnel (minimum of four) and the cascading response positions with one alternate for each (eight distinct positions for a total of*

16 personnel). Tier I spill management teams must have an additional alternate for the positions of Incident Commander and Planning Section Chief, so by this logic the commenter should have come up with 22 individuals. However, neither of these figures is correct. The proposed regulations allow for cross-training of personnel to fulfill requirements for alternate cascading positions; however, a minimum of 12 individuals is required to meet the requirements for the 18 positions, including alternates, required of Tier I spill management teams. Thus, the four initial response personnel can also be counted as cascading personnel if they are trained in accordance with the appropriate requirements. So, there need to be at least eight people trained to respond in the first two days, plus properly trained alternates who can cover the full suite of eight positions. The actual number of personnel will vary for each plan holder, but the minimum number is 12 properly trained personnel. The minimum numbers of personnel are stated in 830.4(a)(1)(D), (a)(2)(D), and (a)(3)(D) of the proposed regulations. OSPR has made changes to the text at each subsection to communicate the minimum personnel requirements more clearly. The changes will be noticed to the public for a 15-day comment period.

#### Section 830.4 – On-Scene Requirements

##### Subsection (a)(1)(C)2.

As drafted, the proposed regulation appears to allow plan holders to count a single alternate for multiple command positions identified in §830.4(a)(1)(B)2 if they have been sufficiently cross trained. The language in the regulation however is not clear. We request OSPR provide clarification in the regulation to provide better clarity on this item. Ensuring a single alternate with proper training can help fill the compliance requirements of this section will also help align with the realities industry and OSPR are contending with during the current pandemic. [Commenter 5g]

Request OSPR verify the form of certification that may be required for cross-trained responders and the number of roles that can be filled by cross-trained personnel. Example, can a single individual be allowed to count as the alternate for multiple roles if they have been properly trained in all the roles? [Commenter 13a]

*OSPR Response: The comment(s) is/are not clear. If the commenter(s) is/are asking whether the regulation precludes a single person from being an alternate for all incident command system (ICS) positions requiring an alternate, then no, this is not precluded. People may be cross-trained to fill multiple positions; however, it is unlikely that one person could competently perform all eight required positions as an alternate. The proposed regulations include minimum numbers of personnel that must be included to fill the required positions and alternates. Thus, if one team member is cross-trained to fill all eight cascading positions, additional personnel would still be required as alternates. Tier I spill management teams must account for 18 cascading positions (i.e. 8 primary plus 10 alternates) to meet the cascading response personnel requirements (six positions requiring one alternate and two positions requiring two alternates; see 830.4(a)(1)(B)1.), and teams are required to have a minimum number of 12 personnel to fill the 18 roles (830.4(a)(1)(D)). Tier II*

*spill management teams must account for 16 positions to meet the cascading response position requirements (eight incident command system positions requiring one alternate each; 830.4(a)(1)(C)1.), and teams are required to have a minimum number of 10 personnel to fill the 16 positions (830.4(a)(2)(D)). Tier III spill management teams are not required to have alternates (830.4(a)(3)(C)), but they must have eight personnel to fill the eight required incident command system positions (830.4(a)(3)(D)). No changes are made to the proposed regulations in response to these comments.*

Subsection (a)(3)(B)1. & 2.

The regulations should allow for use of virtual tools to meet SMT arrival times. Cascading roles, such as Public Information Officer (PIO), Liaison Officer, Finance Section Chief, and Logistics Section Chief can generally be conducted remotely, making their mandated presence in the IC impractical and unnecessary. Revising the section to allow these positions to be done remotely will also align with the realities industry and OSPR are contending with during the current pandemic. [Commenters 4b; 5f; 7b; 13c]

*OSPR Response: OSPR rejects this comment. The proposed regulations establish planning standards for a reasonable worst-case spill; OSPR expects personnel to be able to deploy to an incident of this size. Each incident is different, and the resources needed to respond may differ accordingly. The proposed regulations do not require spill management personnel to automatically mobilize to every incident, but they must be capable of arriving within the time frames described in the regulations. OSPR does not expect personnel to automatically deploy when conditions are not safe for them to deploy, but they must be able to perform their positions and accomplish objectives whether in-person or remotely. No changes were made in the proposed regulations in response to these comments.*

### *Section 830.5 – Training and Experience Requirements*

Subsection (a)(1)

830.5(a)(1) requires training courses be “the same number of hours” as courses described in the FEMA NIMS Training Guide or the USCG ICS Training Guide. Given that regulation references the requirements of FEMA it is unnecessary to specify in the body of the regulation the specific time requirements for each of the named positions. Listing time requirements does not consider current industry training programs that may be different in length than the training programs provided by FEMA or USCG but still cover the same depth of content. It is more appropriate for the training courses to require the classes to meet the specific objectives and the competencies associated with the task book and remove the hour requirements. Training should be focused on the ability to perform specific competencies for the position versus the time duration of the class. The hour requirement is not compatible with a “learning objective” approach used by industry AHJ. Recommend that OSPR accept AHJ courses that address the FEMA and/or US. Coast Guard learning objectives, materials, course structure, custom/relevant scenarios, qualifications and

experience of instructors, and effectiveness of delivery. Specifically requesting OSPR include the following text: “Equivalent courses and training programs developed by Authority Having Jurisdiction (AHJ) shall deliver comparable learning objectives, course curriculum, and similar settings, if possible (e.g., classroom, online) to the applicable Federal Emergency Management Agency’s Emergency Management Institute or the United States Coast Guard’s Performance Qualification Standard courses. AHJ shall be allowed to tailor “Equivalent” courses and training programs to meet industry facility and vessel plan holder Spill Management Team specific staffing needs.” [Commenters 2b; 4c; 5h; 6f; 8b; 9a; 13d]

*OSPR Response: OSPR rejects these comments. FEMA and USCG courses are the basis for the National Incident Management System (NIMS) qualifications for incident management personnel. Course length is an important determinant of full subject coverage and engagement with course materials and instruction. The minimum course lengths are included in the proposed regulations to ensure that they can adequately deliver course topics and ensure that learning objectives are absorbed by students. NIMS defines an authority having jurisdiction (AHJ) as “an entity that has the authority and responsibility for developing, implementing, maintaining, and overseeing the qualification process within its organization or jurisdiction.” While an AHJ may be established within a company or industry, its authority extends within its organizational jurisdiction only. OSPR has statutory authority to establish minimum requirements for certified SMTs that may be listed in contingency plans in order to satisfy contingency planning requirements. No changes were made to the proposed regulations in response to these comments.*

#### Subsection (a)(1)

As the rule is currently written, if FEMA or USCG decide to change class lengths it would necessitate a rule change to keep them in sync. Making the training requirements objective based and requiring demonstrated competencies would keep them synced regardless of future changes. [Commenters 4d; 5h; 9b; 13e]

*OSPR Response: OSPR accepts this comment and has removed the specified hours from the regulations throughout 830.5(j) and (k). The provision describing equivalency (830.5(a)(1)) imposes course length requirements that correspond to those specified by the FEMA or USCG curricula, so the course length requirements still apply despite having been removed from the text of the proposed regulations. As the commenters point out, this change will allow the regulations to refer to the most current FEMA and USCG curricula without necessitating changes to the regulations if either agency amends its curriculum. The changes will be noticed to the public for a 15-day comment period.*

#### Subsection (a)(2)

Request that OSPR revise the in-person training requirement for Safety Officer, Operations Section Chief and the Planning Section Chief to allow for virtual instructor-led training. The requirement for in person training for specified roles fails to recognize the current realities of the global pandemic. OSPR should align its regulatory requirements with the state’s efforts in response to the Covid-19 crisis by



making the appropriate modifications to eliminate to the extent possible in person training requirements. Virtual instructor-led training should apply to all positions. Success of the training is more dependent on instructor competency, course organization and materials rather than whether it is “virtual” or “in-person”. Request that private industry “Authority Having Jurisdiction (AHJ)” be allowed to provide and certify “in-person” and “on-line” virtual training classes for the various position-specific training courses required by the regulations. Training should be offered online or virtually as much as feasible. [Commenters 2a; 3b; 4e; 5e; 6h; 9c; 13f]

*OSPR Response: OSPR accepts these comments and the limitations on in-person training that have arisen due to the Covid-19 pandemic. As such, OSPR has revised the criteria in section 830.5(a)(2) to allow instructor-led virtual courses for all position-specific courses. Equivalent courses must still meet the criteria for course length and learning objectives described in 830.5(a)(1). The changes will be noticed to the public for a 15-day comment period.*

#### Subsection (b)

The requirement that individuals providing courses also have completed a training course for teaching the subjects they teach or meet an undefined equivalency creates the potential for a dearth of available individuals to provide the copious training required by the regulations and in turn creating a burden upon the SMT applicant to compete for limited training resources, thereby increasing costs and compliance time frames. Effective instruction does not necessarily need these additional requirements and is very likely to reduce the availability of competent instructors who are willing to offer these courses locally without out of area/state travel. There has been a dearth of trainers, particularly during the COVID-19 pandemic. For this reason, OSPR should consider allowing more time for plan submission and certification completion and a delay in adoption of these regulations to reevaluate the requirements of each position. [Commenters 1c; 3f; 6g; 13h]

*OSPR Response: OSPR rejects these comments. 830.5(b) sets guidance for acceptable training. During pre-rulemaking activities, the regulated community requested that the regulations address instructor qualifications. The language is modeled after the trainer qualifications that the California Occupational Safety and Health Administration allows for teaching Hazardous Waste Operations and Emergency Response (HAZWOPER) regulations, with which the regulated community is familiar. 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. Therefore, the proposed regulations do not require trainers to complete specific courses. Like the agency administering the HAZWOPER regulations upon which this proposed regulation is based (California Occupational Health and Safety Administration), OSPR expects SMTs to self-certify that their trainers are qualified. If there is an indication that unqualified instructors are leading training courses, OSPR may request documentation that their qualifications reasonably meet the standards described in this provision. OSPR has clarified this*

*by adding section 830.5(b)(2) to the proposed regulations. The perceived dearth of competent trainers is mitigated by virtual training opportunities. Also, the proposed regulations allow over three years for spill management teams to obtain the required qualifications and perform the objectives at an exercise for certification. This is ample time to meet the requirements. No changes were made to the proposed regulations in response to this comment.*

Subsections (d), (f)(3), (g)(3), and (h)(5)

Recommend eliminating the HAZWOPER training requirement for response personnel that will not be actively working in the “hot zone” during an incident response. The HAZWOPER training requirement for at ALL initial responding SMT members requires broad training of staff in order for internal SMT to ensure staff availability at any point during course of business due to staff turnover, vacation, business operation responsibilities, etc. Such requirements should be narrowed to relevant positions. Furthermore, it is unclear whether CCR Title 8 applies to individuals working in the Incident Command Post or whether guidance on this issue has been requested from Cal OSHA. Absent confirmation that a sweeping time-consuming requirement of this nature is necessary, recommend removal of the training mandate in favor of a more general statement requiring SMT personnel be trained to a level that meets Cal OSHA rules and regulations. [Commenters 3g; 5b; 13i]

*OSPR Response: 830.5(d) does not require HAZWOPER for all spill management personnel; only one position is required to have HAZWOPER. These regulations require whatever safety training is appropriate, by law, based on an individual’s position, function, and exposure responding to a spill. The proposed regulations specify that one member of each SMT to have HAZWOPER Incident Commander/On-scene Manager training (sections 830.5(f)(3), (g)(3), (h)(5)). This training is identified as a requirement because it includes key competencies: capability of implementing a contingency plan, and knowledge of local, state, and federal plans, as well as employee safety and personal protective equipment utilization (described in Title 8 CCR subsection 5192(q)(6)(E)). This knowledge is crucial for commencing a safe and effective response. The other positions are only required to have HAZWOPER if required by law. However, to improve clarity, OSPR has revised subsection 830.5(d) to state that safety training is only required if otherwise required by the applicable law. In addition, references to 830.5(d) have been removed from other sections referring to training requirements to mitigate confusion regarding whether the provision establishes specific safety training requirements. The changes will be noticed to the public for a 15-day comment period. Note, later in the rulemaking, during the third 15-day public comment period, the provisions specifying the requirement for HAZWOPER Incident Commander/On-Scene Manager were removed because existing regulations require incident commanders assuming control of operations to stop and contain an oil spill to have HAZWOPER training. Spill management teams are required to include an incident commander, so this training is addressed by subsection 830.5(d), which requires spill management personnel to have all health and safety training required by law.*

*References to subsection 830.5(d) were also reinstated because the omission led to clarity issues regarding whether and when spill management personnel are required to have health and safety training.*

#### Subsections (e) and (i)

The requirement that spill management team personnel fill their ICS position(s) at a spill or exercise in California at least once every three calendar years is counterproductive. Instead, the requirements should be prescribed in regulations that SMT members maintain their training and qualifications to meet the objectives found in §830.3(e) and §820.01. [Commenter 7i]

*OSPR Response: OSPR accepts this comment. The requirement for SMT personnel to perform their positions in California once every three years was included because some oil spill response protocols and organizational structures are unique to the state, and personnel must practice within these structures to ensure that they are prepared to respond to spills in California. This comment references an earlier draft of the regulations shared during pre-rulemaking activities, and received by OSPR at that time. In response to the comment at that time, OSPR added a provision to the originally proposed regulations clarifying that this requirement only applies to the minimum number of required personnel (subsection 830.5(i)(5)). This means that a Tier I spill management team must ensure that 12 personnel participate in spill responses or exercises in California every three years, regardless of the total number of personnel included on the spill management team nationally or globally. Later, during the second 15-day comment period, changes were made to similar language at 830.5(e)(3).*

#### Subsection (e)(2)

The requirement for 8-hours of refresher training, review or experience each calendar year, in combination with the rest of the newly required training and OSPR drill objectives, seems excessive and should be eliminated for all initial response personnel. Suggest an alternative option to consider would be for an 8-hour refresher training every 3 years in alignment with the drill cycle. [Commenters 4f; 13g]

*OSPR Response: OSPR rejects these comments. The annual refresher training requirement was included for the purpose of ensuring that personnel retain familiarity with ICS. Participation in formal training courses, exercise participation, and informal review of the incident command system may fulfill the requirement for refresher training. The regulations provide flexibility by allowing SMTs to determine how best to ensure that personnel engage with ICS, and by stipulating that the refresher training can be accomplished in increments throughout the year. OSPR believes that annual engagement with ICS is essential to maintaining the capability of personnel to competently perform ICS positions. No changes were made to the proposed regulations in response to these comments.*

#### Subsections (e)(2) and (3)

It is not uncommon for companies to utilize internal/external staff with spill response management expertise that may be based in other states. Request the experience

and skill set developed at a training session in another state count towards the requirements of this section. This would align with OSPR's existing practice of allowing credit for out of state drills. [Commenter 13j]

AB 1197 does not stipulate any of the training and exercise requirements must be completed within California. Credit should be given for spill and exercise participation outside California. Documentation that the role filled on a spill or exercise outside California meets that of the California SMT position should be sufficient. [Commenter 8c]

Various elements of the regulation preclude the ability of highly skilled and knowledgeable individuals from serving in a leadership capacity during an incident response by mandating training be done in California as a condition of being certified. Given that ICS is the nationwide standard for training, exercises conducted in other regions translate equitably to the skills and training required in California. OSPR should modify the draft regulation to allow training and incident exercise participation completed outside of the state be counted towards an individual's certification qualifications. [Commenter 5d]

*OSPR Response: The proposed regulations do not prevent an SMT from maintaining a global stable of personnel. The proposed regulations also allow for training and experience outside of California. However, the certification exercise must take place in California, in accordance with AB 1197's provision that OSPR must observe the spill management team's performance in California before issuing a certification (Government Code section 8670.32(c)). Although SMTs must exercise their positions in California once every three years, practically speaking this in-state requirement only applies to the minimum number of personnel who participate in the certification exercise. All other training and experience may be conducted outside of California. In response to these comments, however, OSPR has removed the specification that spill responses or exercise participation must take place in California to be counted toward ICS refresher requirements (830.5(e)(2) and (i)(4)). The changes will be noticed to the public for a 15-day comment period.*

Subsection (f)(2)

By mandating ICS-300 training for specified individuals, this section essentially imposes duplicative training for individuals that have received training in the ICS-320 course. For purposes of achieving administrative efficiencies we recommend this section be modified to allow compliance flexibility through completion of the ICS-300 **or** ICS-320 course. This would acknowledge that ICS 320 encompasses all the foundational aspects of ICS 300. [Commenters 5i; 13k]

*OSPR Response: OSPR rejects this comment. ICS-320 builds upon ICS-300 and is not an adequate substitute for the detailed instruction of ICS and the planning process that is presented in ICS-300. No changes were made to the proposed regulations in response to this comment.*

### Subsection (i)(2)

This language is unclear as to whether SMT certification applicants will be required to, during SMT certification process, provide documentation in support of the requirement identified in the regulation, and if so, what form of documentation will be required. [Commenters 3h; 13]

*OSPR Response: OSPR rejects this comment. The comment does not pertain to the language provided in 830.5(i)(2). Training records will be requested during verification (830.7(b)(2)). The process described in the proposed regulations that includes OSPR requesting documentation of training and experience during verification rather than at the time of application submission was designed this way in response to multiple requests from industry during pre-rulemaking activities. No changes were made to the proposed regulations in response to this comment.*

### Subsection (i)(2)

Requiring all plan holders use a PQS equivalent to the type of training utilized by FEMA is overly burdensome and unnecessary given that the regulation provides for extensive training requirements already. [Commenter 5]

*OSPR Response: OSPR rejects this comment. The proposed regulations are clear that SMTs are not required to use the FEMA national qualification system (NQS) position task books, but they should achieve the behaviors and competencies as described in the FEMA task books or an equivalent system used by a spill management team. Completing a position qualification system (PQS) such as FEMA's includes specific training courses as well as completion of a position task in which tasks completed at an exercise or response and approved by a verifying officer. The proposed regulations do not include all of the courses that are required for completion of the FEMA NQS, nor do they require completion of a position task book, which would require participation in several exercises and/or responses to complete every task in the presence of a verifying officer. Rather than requiring the completion of a position task book, the proposed regulations only require personnel to be capable of independently performing the behaviors and tasks listed in the task book associated with their positions. No changes were made to the proposed regulations in response to this comment. Note, later in the rulemaking, during the third 15-day public comment period, the reference to the FEMA task books was replaced with a reference to the major responsibilities associated with each position in the United States Coast Guard's Incident Management Handbook to resolve a clarity issue regarding the definition of an "equivalent task book."*

### Subsection (i)(3)

The requirement that all cascading response personnel complete both ICS 700 and 800 is excessive particularly for individuals providing assistance with a Tier III event. IS-700 training is generally not relevant for cascading personnel assisting with incident response in Tier III areas. Recommend requiring at least 1 member of the response team has undergone the training rather than all. ICS 800 course is generally not relevant for cascading personnel. This specific training can add up to

an addition 3 hours in training obligations on top of the significant requirement already proposed. [Commenters 5k; 13m]

*OSPR Response: OSPR rejects these comments. According to the NIMS Training Program, IS-700 and IS-800 are prerequisites to ICS-300, which is required of all cascading response personnel. IS-700, An Introduction to the National Incident Management System, introduces the key concepts and principles underlying NIMS. IS-800 includes principles and concepts to integrate private sector and government response efforts. Both courses are available for free online and take approximately two to three hours to complete. No changes were made to the proposed regulations in response to these comments.*

#### Subsection (i)(4)

Reduce mandated hours for the NIMS ICS refresher training for Cascading Response Personnel from 16 hours annually to eight hours. [Commenters 2d; 3i; 4g; 5c; 8d; 9e; 13n]

*OSPR Response: OSPR accepts the comment asserting that a 16-hour requirement for cascading response personnel refresher training does not have a solid basis in the NIMS framework or in the practices of the federal agencies whose training programs OSPR has used as a template for the requirements in the proposed regulations (FEMA, USCG). OSPR has made edits at subsection 830.5(i)(4) reducing the annual refresher requirement for cascading response personnel from 16 to eight hours. The change will be noticed to the public for a 15-day comment period.*

#### Subsection (j)(1)

Incident Commanders should be trained to the highest level of proficiency, however, requiring 70 hours of exercise, drill, and training requirements is burdensome and brings excessive costs and resource drains to Tier I contingency plan holders. OSPR should also clarify how it will treat a position when a company experiences turnover of personnel responsible for the Incident Commander position. [Commenters 3j; 13o]

*OSPR Response: Seventy hours of training does not seem to be an inordinate amount of time spent in training for individuals responsible for filling the lead ICS position for a reasonable worst-case size spill. If a spill management team experiences changes that render it unable to respond as certified, they must notify the Administrator, as described in section 830.9. However, for clarification, OSPR has made edits in section 830.9(c) regarding changes in personnel; OSPR does not need notice of mere changes in names, however notice of changes of position capability must be provided. The change will be noticed to the public for a 15-day comment period.*

#### Subsection (j)(1)(A)

Given that many industry personnel involved in assisting with a spill response are not full-time responders, 400 level ICS courses or (sp.) cascading personnel is

excessive. Request that OSPR delete the requirement for such courses in all situations or Tier levels (i.e., Tier III). [Commenter 13b]

*OSPR Response: OSPR rejects this comment. ICS-400, Advanced ICS, is only required for Tier I Incident Commanders because it is critical for personnel performing the lead position on behalf of the responsible party to have an advanced knowledge of ICS for a reasonable worst-case size spill. No changes were made to the proposed regulations in response to this comment.*

Subsections (j) and (k)

Throughout the SMT Draft Regulatory Language, credit is given for “an exercise simulating a response”. WSPA requests that experience gained from participation in an actual incident response team be credited as well. [Commenter 13s]

*OSPR Response: OSPR accepts this comment. While the comment is unclear, it appears to be referring to the exercise participation required for cascading response personnel who become qualified through a combination of training courses and exercise participation. OSPR has made adjustments to the proposed regulations throughout 830.5(j) and (k) to allow for participation in actual incident responses to be credited as an alternative to the exercise participation in addition to completion of training courses. The changes will be noticed to the public for a 15-day comment period.*

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

Many of the objectives stated in the proposed regulation can be achieved with intermediate ICS level training of 300/320. The type of advanced position specific training being proposed significantly exceeds the regulation’s stated objectives, therefore making it unnecessary to mandate. We encourage OSPR to revise the proposed training requirements in a manner that are more appropriately tailored to the regulation’s primary objectives. [Commenter 5a]

*OSPR Response: OSPR rejects this comment. Government Code section 8670.32(j) instructs OSPR to establish standards both for training and for exercise objectives. The training requirements are not merely a means to achieving the exercise objectives; having trained and qualified personnel is an end unto itself. As discussed elsewhere, the training requirements are based on NIMS training requirements, with several courses removed that OSPR deemed not applicable to spill management teams representing a plan holder. No changes have been made to the proposed regulations in response to this comment.*

General Comments to Section 830.5

Recommend providing the ability for individuals meeting the training requirements for a specific position for a Tier 1 SMT, automatically meet and be certified for the same Tier 2 position. [Commenters 3c; 6i]

*OSPR Response: According to the criteria included in the proposed regulations, a Tier I member, by definition, meets the Tier II requirements for the same ICS*

*position. No changes have been made to the proposed regulations in response to this comment.*

The regulation requires many varied courses by position which for all practical purposes appear inaccessible in California. It requires courses that are not entirely relevant to the competencies of individual positions, and are required in a time frame much too short, particularly given the current COVID-19 pandemic environment. Traveling out of state for weeklong training programs would be a significant departure from our past training practices and adds un-necessary expense. [Commenters 3a; 6a]

*OSPR Response: OSPR accepts these comments and have revised the proposed regulations to specify that virtual training courses are permissible. This adjustment allows more flexibility for SMTs to achieve required training under restrictions imposed by Covid-19, and it obviates concerns about courses being inaccessible in California. The proposed regulations require SMTs to achieve training requirements by December 31 of the third full calendar after obtaining an interim certification – so teams have at least three full years to accomplish the required courses. OSPR believes that this is a sufficient time frame, particularly with the allowance for virtual courses. The changes will be noticed to the public for a 15-day comment period.*

Although we understand there is a need for a Public Information representative during a response, for legal reasons, including potential conflict of interest between the legal role of the Qualified Individual (QI) and plan holder interests, QI's do not have the authority to fill that position for their clients. The PIO role is the responsibility of the plan holder who typically uses their internal business public affairs personnel or a public affairs-specific contractor. Therefore, as the proposed regulation is currently written, contracted SMT providers such as GMS, which cover thousands of vessels calling California and additionally support California facilities, pipelines, and railroads, will not be able to gain SMT certification. We recommend that the APIO piece of the regulations is removed. [Commenter 8e]

*OSPR Response: The commenter previously submitted this comment during pre-rulemaking activities, and in response, OSPR added a provision stating that contracted SMTs can apply for certification as a full team without providing an Assistant PIO. However, although this exemption is stated on page 4 of Form DFW 1006 Application for Certification of External Spill Management Team (new 07/13/20), the provision was inadvertently dropped from the text of the proposed regulations when the section describing application content was moved onto the application forms. OSPR has corrected this oversight by adding text at section 830.4(b). However, the Assistant PIO position must be accounted for in each plan holder's certified SMT, so plan holders contracting with external SMTs that do not include an Assistant PIO must account for the position, and alternates, if applicable, on the Form DFW 1005 Application for Certification of Plan Holder Spill Management Team (new 07/14/20). These regulations do not require a plan holder to develop an internal PIO position if this role will be filled by contracted public affairs personnel; however, those contracted personnel must meet the minimum*



*training and qualifications specified in these regulations for Assistant Public Affairs Officer. The changes will be noticed to the public for a 15-day comment period.*

OSPR may be supportive (of) operators working together to schedule the training courses and organizing to host courses for industry. The issue with this approach is that many of the Tier 1 companies are large or considered majors and have their own bespoke training programs and are very unlikely to join in. This may leave the smaller Tier I companies in a unique situation to bear the costs of meeting the requirements at its own without a coalition. [Commenter 6e]

*OSPR Response: OSPR is not aware of any obstructions to cooperation among the regulated community imposed by the proposed regulations, and the commenter did not provide enough information for OSPR to respond to this comment in depth. However, in response to several comments, OSPR has adjusted the criteria in the proposed regulations to allow for virtual training courses. The removal of in-person training requirements should mitigate the commenter's concern about their company being unable to collaborate with others in the regulated community to achieve required training courses. The changes will be noticed to the public for a 15-day comment period.*

With training and travel expenses (and not counting lost time of staff in key roles), we believe it could be in the range of \$100,000 to implement the regulation for an in-house SMT. On-going costs could be \$25,000 - \$50,000 per year if we don't experience staff turnover. [Commenter 6b]

*OSPR Response: OSPR cannot evaluate this comment because the commenter does not provide supporting calculations or data upon which these estimates are based. In particular, it is difficult to understand how the proposed regulations will impose training costs of \$25,000 to \$50,000 after initial implementation. The only requirements that must be fulfilled annually are the ICS refresher training and any health and safety training refreshers already required by other laws. The proposed regulations are flexible with respect to achieving the ICS refresher. The refresher requirements can be satisfied by participation in formal training courses and exercises conducted in pursuance of the proposed regulations or other regulations such as 14 CCR 820.01-820.02 (Drills and Exercises) or informal review and engagement with ICS. Refresher training may be accomplished in increments throughout the course of the year totaling eight hours. The proposed regulations specify that one team member must have HAZWOPER Incident Commander/On-Scene Manager and the annual refresher. Because these are the only annual requirements in the proposed regulations, OSPR would need more information to respond further. No changes have been made to the proposed regulations in response to this comment. Note, later in the rulemaking, during the third 15-day public comment period, provisions specifying the requirement for HAZWOPER Incident Commander/On-Scene Manager were removed because existing regulations require incident commanders assuming control of operations to stop and contain an oil spill to have HAZWOPER training (Title 8 CCR subsection 5192(q)(6)(E)). Spill management teams are required to include an incident*

*commander, so this training is addressed by subsection 830.5(d), which requires spill management personnel to have all health and safety training required by law.*

To the greatest extent possible, course requirements should be free, virtual, if required in person, offered by numerous training companies, on a frequent basis (monthly) and be available locally in Bakersfield and Los Angeles. And offered during COVID-19 with social distancing and protective measures. [Commenter 6d]

*OSPR Response: OSPR rejects this comment. OSPR does not have the authority to make training courses local or free. However, there are many courses that are already offered for free online, thus making them effectively “local.” Training courses are taught by experts and require time, expertise, and other resources to design and implement, so it is not reasonable to expect all trainers to provide training for free. No changes have been made to the proposed regulations in response to this comment.*

Propose that OSPR implement training requirements modeled after California’s SEMS training requirements found in Title 19 CCR with regulatory language similar to the following: “Certified spill management teams shall ensure that their response personnel can demonstrate and perform to the objectives identified in §830.3(e) and §820.01.” This approach is consistent with OSPR unannounced drill program that was generated just a few years ago and would move the emphasis away from training and toward objectives based regulations. Such language would provide clarity and focus for SMTs. [Commenter 7f]

*OSPR Response: OSPR rejects this comment. The regulation suggested by the commenter as a model for training requirements in the proposed regulations describes requirements for agencies participating in interagency coordination under the Standardized Emergency Management System (SEMS). SEMS centers upon four components: interagency coordination, mutual aid, coordination at the operational area (county) level, and the incident command system. The SEMS framework is based upon the idea that incidents begin locally and are thus managed from the county/operational area level, with coordination and resources supplied at a regional or statewide level when local response capabilities are exceeded. However, oil spill responses in California are managed at the state level by OSPR. The SEMS model applies to local and state agencies for all-hazards responses and is not relevant for spill management teams representing a responsible party in an oil spill response. See further discussion within the Final Statement of Reasons at V. Reasonable Alternatives to the Proposed Regulation and Reasons for Rejecting Those Alternatives. OSPR declines to use the suggested language describing agency training requirements under SEMS as a model for SMT training requirements. No changes have been made to the proposed regulations in response to this comment.*

Propose that training for the Incident Commander, Command and General Staff should be limited to ICS-200 and ICS-800. [Commenter 7m]

*OSPR Response: OSPR rejects this comment. IS-200 ‘Basic Incident Command System for Initial Response’ is a four-hour online course, and IS-800 ‘An*

*Introduction to the National Response Framework' is a three-hour course. OSPR rejects the suggestion that the two introductory courses suggested by the commenter, totaling seven hours of online training, would qualify personnel to perform command and general staff positions in a spill response in California. No changes have been made to the proposed regulations in response to this comment.*

OSPR, as part of the requirement found in CA Gov §8670.8(a), should strive to increase spill training availability in California including maintaining a listing of available ICS position training. [Commenter 7n]

*OSPR Response: OSPR rejects this comment. OSPR does provide training relevant to spills, such as Environmental Response to Oil Spills (EROS) and volunteer training. However, OSPR is not required to provide training that would enable SMTs to be certified and thus qualifying them to provide services to plan holders. The maintenance of a training database is outside of the scope of OSPR's duties. No changes have been made to the proposed regulations in response to this comment.*

Five operational periods on a spill response sufficient to classify as Tier I should be sufficient to meet the experience requirement. [Commenter 7o]

*OSPR Response: This comment references an earlier draft of the regulations shared during pre-rulemaking activities (specifically subsection 830.3(d)(3)(A)1.ii.) which specified 10 operational periods of equivalent experience for Tier I cascading response personnel. To avoid ambiguity, OSPR changed the units used to quantify qualifying experience from operational periods to hours. Use of hours is a more objective standard than operational periods or work shifts. No changes have been made to the proposed regulations in response to this comment.*

The proposed training requirements are overly prescriptive. Not even CAL FIRE or OES have such regulations. In fact, we could not locate any other states imposing such burdensome ICS training requirements on the private sector. [Commenter 7j]

*OSPR Response: OSPR rejects this comment as not relevant. California OES does not regulate industry and CalFire does not have a statutory directive to set criteria for certifying an SMT. The commenter is not specific about which training requirements are prescriptive.*

For those that have received all the prescribed ICS position training they would then need to participate in their position on a drill simulating a largest reasonable worst case spill. This standard is not practicable. We are unsure why the spill volume of 600 bbls (for Tier 1) or even a potential spill volume of the largest reasonable worst case spill was not considered. This should be sufficient to meet minimum qualifications. [Commenter 7h]

*OSPR Response: OSPR partially accepts and partially rejects this comment. Government Code section 8670.29(b)(8)(A) requires plan holders to identify an SMT capable of managing a spill of their RWCS volume. SMTs for Tier I plan holders should be familiar with exercising scenarios involving spill volumes equal to or greater than the volumes required by these regulations. OSPR's Tier I plan*

holders are also regulated by one or more federal agencies that require exercise scenarios involving worst-case discharge volumes (WCD) (e.g., USCG, US EPA, Pipeline and Hazardous Materials Safety Administration, Bureau of Safety and Environmental Enforcement). Because of the definitions of WCD and RWCS and jurisdictional patterns of overlap, federal WCD volumes are equal to or greater than OSPR RWCS volumes in all cases. Therefore, SMTs representing vessels or facilities with large federal WCDs should have experience exercising scenarios featuring substantial volumes of spilled oil.

*This comment references an earlier draft of the regulations shared during pre-rulemaking activities and received by OSPR at that time. In response, OSPR added a cap of 78,125 barrels to the original express terms of the regulations. However, in response to the resubmission of this comment in the formal 45-day comment period, OSPR has adjusted the proposed regulations again to clarify that the exercise must simulate a response to an incident for which the RWCS volume is spilled or is imminently threatened to spill. Additionally, OSPR has reduced the largest exercise volume to be tested from 78,125 barrels down to 31,250 barrels. This revised amount corresponds to the 24-hour requirement for recovery rates in high-volume ports (ref. subsections 817.02(d)(3)(B) and 818.02(e)(3)(B)). The changes will be noticed to the public for a 15-day comment period.*

BNSF respectfully recommends that OSPR coordinate promulgation of these industry plan holder AHJ SMTs rules with CAL OES - California Specialized Training Institute, as necessary, realizing NIMS ICS training requirements for industry plan holders may be or should be different than state or federal agency groups in California.

[Commenter 2c]

*OSPR Response: This comment does not specify the requirements to which the commenter objects. OSPR acknowledges that some of the NIMS training requirements exceed what might be necessary and attainable for SMTs representing a plan holder in California. Accordingly, OSPR's proposed training requirements for SMTs are significantly less than the NIMS requirements for typed incident management personnel. For example, the NIMS training requirements include some courses that are more appropriate for agency personnel, such as emergency operations center-specific courses, that are not included in the proposed regulations. Additionally, OSPR did not include specific HAZWOPER requirements for cascading response positions and reduced some of the more advanced courses cited by NIMS because they were time-intensive and difficult to obtain. OSPR reached out to the California Specialized Training Institute, and they declined to provide input since their focus is on agencies complying with SEMS and NIMS. No changes have been made to the proposed regulations in response to this comment.*

### [Section 830.6 – Exercise Objectives Required for Full Certification](#)

#### Subsection (a)

Requiring all objectives to be demonstrated at once is at odds with the way OSPR currently evaluates exercises and provides credit and precludes the ability to design

an exercise that focuses on enhancing skill sets in a specific aspect of the planning and response effort. Allowing demonstration at multiple exercises will facilitate the rotating of cascading personnel into exercises located in California over a 3-year period. Conducting a worst-case discharge exercise or one involving a spill of 78,125 barrels involves significant planning and resources and as such are only usually held once every three years. We recommend deleting the requirement that each drill must be designed around the worst-case discharge volume. OSPR should also allow plan holders to receive credit for objectives exercised at actual spill events, regardless of the spill volume. [Commenters 2e; 5l; 9d; 13p]

*OSPR Response: Although facility plan holders have not been previously required to achieve all of the Drills and Exercises program objectives at a single exercise (14 CCR 820.01-02), the requirement for vessel plan holders to complete all objectives in a single exercise has been in place since 2014, so this requirement is not without precedent in OSPR's regulations. Despite this requirement not having previously been applied to facility plan holders, almost all facilities test a reasonable worst-case spill or worst-case discharge scenario every three years, and they typically achieve all objectives in this single exercise. The requirements for vessel plans to be fully exercised every three years and the common practice of facilities testing a reasonable worst-case spill or worst-case discharge scenario every three years is precisely the reason why SMTs are allowed a full three years to achieve the objectives for certification.*

*SMTs can complete the required objectives during a plan holder exercise (pursuant to 14 CCR 820.01 and 820.02), such as a triennial vessel exercise or a facility RWCS volume scenario, so additional exercises will be conducted only if SMTs opt to do so. After achieving a full certification, an SMT does not have to achieve the objectives again for another three years. Therefore, these regulations do not require every exercise to involve a RWCS volume scenario. To make compliance with these regulations even more achievable, the proposed regulations have been revised to reduce the maximum exercise scenario volume from 78,125 to 31,250 barrels and allow for scenarios in which that volume is threatened to spill.*

*OSPR agrees that responses to actual spills should be eligible for credit for performing certification objectives, even if the response is to a spill of a lesser volume than the applicable RWCS volume. The criteria for credit for responses to actual spills have been added to the proposed regulations at section 830.6(a)(4). Changes in response to these comments will be noticed for a 15-day comment period.*

#### Subsection (b)(3)(B)

As drafted the regulation will require GIS team activation for every response which may be appropriate in larger events, but not minor ones. Recommend OSPR modify this subsection by allowing alternative methods of sharing data with OSPR such as allowing a response company to have in place a data sharing agreement within 24 hours of an initial response. Concerning the requirement to provide "cloud-based, on-site" data storage is not standard practice to provide physical on-site storage and

backup in the case of an event. This is generally limited to instances where network performance makes cloud data access impossible. Recommend the on-site requirement be deleted. [Commenter 5m]

*OSPR Response: OSPR accepts this comment and has modified the regulation to allow for posting information either at the command post or virtually. The regulation has also been modified to allow either on-site data storage or online data storage. It is important to note that the proposed regulations describe standards for SMT capabilities listed in contingency plans, but they do not prescribe which resources must be deployed in a response. Therefore, GIS teams do not need to activate to every incident, but data that are collected must be made available to those persons filling roles within the incident command during the response, and to each Incident Commander/On-scene Coordinator after the spill is over. OSPR doubts that a requirement for a responsible party to come to an agreement with state and federal on-scene coordinators in the first 24 hours would be tenable, as these regulations do not apply to state or federal on-scene coordinators. Instead, SMTs must be capable of storing data in a format that can be made accessible to state and federal on-scene coordinators. The changes will be noticed to the public for a 15-day comment period.*

#### General Comments to Section 830.6

Since achieving the exercise objectives of §820.01 and §820.02 is already required for plan holder exercise credit, then by doing so an SMT has achieved sufficient objectives to be a certified SMT. All of the proposed tasks are or can be incorporated within the existing drill and exercise regulations with the following statement and reference incorporated within the SMT regulations: “To initially receive a certification and then maintain certification, the spill management team must demonstrate the ability to ensure all the objectives of §820.01 and/or §820.02 depending upon the plan holder’s classification, are completed during an exercise or an incident in which the reasonable worst case spill volume is released or is at risk of being released, as appropriate, to be verified by the Administrator at a spill or announced exercise in California.” [Commenter 8f]

*OSPR Response: OSPR rejects this comment. OSPR’s Drills and Exercises program is aimed at exercising and verifying components of a contingency plan, while the objectives in the proposed SMT regulations are intended to verify that spill management personnel can achieve key response management actions within the first 24 hours. Although there is some overlap between required contingency plan and SMT exercise objectives, the SMT objectives include aspects not included in the contingency plan regulations, such as requirements to achieve objectives within specific time frames. The two sets of objectives do not conflict, so exercises of contingency plans can be combined with exercises for SMT certification. No changes have been made to the proposed regulations in response to this comment.*

## Section 830.7 – Exercise Objectives Required for Full Certification

### Subsection (a)(2)

No reference is made to a certification application for combination of in-house and contracted personnel, pursuant to §830.1(a)(3). Request this language be modified to account for a combined in-house/contracted spill management team. [Commenter 13q]

*OSPR Response: OSPR accepts this comment and has made clarifying revisions at 830.7(a)(1) and (2). The Form DFW 1005 Application for Plan Holder Spill Management Team Certification (new 07/14/20) was designed to accommodate combinations of in-house and contracted personnel. The changes will be noticed to the public for a 15-day comment period.*

### Subsection (b)(1)

The language is unclear as to whether the unannounced drill can be satisfied by an unannounced drill held as a condition of separate regulatory requirements, or whether the unannounced drill referenced would be additive. We recommend this section be modified to harmonize this requirement with other existing regulatory obligations in order to avoid redundancy and create efficiencies for both the agency and the operator. [Commenter 5n]

*OSPR Response: OSPR will conduct unannounced exercises for the specific purpose of verifying the ability of SMT personnel to arrive on scene to meet the requirements of section 830.4. The goal of unannounced exercises held under these guidelines is to demonstrate the ability of an SMT to mobilize in accordance with certifications for which it applies. The goals of non-OSPR unannounced exercise programs do not explicitly address these capabilities, so they would not be appropriate substitutes for the unannounced exercises conducted to verify on-scene capabilities. OSPR has not made any revisions to the existing proposed regulations in response to this comment.*

### Subsection (b)(2)

180 days to submit a training plan once an application is submitted is not adequate. Recommend instead a timeframe of the first calendar year of the 3-year compliance period to submit a training plan. [Commenters 3e; 6k]

*OSPR Response: OSPR rejects this comment. Once these regulations are effective, SMTs will have 90 days to apply for certification, plus an additional 15 days to submit a training plan after the Administrator requests documentation of training, as described in subsection 830.7(b)(2). The plan should identify the courses needed, but it is not required to specify which courses have been completed or specific enrollment dates. No changes have been made to the proposed regulations in response to this comment.*



#### Subsection (f)

The process laid out in (2) of this section is overly burdensome and designed to deter operators from claiming confidentiality based on the sheer volume of validation and justification that would be required. We recommend OSPR revise the language to allow operators to simply submit a justification without the prescriptive requirements proposed, and to give the agency the discretion to determine whether there is merit to the request. [Commenter 5o]

*OSPR Response: This comment is an attempt to burden-shift identification of what information is truly confidential. The confidentiality provisions are designed to require legitimate assertions of protection from disclosure. The commenter's recommendation to allow wholesale claims of confidentiality would put OSPR in the position of deciding for the applicant what is trade secret or other category of protection for specific instances of information. The burden of asserting a privilege of confidentiality is on the person claiming it. Allowing the applicant to simply declare its entire application is "confidential" defeats the legislative intent of the California Public Records Act. The confidentiality provisions of 830.7(f) strike a balance between public access to a record within the possession of a state agency, which is presumed to be a "public record," and protecting from disclosure truly confidential information based on a legitimate legal justification. No changes have been made to the proposed regulations in response to this comment.*

#### [Section 830.8 – Certification Revision Requests, Renewals, and Updates](#)

##### Subsection (c)

The 30 day requirement for filing non-substantive changes (i.e. personnel names for select roles) could result in having to file multiple administrative filings annually. For administrative efficiency purposes on the part of the applicant as well as OSPR, we recommend revising the requirement to allow companies to update their certifications on an annual basis, or at most twice a year, for non-substantive changes.

[Commenter 5p]

*OSPR Response: OSPR rejects this comment. SMTs must notify the Administrator of updates to information listed on an application that do not affect its ability to respond according to its the tier requirements. Because the names of personnel are not requested on the application forms, the proposed regulations do not require SMTs to update OSPR with new personnel names. SMTs are required to maintain a list of personnel to be made available to the Administrator upon request (subsection 830.4(d)). No changes have been made to the proposed regulations in response to this comment.*

[Section 830.9 – Significant Change in Spill Management Team Resources.](#) No comments were received during the 45-day public comment period.



## Section 830.10 – Certification Modification, Suspension, or Revocation

### Subsection (a)(1)

It is requested that the word “material” be added (so as to be “other *material* deficiencies”) and that OSPR insert and define either the term “immaterial” or “de minimis” and provide additional clarity by stating that an “immaterial” or “de minimis” deficiency would not trigger modification. [Commenter 13r]

*OSPR Response: OSPR accepts this comment and has changed the language from “other deficiencies” to “significant changes.” This revision ties the concept of reductions of service to section 830.9 which specifically addresses this topic. The changes will be noticed to the public for a 15-day comment period.*

*Section 830.11 – Reconsideration and Hearing Procedures. No comments were received during the 45-day public comment period.*

### Non-Specific Comments

While the proposed regulations include all the AB 1197 parameters, they fail to meet the overall spirit of the requirement: realistic, achievable minimum experience and training standards with application to incident management. Rather the proposed regulations include some overly prescriptive, non-cost effective versus value-added requirements. We urge OSPR to adhere to the requirements of AB 1197 and Best Response goals and avoid being too prescriptive in this regard. [Commenter 8a]

*OSPR Response: The commenter is not specific with respect to which aspect of the proposed regulations are deemed to be overly prescriptive and non-cost effective. Therefore, OSPR cannot provide a detailed response to this comment. No changes have been made to the proposed regulations in response to this comment.*

The draft regulations would eliminate legitimate, capable independent SMT providers. We are unaware of any SMT provider that would qualify as a certified SMT if the training requirements proposed by these regulations were implemented. We doubt that even OSPR has sufficiently trained personnel to qualify as an SMT under these proposed regulations. [Commenter 7e]

*OSPR Response: OSPR rejects this comment. OSPR does not agree that the proposed regulations will eliminate capable providers. The regulations are not yet in effect, and SMTs can achieve the requirements through training and/or experience managing real responses over the course of three years. Additionally, these regulations do not apply to OSPR. They apply to vessels and facilities, and persons offering SMT services to plan holders, not to public agencies. OSPR does not provide SMT services; however, OSPR employees are appropriately trained for the roles they would fulfill during response. No changes have been made to the proposed regulations in response to this comment.*

We find the proposed regulations problematic and lacking in consideration of the effects of the COVID-19 pandemic to responses, training and exercises in 2020. A

requirement for in-person instruction is unnecessary, impossible to meet, and unsafe. [Commenter 7a]

*OSPR Response: The proposed regulations allow a period of at least three years to accomplish training and the certification exercise. In response to this and similar comments, the regulations have been revised to allow virtual training courses. If three years from now Covid-19 is still an impediment to in-person activities, OSPR will issue guidance on conducting exercises that will meet the requirements for SMT certification. No changes have been made to the proposed regulations in response to this comment.*

The regulations do not allow for OSRO personnel to occupy the positions of Safety Officer or Operations Section Chief during the initial response even though these are functions most often performed by OSRO personnel during the first 24 hours. Propose this be permitted, however require the SMT to ensure the objectives found in the regulations are met. [Commenter 7k]

*OSPR Response: OSPR rejects this comment. There are no provisions within the proposed regulations that restrict this. Oil spill response organizations (OSROs) can be listed in contingency plans as supplying personnel to fulfill these positions if they obtain a commensurate level of certification for these positions. No changes have been made to the proposed regulations in response to this comment.*

The on-scene and training requirements for initial and cascading personnel is considerable for small marine facilities and MTUs. The proposed regulations may result in many facilities disbanding their internal SMTs in favor of contracted SMTs which in turn may reduce the overall response capability of Plan Holders. In addition, it may lead to certified SMTs being contracted as SMTs for multiple facilities in different locations which may lead to conflict during an actual spill response.

[Commenter 11b]

*OSPR Response: OSPR's intent is to establish appropriate standards for SMTs in California, not to encourage the disbanding of internal SMTs. Although the criteria for SMT certification may exceed the levels of qualification currently achieved by a plan holder's spill management personnel, SMTs have over three years to achieve the required qualifications. OSPR expects SMTs to provide appropriate services, and in the event of multiple incidents, resources would be cascaded in to support response organizations as needed. No changes have been made to the proposed regulations in response to this comment.*

AWO appreciates that OSPR's new proposed regulation on the certification of SMTs could help ensure qualified capable, and accountable SMTs. Holding SMTs themselves accountable for complying with planning standards, instead of plan holders is an appropriate allocation of responsibility. The rulemaking aligns with the maritime transportation industry's goal of mitigating environmental impacts.

[Commenter 1a]

*OSPR Response: OSPR appreciates this comment. With these proposed regulations, OSPR has attempted to create a fair process for certifying SMTs as*

*capable of managing responses to spills of represented plan holders' RWCS volumes, as required by Government Code 8670.32, that also meets the statutory mandate that OSPR provide best achievable protection regarding oil spills. No changes have been made to the proposed regulations in response to this comment.*

AWO has concerns that this rule will impose additional costs on barge and towing vessel operators and erode the economic efficiency of California's least carbon intensive mode of transportation. Vessel operators that do not contract with external SMTs and those who use external SMTs to supplement internal SMTs will feel a direct cost increase and resource burden. These regulations will increase training cost for operators that use internal resources to perform spill management functions. [Commenter 1b]

*OSPR Response: It is not clear what inefficiencies will be created or result from these regulations, or why there will be a disadvantage. These regulations are implementing the statutory mandate for plan holders to have a competent, capable SMT (CA Gov. C. § 8670.32). As discussed elsewhere, the training requirements in the proposed regulations are based on the NIMS training requirements, with adjustments to the requirements to make them more achievable and applicable to SMTs representing a responsible party. All responders should be properly trained for the role they will perform at a spill. No changes have been made to the proposed regulations in response to this comment.*

## **Comments on Associated Rulemaking Documents**

### Notice of Proposed Rulemaking (NOPR)

The determination that the regulations will not result in costs to any state or local agency is incorrect. The regulations will require more exercises, some of which will be a worst case discharge scenario. Such exercises will be at a SONS level which will require tremendous levels of planning and participation by OSPR and other state and local agencies. This level of resources is well beyond the positions in the SMT regulations and will require multiple agencies to be involved, both as participants and evaluators. The financial and time burden to government agencies does not appear to be considered within the fiscal impact analysis. We also note that OSPR exercise personnel are currently operating at or near capacity to evaluate the current exercise requirements of §820.01 and §820.02. If extra staff <will> be required to support the additional certification exercises (SMT) and processing, OSPR's fiscal budget could be impacted. The regulations establish a new "best achievable protection" standard for response personnel in California, thus OSPR response personnel will be required to undergo additional training and documentation to meet the training and experience standards. Further, local governments who participate in exercises or actual response should be trained. The NOPR must be amended to reflect actual state and local government costs. [Commenters 7c; 8g]

*OSPR Response: OSPR partially accepts and rejects these comments and regrets that the response is rather lengthy, but feels a response to each concern presented is warranted.*

### Additional Exercises

*OSPR Response: OSPR rejects this comment. These proposed regulations do not require additional exercises. For example, both a plan holder and an SMT receive credit for a single exercise. If an SMT wishes to have additional exercises, it can. Because these regulations do not require additional exercises, OSPR does not expect there to be additional internal costs or planning workload.*

### Worst-Case Discharge Scenario

*OSPR partially accepts and partially rejects this comment. The regulations do not require a “worst-case discharge” scenario, technically a federal term [Clean Water Act, 33 U.S.C. section 1321]. These regulations require spill scenario of the reasonable worst-case spill volume (RWCS) for contingency plans in which SMTs are listed; these spill volumes are equal to or less than federal worst-case discharges for all plan types. Nevertheless, the proposed regulations have been revised to reduce the maximum scenario volume to 31,250 barrels, and the language has been adjusted to clarify that the entire volume does not have to be spilled to water in the scenario; this volume can be that which may be imminently threatened to spill. This cap has been lowered from 78,125 barrels so that SMTs offering contracted services to vessels would not be required to exercise the largest possible RWCS volume for ultra large tank vessels. The 31,250 barrel cap is considerably less than a tank vessel’s RWCS volume, which at 25% of the total oil cargo is at least 100,000 barrels for even the smallest classes of tank vessels. The reduction in volume will be noticed for a 15-day comment period.*

### SONS level exercises

*OSPR rejects this comment. A SONS-size exercise is not required by the proposed regulations. The National Contingency Plan defines a Spill of National Significance (SONS) as a spill that, due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge (40 CFR section 300.5). Only one actual SONS has ever been declared, Deepwater Horizon in 2010 (USCG Statement to Congress 2015/04/22). The cap of 78,125 barrels included in the originally proposed regulations (which has since been reduced to 31,250 barrels) is well below common SONS exercise volumes. It does not take a “SONS”-sized scenario to accomplish the required objectives. Furthermore, the cap is not appreciably larger than volumes of oil spilled to water in recent triennial vessel exercise scenarios. OSPR reviewed ten triennial vessel exercises conducted by SMTs since 2014, and five voluntarily chose scenarios in which volumes of 30,000 barrels or more were released to water, while three involved volumes of at least 50,000 barrels being released to water.*

### Fiscal Impact

*OSPR rejects this comment. As stated earlier, because these regulations do not require additional exercises, OSPR does not expect there to be additional internal costs or planning workload. With regard to the comment that OSPR would incur additional costs associated with additional training for its personnel, these*

*regulations do not apply to OSPR since OSPR does not provide SMT services to plan holders. For the same reason, these regulations do not apply to local agencies. OSPR staff are trained at levels at or above the requirements in the proposed regulations for ICS positions that OSPR would fill at a spill response, so no new costs associated with increased training of OSPR staff are foreseen. All responders – public and private – should be appropriately trained.*

*Regarding additional OSPR staffing, the expectation of the legislation behind the SMT regulations was that the implementation would require the creation of one permanent position to manage the program. This position was filled through an internal vacancy within OSPR, and the cost has been absorbed within OSPR's existing budget. The fiscal impact statement of the STD form 399 has been revised to reflect this. If additional staff or funding is needed in the future, OSPR will take appropriate actions. Changes to the fiscal impact statement (STD 399) will be noticed to the public for a 15-day comment period.*

#### *Multiple Agency Involvement*

*With regard to multiple agency involvement, other than OSPR, no additional state or local agencies are required to participate in or evaluate SMT exercises, although OSPR hopes that SMTs continue to invite agencies that would be involved in a spill response to participate in exercises, a common practice for exercises testing reasonable worst-case or worst-case discharge volume scenarios.*

#### Economic and Fiscal Impact Statement (STD form 399)

In the Economic Impact Statement, OSPR purports to the causation between 2018 regulations and a decrease in the number and volume of oil spills. OSPR also speculates that implementation of SMT regulations will contribute to fewer spills in the future. There is no data to support either of these assertions. A statement of a causal relationship between spills and 2018 regulations needs to be supported by an analysis that examines other possible factors including long term spill trends, annual spill variability, oil prices (which have trended down since 2008, and weather events. Without a data analysis, the claims made in the Economic Impact Statement are specious. An amended Economic Impact Statement should be submitted.

[Commenter 7d]

*OSPR Response: OSPR partially accepts and partially rejects this comment. The analysis within Section C. Estimated Benefits of the STD form 399 examines data from the California Governor's Office of Emergency Services hazardous materials spill reports regarding inland oil spills to water, comparing the 21 months (September 2015 through April 2017) under the 2015 emergency "inland" regulations to the previous 38 months (July 2012 through August 2015) before the implementation of the emergency inland regulations. Normalizing the data to a 12-month period for comparative statistics, OSPR finds that while the total number of spills stays about the same (123 per year before the regulations went into effect, 135 per year after), the size of the spills became smaller: spills ranging from 100-999 gallons fell by a third (32 per year to 21 per year), spills 1,000 gallons or more dropped by half (6.3 to 2.9 per year), and that the volume of oil spilled decreased*

*from 90,000 gallons per year to 20,000 gallons per year afterwards. The commenter raises a valid point about the analysis using causal language to imply that the 2018 regulations had a direct effect on spill size and volume. These SMT regulations and the 2018 inland regulations are part of a larger scheme, and they, along with potential penalties, incentivize best practices that allow for better spill prevention and spill management, which essentially provides an indirect effect on the amount of oil released during a spill. Note: This approach to the analysis was subsequently re-visited and revised and noticed to the public for the 15-day public comment period.*

*However, OSPR disagrees with the commenter's assertion that oil prices have been trending downwards since 2008. A look at the annual pricing data shows that this has not always been the case: prices for CA Midway Sunset from 2011-2014 were above the 2008 price (2008 - \$86.92/bbl, 2011 - \$100.96/bbl, 2012 -\$103.05/bbl, 2013 -\$101.02/bbl, 2014 – \$89.34/bbl), and the decrease in oil prices seen in 2015 was followed by a period of price increases from 2016-2019 until the demand for oil crashed in 2020 due to the COVID-19 pandemic. OSPR does not believe that prices or weather events, which are generally not used for causal inference outside of agricultural and ecological analysis due to variability, would be relevant in analyzing causal effects for oil spills within the state.*

Section (D)2. summarizes the total statewide costs and benefits from this regulation and each alternative considered. This statement may not be entirely accurate given our view that these proposed regulations do in fact include specific prescriptive actions or procedures which may require increased costs to accomplish the requirements. We also are concerned that the cost/benefit analysis does not appear to utilize cost/benefit assumptions that are verifiable, accurate, and supportable. [Commenter 13t]

*OSPR Response: This comment does not provide enough specifics for OSPR to be able to provide an in-depth response. The assumptions used for the cost benefit analysis in (D)2. of the STD 399 are explained in the previous sections with data that are verifiable, including figures from the 2019 Catalyst Report (identified as a Study, Report, or Document Relied Upon in the rulemaking file) and from spill reports submitted to the California Governor's Office of Emergency Services. Because the comment is not clear with respect to what was found to be objectionable in the analysis, OSPR cannot further expand our response to this comment.*

*However, after receipt of this comment and further review, the costs were updated upon discovery of mathematical errors. Additionally, the benefits were updated based upon feedback from the Department of Finance regarding the extrapolation of benefits derived from OSPR's statewide expansion to estimate benefits of the proposed regulations. Changes to the fiscal impact statement (STD 399) will be noticed to the public for a 15-day comment period.*

## Irrelevant Comments

The following comments are considered irrelevant as they are not germane to the proposed regulations or procedures. As such, OSPR rejects these comments.

Response alone is not adequate for Best Achievable Protection (BAP). It requires identification of risks and treatment of those risks as per a process commonly called "Safety Management System or SMS". Recommend SMT be held accountable both for prevention and response following the SMS process. [Commenter 12a]

*OSPR Response: OSPR rejects this comment as not relevant and outside the scope of the function and purpose of SMTs in California. Specific sections are not identified by the commenter. Government Code section 8670.3(ad) defines an SMT as, "personnel and associated equipment that staff the organizational structure for managing some or all aspects of response, containment, and cleanup of a spill, utilizing an incident command or unified command structure." This definition outlines the general expectations for SMT responsibilities, which do not include prevention.*

Using Type 2 events as the standard for qualifying experience is not practicable. Such events are very rare and even rarer in California. Thus, only a handful of responders could use either experience during that response to qualify for positions on a certified SMT. [Commenter 7g]

*OSPR Response: OSPR rejects this comment. This comment references an earlier draft of the regulations shared during pre-rulemaking activities and received by OSPR at that time. It was subsequently revised requiring experience with incident types of lesser complexity. The comment is no longer relevant.*

The required ICS training courses found in the draft regulations beyond ICS 800 are not readily available for the public. While it might be possible to contract with a training company to secure the training, such an arrangement could potentially exceed \$100,000 just to meet the qualifications specified in the draft regulations. [Commenter 7f]

*OSPR Response: This comment references an earlier draft of the regulations shared during pre-rulemaking activities. Since this comment was originally submitted in 2019, several course requirements were removed from the proposed regulations. OSPR cannot evaluate the projected costs of training without further information from the commenter. However, OSPR notes that the regulated community was invited to provide information regarding the costs of compliance with the proposed regulations during pre-rulemaking activities. OSPR also expects that many professional spill management personnel can demonstrate their qualifications through experience acting in real responses and thus will not need to obtain additional ICS training courses. Since this comment references a defunct draft of the regulations, OSPR dismisses this comment as not relevant.*

As a plan holder, the rationale for required plan holder tabletops now seems unclear and unnecessary. The tabletops are expensive to host and take extensive resources out of operations. We think if we have a certified SMT, then it would not be necessary

to convene the exact same people to successfully pass a required Plan tabletop. If the SMT is certified, there seems to be no need for Plan holder tabletop. [Commenter 6l]

*OSPR Response: OSPR rejects this comment. As addressed above in responses to comments to section 830.6, the objectives for SMT certification exercises are not duplicative of the drills and exercises objectives and are not a substitute for those objectives. The comment seems to pertain to sections 820.01 and 820.02 rather than to the proposed regulations. Although SMTs have a requirement to accomplish a full set of objectives in a single exercise, these can be completed during a plan holder exercise, such as a triennial vessel exercise or facility RWCS exercise (see subsection 930.6(a)).*

### **Untimely Comments**

The following comments are considered untimely because they were not received during the applicable comment period. As such, OSPR summarily rejects these comments.

830.4(a)(1)(D), (a)(2)(D), (a)(3)(D) – Request OSPR insert the following language: “A plan holder may assemble a certified spill management team from personnel employed by the plan holder or by persons affiliated with the plan holder, from contracted personnel, or through a combination thereof.” [Commenter 10a.1, a.2, a.3]

830.4(c) – Presume contracted SMT keeps own list and does not need to provide to all facility/vessel plan holders. [Commenter 10b]

830.5(a)(2) – Request OSPR insert the following language (underlined): “...and Planning Section Chief shall be Interactive Virtual (e.g., Microsoft Teams) or instructor-led and in-person.” [Commenter 10c]

830.5(d) – “HAZWOPER” implies required for all positions. (d)(f)(3) requires only on Initial Response Team. Consider different example to reference. [Commenter 10d]

830.5(e)(2) & (3) – Consider adding: “Or XX hours of instruction and Technical Advice, in person for position-specific incident command system training, delivering learning objectives for ICS position.” [Commenter 10e]

830.5(i)(4) – Consider revising as follows: “All cascading response personnel shall receive 16 hours of incident command system refresher training, review, or experience each calendar year, which may be accomplished in increments over the course of the year. This may be satisfied by participating in a spill or exercise ~~in~~ California for a total of 16 hours in ICS Position.” Or x number of days in position to allow credit for out of state experience. SMTs still need to meet in state minimums. [Commenter 10f]

830.5(i)(5) – Does the total in this subsection include Initial Response Team? Example, since all 4 Initial Response Team member must complete California spill/drill within three years, does minimum in 830.4(a)(1)(D) drop to 8 for Cascaded Response Team? Request OSPR add clarification. [Commenter 10g]



830.5(m) – MSRC normally plays Group leader or on occasion Deputy at drills, but spends many hours providing training to Operations Section annually. Current regs draft gives Deputy or Assistant to leads credit for Cascaded Alternates. [Commenter 10h]

830.6(a) – To allow for contracted personnel to execute 830.6(3), consider revising as follows: “A spill management team issued an interim certification must secure a full certification by successfully completing all the objectives for the positions in which the applicant SMT is applying described in subsection (b) of this section at a single spill or a single exercise in California.” [Commenter 10i]

## **Second Comment Period**

After consideration of the comments received from the first comment period, OSPR made revisions to the proposed regulations and noticed the public with a 15-day comment period from January 16, 2021 through February 1, 2021. The following consist of comments received during that comment period.

*Sections 830.1, 830.2, and 830.3.* No comments were received during the 15-day public comment period.

### *Section 830.4 – On-Scene Requirements*

#### Subsection (a)(1)(D)

WSPA recommends the addition of a sentence specifying that for the purposes of certification, plan holders have the option of identifying a source that will fill the role either virtually, or onsite within 24 hours if necessary. [Commenter 20b]

*OSPR Response: These regulations represent a planning standard for SMTs, and they do not prescribe staffing practices for specific incidents. Although personnel are not required to mobilize to every spill, they must be capable of arriving within the required time frames when their ICS positions are activated. Therefore, SMTs must demonstrate that their personnel have the ability to arrive on-scene within the required time frames. However, OSPR has made edits at 830.1(a)(4) to further clarify that these regulations establish planning standards. The changes will be noticed to the public for a 15-day comment period.*

#### Subsection (b)

O'Brien's disagrees with contracted SMTs be exempt from being required to have the Assistant Public Information Officer (A/PIO) as a member of the team. This PH ability to call on additional resources should not mean the SMT is not expected to have a fully capable team. The external SMTs should be expected to staff the same ICS positions as any of the other SMTs. If these regulations are going to make exemptions for not needing key members of the team, then these regulations should indicate they cover Spill Management Services rather than Spill Management Teams. O'Brien's recommends removing the A/PIO exemption for external SMTs. [Commenter 19a]

*OSPR Response: OSPR agrees that SMTs must have an Assistant PIO. Although the exemption allows external teams to achieve certification without providing personnel to fill the position, any plan holder contracting with such a team must identify a different source of personnel to fill the position. The regulations do not prohibit external teams from providing personnel for the APIO position; presumably, a team providing all positions could have an advantage in competing for contracts with plan holders wishing to contract an external SMT to fulfill contingency planning requirements. No edits have been made to the regulations in response to this comment.*

### *Section 830.5 – Training and Experience Requirements*

#### Subsection (d)

Remove “all” from the Training and Experience Requirements in Draft § 830.5(d) Safety Training Requirements. [Commenter 14c]

*OSPR Response: Subsection 830.5(d) establishes that SMT personnel shall have all safety training as required by law appropriate for their position, function and exposure. OSPR does not see any reason for or benefit to removing “all” from this provision. No changes have been made in response to this comment.*

#### Subsection (e)(3) and (i)(5)

Exercise is not defined. Section 830.6 mentions a “Certification Exercise” and an “approved contingency planned exercise” (used to meet State FRP requirements). Both of these are scheduled with the State and can be used to get SMT Certification. MSRC has 3 Response Managers and 8 Response supervisors in California. If MSRC is not given the option from our customers to fill this role in an approved contingency planned exercise would MSRC have to host internal exercises with OSPR participation to meet this regulation or can MSRC host internal exercises and document exercise per § 830.6(c)(1)(B)? Consider adding to (e)(3) to: “A spill management team that draws upon a larger number of initial response personnel than the minimum number of personnel listed in 830.4(a)(1)(A) need only ensure that the minimum number of personnel comply with this requirement.” This change would be on par with cascading response personnel requirements ((i)(5)). [Commenter 18b]

*OSPR Response: OSPR accepts this comment, has made the suggested revision, and will notice the changes to the public for a 15-day comment period.*

#### Subsections (f), (g), and (h)

In the January 2021 version of the proposed SMT regulations, the HAZWOPER requirement in 830.5(d) was adjusted and all mention of CCR citation was removed. Since this section of the regulation covers all (initial and cascading team members), it is unclear why 850.5 (f)(3), (g)(3) & (h)(3) are necessary. O’Brien’s recommends eliminating (f)(3), (g)(3), & (h)(3). [Commenter 19c]

*OSPR Response: Upon further consideration of Cal-OSHA’s HAZWOPER regulations (Title 8, section 5192), OSPR notes that those regulations require incident commanders who will assume control of an incident beyond the first*

*responder awareness level to receive 24 hours of HAZWOPER Incident Commander/On-scene manager training (Title 8, subsection 5192(q)(6)(E)). This requirement applies to incident commanders under OSPR's proposed SMT regulations because emergency response includes activities undertaken to stop and contain spilled oil. SMTs must include an incident commander among the initial response personnel, and because subsection 830.5(d) requires spill management personnel to have all health and safety training as required by law, OSPR agrees that 830.5(f)(3), (g)(3), and (h)(5) are not necessary and has removed the provisions. This change does not materially alter the requirements or responsibilities of spill management teams because existing regulations require an incident commander to have this training.*

#### *Subsection (j)(1)(A)*

The new language in this section limits training credit strictly to when the SMT member drills as the specific position type. There is no credit provided when an individual may drill, or operate during a spill in a deputy role, which by definition under Incident Command Systems, must be capable of stepping into the primary role at any time. WSPA requests the following language be added at (j)(1)(A): "or as a Deputy Incident Commander". WSPA requests similar wording for each ICS position listed in section (j): "i.e., Successful participation as the Safety Officer or as an Assistant Safety Officer, etc." [Commenter 20f]

*OSPR Response: The commenter's proposed modification is consistent with that which is already in the 15-day text. For personnel using the "experience track" to establish qualifications, participation as a deputy or assistant is given equal weight as participation as lead. For the "training track," participation must be in a lead role, except for personnel demonstrating qualification as an alternate (see subsection 830.5(m)). No additional changes are made in response to this comment.*

#### *Section 830.6 – Exercise Objectives Required for Full Certification*

##### *Subsection 830.6(a)*

IMT Exercise/Spill Response Demonstration for Certification Purposes. Section 830.6(a) requires that all objectives are completed "at a single spill or a single exercise in California. Requiring the plan holder to meet the objectives within the first 16 or 24 hours of a spill makes these draft regulations unnecessarily complicated and may make SMT members focus on getting drill credits versus safely performing their assigned ICS duties on a spill. Additionally, OSPR-evaluated SMT drills don't last for 16 or 24 hours. [Commenter 14f]

*OSPR Response: If SMT personnel were to focus on achieving objectives for credit at a spill at the expense of safely performing their duties, that would be very concerning to OSPR and would suggest that the team members have not been appropriately trained. OSPR does not expect the requirement for all of the objectives described in section 830.6 to be achieved at a single spill or exercise to necessitate unconventionally long exercises. All of the objectives, including those for which SMTs must be capable of achieving within 24 hours, are within the scope*

*of current plan holder exercise outcomes because a planned exercise allows SMTs to mobilize and organize personnel and resources prior to exercise commencement. OSPR expects that SMTs have processes in place that would facilitate their ability to attain the objectives within 24 hours in a real event; these capabilities will be assessed during the application review and verification process. No changes are made to the regulations in response to this comment.*

#### Subsection (b)(3)(A)

The changes in the January 15 proposed regulations acknowledge the COP (required in (b)(3)(B), can be performed at an ICP or virtually. O'Brien's recommends adjusting (3)(A) to read, "Establish a secure incident command post **(on site or virtual)** sufficient to support initial response needs, including adequate space, equipment, supplies, and internet/cellular communications." [Commenter 19e]

*OSPR Response: While a virtual incident command post (ICP) might be appropriate for some incidents under conditions like those imposed by the Covid-19 pandemic, a virtual ICP is not acceptable as a planning standard. Permitting a virtual ICP to substitute for a physical ICP is not analogous to allowing a virtual common operating picture (COP) as a planning standard. The information contained in a COP is typically electronic-based and having a virtual COP does not differ from common practice the way that using a virtual platform departs from the standard of housing spill management personnel and support resources in a physical location. In order to meet these planning standards, SMTs must demonstrate that they are able to establish a physical ICP. No changes are made to the regulations in response to this comment.*

#### Subsection (c)(1)(A)

The examples of documentation for requesting credit do not reflect the objectives identified in (b)(1-3). The only item mentioned that would demonstrate the certification exercise objectives in (b) is the ICS-201. The remaining examples provided are misleading the reader. O'Brien's recommends removing "(e.g., ICS-201, site safety plan, waste management plan, communications plan, incident action plan, etc.)" from (c)(1)(A). [Commenter 19f]

*OSPR Response: In response to this comment, OSPR has modified the example documents provided in subsection 830.6(c)(1)(A) to better align with the objectives that must be supported by documentation. The changes will be noticed to the public for a 15-day comment period.*

#### Subsection (c)(2)(A)

The documentation to support the credit request is described in (c)(1)(A). The supporting documentation in (c)(1)(A) is reflective of Certification Exercise Objectives (b)(1-3). O'Brien's recommends (2)(A) reference the appropriate section: "(A) Within 60 calendar days after completion of the exercise or spill response for which the spill management team is requesting credit, the spill management team shall submit its name, assigned SMT number, and all supporting documentation described in (1)(**A**) above to OSPRSMT@wildlife.ca.gov." [Commenter 19g]

*OSPR Response: OSPR agrees that the precision of subsection 830.6(c)(2)(A) could be improved by the change suggested by the commenter and has made this adjustment. The changes will be noticed to the public for a 15-day comment period.*

*Sections 830.7 through 830.11.* No comments were received during the 15-day public comment period.

## **Comments on Associated Rulemaking Documents**

Economic and Fiscal Impact Statement (STD form 399)

O'Brien's disagrees and takes exception with the premise that the proposed regulations will benefit the environment and communities by reducing the amount of spilled oil. The example used in the *Addendum to Initial Statement of Reason (1-15-2011)* suggests these proposed SMT Regulations would have reduced 1% of the spilled oil in the 2015 Refugio spill. There was no documentation from the Refugio Incident or hotwash sessions that identified delays in Spill Management Team activities resulted in additional oil being spilled during the Refugio incident. The assumption that a 1-10% reduction in spilled oil will be the result of these SMT regulations is unfounded. [Commenter 19h]

*OSPR Response: OSPR accepts this comment and has revised the basis for calculating projected benefits from the proposed regulations. The changes will be noticed to the public for a 15-day comment period.*

While there might have been one new Environmental Scientist position created to address Spill Management Teams, that single position cannot accomplish all drill and exercise functions. These regulations establish new and more stringent drill requirements. As a result, there will be more oil spill exercises in California. Nowhere in the fiscal statement were OSPR's costs for planning for, participating in, or evaluating these additional exercises. In cases where a reasonable worst case discharge exercise is required by these regulations, the impacts can be substantial and involve dozens of staff. These impacts must be addressed in the Fiscal Impact Statement. [Commenter 17a]

*OSPR Response: These regulations do not require additional exercises. Both a plan holder and an SMT can equally receive credit for a single exercise. If an SMT wishes to have additional exercises, it can. However, OSPR does not expect this to be a common practice because the regulations are structured to allow SMTs to combine certification exercises with other exercises, as is required by Gov. Code section 8670.32(e)(1). Because these regulations do not require additional exercises, OSPR does not expect there to be significant additional internal costs or planning workload. The expectation of the legislation behind the SMT regulations was that the implementation would require the creation of one permanent position to manage the program. This position was filled through an internal vacancy within OSPR, and the cost has been absorbed within OSPR's existing budget. The fiscal impact statement of the STD form 399 was revised to reflect this. If additional staff or funding is needed in the future, OSPR will take appropriate actions. No changes are made to the regulations in response to this comment.*

OSPR is not immune to the requirement to meet Best Achievable Protection standards. In fact, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act clearly established expectations for the State of California to be able to respond to and manage oil spills that occur in state waters. As such, OSPR response teams will need to meet the staffing levels, arrival times, response training and experience standards found in these regulations. The costs for OSPR meeting the Best Achievable Standard must be accounted for in the Fiscal Impact Statement. Commenter 17b]

*OSPR Response: These regulations do not apply to OSPR since OSPR does not provide spill management services to plan holders. OSPR staff are trained at levels at or above the requirements in the proposed regulations for the ICS positions that OSPR would fill at a spill response, so no new training costs are foreseen. All responders – public and private – should be appropriately trained. No changes are made to the regulations in response to this comment.*

### **Untimely Comments**

The following comments are considered untimely because they were not received during the applicable comment period. As such, OSPR summarily rejects these comments.

830.2(a)(4) – There are 9 objectives that need to be met within the first 24 hours, including setting up a common operating picture. Regulation as written requires Contracted SMT to “successfully” accomplish objectives that may not pertain to the position Contracted SMT is applying for. Consider changing to: “Participate in and successfully accomplish all exercise **objectives relevant to position(s) applying for** described in section 830.6.” [Commenter 18a]

830.4(a)(1)(A) – Clarify in the regulations that “On-Scene” requirements are planning standards. For actual spills that are not EPA Type 4-5 incidents, plan holders should not be required to have four (4) “Initial Response Personnel” within 8 hours and eight (8) additional “Cascading Response Personnel” within 24 hours at initial ICP or incident location, as many of these types of spills can be managed remotely. SMT staffing needs should always be determined on an “as needed” basis. [Commenter 14a]

830.4(a)(1)(A)1. and (a)(1)(B)1. – WSPA recommends revising these sections related to cascading personnel to allow the option of having the Liaison and PIO positions be filled remotely. The evolution of the COVID era impacts include verified examples of the ability to effectively conduct drills remotely. [Commenter 20a]

830.4(a)(3)(B)(1 & 2) – Request clarification on the requirements for responding to the ICP for initial response and cascading response. It is unclear if a virtual ICP will be acceptable as was demonstrated as functional during the COVID-19 pandemic. Positions such as LOFR, PIO, FSC and LSC can run remotely in most incidents. [Commenter 16a]

830.4(a)(1)(B)1. & 2. – Several of the named positions roles can effectively be conducted remotely given modern communication technologies. In particular, the positions of Assistant Liaison Officer, Assistant PIO, and Finance Section Chief can effectively be formed by individuals not physically present at the command center. We recommend revising this section to provide locational flexibility for these positions. [Commenter 15a]

830.5(a)(1) – The requirement to meet a specific number of hours as described in the FEMA NIMS Training Guide or USGS ICS Training Guide. Listing time requirements does not consider current industry training programs that may be different in length then the training programs provided by FEMA or USGS but still cover the same depth of content. CRC recommends that the training courses to require the classes to meet the specific objectives and the competencies associates with the task book. Making the training requirements objective based will also allow for training to remain synced regardless of future changes. CRC request that the training should be based on content and proven competency rather than a minimum hour requirement. [Commenter 16b]

830.5(a)(1) – Remove “Same” and replace with “Similar” Number Hours for the NIMS ICS Training Class Requirements in Draft § 830.5(a)(1). BNSF requests the mandated hour requirement be used as a guideline. Current SMT industry position specific training programs may be different lengths than the hours listed in FEMA/USCG class guides. [Commenter 14b]

830.5(a)(1) – The training hours listed by these agencies are not agreed upon by these federal agencies. If the equivalent courses provide the same learning objectives, the number of hours should not be an issue. It should be sufficient to say that equivalent training is acceptable if the same learning objectives are used. Keeping the learning objectives of any equivalent course consistent with the FEMA/USCG courses will provide the similar guidance for the participants. O’Brien’s recommends removing the words, “*over the same number of hours,*” from (a)(1). [Commenter 19b]

830.5(a)(2)(e)(2) – CRC request for reconsideration of the 8-hours of refresher training each calendar year. As an alternative the 8-hour refresher should line up with the 3-year certification cycle rather than on an annual basis. [Commenter 16c]

830.5(i) – Remove “in California” from Training and Experience Requirements Draft § 830.5 (i). Plan holders should be allowed to document certified SMT member training completed in other states, federal regions or provinces and also at year-2 drills (not just year-3 WCD drills). [Commenter 14d]

830.5(i) and (m) – Make sections (i) and (m) consistent. OSPR should allow both the position leads for Command and General Staff and the deputy/assistant positions to both obtain drill credit to comply with these requirements as described in Section 830.5(m). [Commenter 14e]



830.5(e)(3), (i)(5), (j)(1) – One of WSPA’s primary concerns is the new language in this section limits training credit strictly to when the SMT member drills as the specific position type. There is no credit provided when an individual may drill, or operate during a spill in a deputy role, which by definition under Incident Command Systems, must be capable of stepping into the primary role at any time. WSPA requests the following language be added at (e)(3) and (i)(5): “*as a commander/officer/chief or deputy/assistant*”. [Commenter 20f]

830.5(f)(2), (g)(2), (h)(4) – ICS 300 Training Requirements. We believe the regulation would be strengthened by explicitly referencing ICS 320 as an eligible requirement for certification purposes. ICS 320 is a three day course that fully covers all the course matter subject contained in ICS 300. By clarifying from the outset that ICS 320 is “equivalent” to ICS 300 OSPR will reduce confusion and proactively address what is expected to be a regular point of requested guidance in the future. [Commenters 15b; 20d]

830.5(f)(2), (g)(2), (h)(4) – WSPA requests the agency allow both for operators to design their own curriculum that meets the content for the FEMA course, and for other credentials to qualify their instructors as satisfying the section specific train-the-trainer credentials as a qualified instructor in place of that specific credential. [Commenter 20e]

830.5(f)(3), (g)(3), (h)(5) – For clarity purposes, we encourage OSPR to explicitly note as stated on the OSHA FAQ page training is required for members who are exposed or potentially exposed to hazardous substances not those working in the Incident Command Post. The suggested revision would align OSPR’s regulations with CalOSHA’s current requirements under Title 8 CCR Section 5192 which clearly articulate that Hazardous Waste Operations and Emergency Response Material is focused on worker safety at sites where there is actual risk. [Commenter 15c]

Subsections (d), (f)(3), (g)(3), and (h)(5) – WSPA members continue to have concerns and questions with the appropriateness of the HAZWOPER training requirements as proposed. WSPA members believe the training requirements should be limited in terms of position applicability, and specifically limited to individuals that will be located on scene or in the actual “hot zone” during an incident. HAZWOPER rules allow a grace period for refresher training as long as the person is not actively in the field after the annual renewal anniversary. It is unclear whether OSPR’s requirements will be consistent with this practice. WSPA encourages OSPR to provide clarification of whether a grace period will be adopted as part of the regulatory implementation process. WSPA requests that the section relating to HAZWOPER clarify the definition of “on scene”. In most cases the Incident Command Post will not be located close enough in proximity to the incident site to create a potential for exposure, making HAZWOPER training unnecessary for most of the personnel staffing the post. [Commenter 20c]

830.5(j), (k), (l): There is no acknowledgement or attempt to provide credit for a responder who has obtained an ICS role certification or qualification from a federal



agency. O'Brien's recommends amending sections (j-l)(A) to include this option. For example, the Type I IC criteria found in (j)(1)(A) would read: "ICS-400 Advanced ICS or an equivalent course; ICS-410 Advanced Incident Commander, E/L 950 NIMS ICS All-Hazards Position Specific Incident Commander, an equivalent course, **or certification from a federal agency (USCG/FEMA)**; and either 1 or 2 below:" [Commenter 19d]

830.6(a): If contracted SMT does not have ability to piggy back on facility exercise or have sufficient personnel to fill all Spill Management Team positions, or personnel to complete all objectives described in subsection, consider adding at end of section verbiage similar to end of 830.3 for Mobile Transfer units. This will allow OSPR more opportunity to work with smaller SMT's to develop solution(s) for certification should contracted SMT not have the ability to meet all SMT positions needed to complete all required objectives. Consider adding to end of §830.6: "(4) Contracted Spill Management Team (a) The Administrator shall determine if a different exercise is more appropriate for contracted spill management team(s) to meet the objectives in this subchapter." [Commenter 18c]

830.6(b)(1)(D): WSPA requests the section above be revised to add clarity regarding:

- 1) The resource ordering process would consist of mobilizing resources listed in the FRP and available under existing agreements.
- 2) The resource ordering process utilizing the ICS-213RR process would not be initiated until 18-24 hours into an event. [Commenter 20g]

830.9(a) – *Note: Commenter did not include this suggested edit within their comment letter but did make a note on the attachment.* Recommend the following revision: "If the significant change is unforeseen, verbal notice shall be given ~~immediately~~ 5 days after becoming aware of such change." [Commenter 14g]

825.05(a): Removal [of the following content from (a)(3)] will have a major impact on OSRO shoreline protection. Striking this from the regulations will prevent OSRO's from covering areas such as Monterey and Santa Barbara since both MSRC and NRC require 24 hours advance notice to mobilize sufficient resources to meet current Shoreline Protection Requirements. "It may contain provisions to notify the OSRO 24 hours in advance before entering California marine waters, to meet the 0-12 hour shoreline protection requirement. This advance notice requirement is only for vessels that operate in those areas not identified as High Volume ports." Also, consider changing "(a) Contract or Other Approved Means" to "(a) **OSRO** Contract or Other Approved Means" [Commenter 18d]

### **Third Comment Period**

After consideration of the comments received from the first comment period, OSPR made revisions to proposed regulations, and noticed the public with an additional 15-day comment period from February 27, 2021 through March 15, 2021. The following consist of comments received during that comment period. None of the comments received were directed at the proposed changes noticed for the third comment period.

## Untimely Comments

The following comments are considered untimely because they were not received during the applicable comment period. As such, OSPR summarily rejects these comments.

830.5(a)(1) – Listing time requirements for mandated training does not consider current industry training programs that may be different in length than the training programs provided by FEMA or USGS but still cover the same depth of content. CRC recommends that the training courses to require the classes to meet the specific objectives and the competencies associated with the task book. In order to successfully fill a role for an SMT, training should be focused on the ability to perform specific competencies for that position versus the time duration of the class. Making the training requirements objective based will also allow for training to remain synced regardless of future regulatory or organizational changes. [Commenter 22a]

The current language in 830.5 states that the equivalent training must meet the hour requirements of the FEMA or USGS ICS Training Guide, however in the individual training sections, the required number of hours have been removed. CRC requests that the training should be based on content and proven competency rather than a minimum hour requirement. [Commenter 22b]

Hourly requirements should be used as guidelines only and not mandatory requirements. BNSF recommends removing references to “same” and replace with “similar” number of hours for the NIMS ICS Training Class Requirements in Draft § 830.5(a)(1). [Commenter 21b]

830.5(d) – Remove “all” from the Training and Experience Requirements in Draft § 830.5(d) Safety Training Requirements. [Commenter 21c]

830.5(a)(2)(e)(2) – 8 hours refresher training each calendar year is excessive. As an alternative, the 8-hour refresher should line up with the 3-year certification cycle rather than on an annual basis. [Commenter 22c]

830.5(i)(2) – Clarify language to allow Plan Holders options with respect to position task books used by the spill management team (SMT). BNSF recommends the following modification noted below shown in redline/strikeout format: “830.5 (2) - All cascading response personnel shall possess the ability to independently demonstrate the competencies, behaviors, and tasks associated with their incident command system position(s) as described in the appropriate Federal Emergency Management Agency National Qualification System position task book(s) or ~~an equivalent~~ a position task book used by the spill management team.” [Commenter 21a]

830.5(i)(4) and (5) – Remove “in California” from Training and Experience requirements Draft § 830.5 (i) and make sections (i) and (m) consistent. The “Additional Training Requirements” for the IC, SO, PIO, LIO, OSC, PSC, LSC, and FSC to participate in their specific role during an exercise simulating a response to a WCD drill in California within a 3-year N-PREP cycle is problematic. Plan holders

should be allowed to document certified SMT member training completed in other states and federal regions and also at year-2 drill intervals (not just year-3 WCD drills). Additionally, OSPR should allow **both** the position leads for Command and General Staff and the deputy/assistant positions to obtain drill credit to comply with these requirements as described in Section 830.5 (m). [Commenter 21d]

830.6(a) – Section 830.6(a) requires that all objectives are completed “at a single spill or a single exercise in California.” Requiring the plan holder to meet the objectives within the first 16 or 24 hours of a spill makes these draft regulations unnecessarily complicated and may make SMT members focus on getting drill credits versus safely and effectively performing their assigned ICS duties during a spill. Moreover, OSPR-evaluated SMT drills typically do not last for 16 or 24 hours, which would make compliance with this requirement difficult. [Commenter 21e]

There were no other comments during the second 15-day comment period.

#### **Fourth Comment Period**

After consideration of comments received from the Office of Administrative Law, OSPR made revisions to the proposed regulations for clarity, and noticed the public with an additional 15-day comment period from August 11, 2021 through August 25, 2021. The following consist of comments received during that comment period.

#### *Section 830.6 – Exercise Objectives Required for Full Certification*

##### Subsection 830.6(a)

The language changes proposed have made the objective less clear in comparison to previous versions. Specifically, the revised wording noting the spill planning volume necessary to achieve certification seems to conflict with the volumes required to meet the experiential requirement for cascading response personnel in section 830.5(i). WSPA recommends restoring the language as previously proposed in the 2nd 15-day continuation draft which we believe was more succinct, promoted clarity from a compliance perspective, and did not create conflicts with other sections of the proposed regulation. [Commenter 23a]

*OSPR Response: OSPR rejects this comment. OSPR acknowledges that the previous language of subsection 830.6(a) was more succinct than the updated language. However, this update was made in response to comment from the Office of Administrative Law (OAL) that the language did not address spill scenario volumes for Tiers II and III and therefore OSPR should provide clarification. Although the resulting edits made the provision wordier, the meaning and intent of the provision remain unchanged, and there is no conflict with subsection 830.5(i). Therefore, OSPR declines to revert to the previous language. No changes are made in response to this comment.*

## Subsection 830.6(b)(1)(B)

The latest draft proposes requiring SMTs to additionally provide monitoring and sampling on OEHHA's "chronic" RELs. [T]he wording change will impose significantly higher regulatory and testing requirements that are not appropriate or relevant for most spill incidents. Furthermore, the change would prospectively create compliance challenges specifically as it relates to the ability to secure lab results within the timeframe prescribed for certification. [C]hronic RELs are designed with a desire to understand the long-term implications of constant, uninterrupted exposure. This kind of risk is generally not present in conjunction with spill events, given the short duration and generally successful track record of full clean up and remediation. If the "chronic" standard is imposed, data collected from an emergency response would have to be averaged over a year, regardless of whether the incident took hours or days to remediate. Forcing SMTs to conduct this type of long-term evaluation will not advance the public's understanding of shorter-term health risks which are of primary consideration during an event. To the contrary, requiring the evaluation to be reported on the basis of an annual metric could create unnecessary public confusion and concern about the level of actual risk that was present. The proposed changes also introduce new questions as to whether the OEHHA RELs are in fact the relevant standards to reference, or whether the CalOSHA exposure limits are more appropriate. [N]ot all chemicals or constituents that might be present in a spill event have established OEHHA RELs, thus creating further confusion as to compliance. WSPA is additionally concerned the proposed standard could create distraction from the primary objective of a response, which is to protect the health and safety of the workers, responders, and the community from acute hazards for the duration of the response. Requiring teams to focus on establishing a monitoring system that is designed to track exposure well beyond the duration of the event, detracts from the immediate and core requirements. WSPA recommends OSPR delete the reference to OEHHA's "chronic" standards and revert to the language that appeared in the 2<sup>nd</sup> 15-day continuation draft.

[Commenter 23b]

*OSPR Response: OSPR partially accepts and partially rejects this comment. OSPR agrees that chronic exposure levels would be extremely unlikely to be relevant for an oil spill response, particularly at the outset of a response, which is the time frame addressed by the proposed regulations. For these reasons, chronic levels were not referenced in previous iterations of the proposed regulatory text. The update to include the chronic levels was made for consistency with the title of the OEHHA guidelines referenced, but OSPR has removed the reference and reverted to the previous language to avoid confusion.*

*OSPR will also respond to the other points made in the comment. The proposed regulations do not prescribe that spill management teams reflexively conduct community air monitoring and/or sampling to any pre-determined action levels. The appropriate levels are determined based on the circumstances, risks, and hazards associated with an individual spill. It is the authority of local health agencies to*

*establish action levels, and spill management teams must support air monitoring and sampling to the appropriate action levels.*

*The comment asserts that the updated language would require spill management teams to secure laboratory results within 24 hours. OSPR would like to point out that nothing in the regulations specifies that lab results must be secured within any time frame. Subsection 830.6(b)(1)(B) states that spill management teams should be capable of providing support for air monitoring and sampling activities consistent with action levels for the potential community exposure, such as the cited exposure levels established by the Office of Environmental Health and Hazard Assessment (OEHHA). This in no way implies that laboratory results must be obtained within 24 hours.*

*The comment expresses concern regarding the potential for the results of air sampling to confuse the public. However, it is the duty and responsibility of local health agencies to act upon the results of air monitoring and sampling. They must be consulted in the design of monitoring and sampling plans, and they must be granted access to the data collected so that they can make decisions regarding whether to issue public health advisements. If air monitoring information is released to stakeholders and/or the general public through the response organization, all information, including the means by which it is released, is vetted and approved by the Unified Command, as appropriate to the incident. Requiring spill management teams to provide support for air monitoring does not create a source of confusion for the public.*

*The comment suggests that OSPR consider referencing CalOSHA standards. However, those standards are designed for exposure in the workplace rather than for community exposure. Subsection 830.6(b)(1)(B) addresses community air monitoring, not work site monitoring. The reference to chronic levels is removed, but no additional changes are made in response to this comment.*

### **Untimely Comments**

The following comments are considered untimely because they were not received during the applicable comment period. As such, OSPR summarily rejects these comments.

#### **Subsection 830.6(a) & (b)**

WSPA wishes to express concern for meeting full certification in a single exercise, resulting in drill credits not being granted to industry. Specifically, if operators do not have three years for this certification as indicated in (a)(3), they may be able to meet all the criteria of (b) within two consecutive drills but given all the criteria in subsection (b) not the single, accelerated time line exercise requirement. WSPA recommends at minimum, two exercises to complete all of the objectives to secure full certification.

[Committer 23c]

*OSPR Response: OSPR rejects this comment. No changes were made in the third 15-day comment period regarding the requirement for all certification objectives to*

*be achieved at a single spill or exercise. As specified at subsection 830.6(a)(3), a spill management team has until December 31 of the third full calendar year from the date of issuance of an interim certification to conduct a certification exercise.*

Subsection 830.8(b)

This section also creates a timing concern, given this regulation is new and every SMT will have to drill to prove out the renewal certification requirements within 90 days. The demand on OSPR to certify all the SMTs on this schedule seems burdensome. WSPA suggests OSPR consider extending this requirement to 6 months, especially in light of this amended rulemaking requiring every SMT to drill to prove out the renewal certification requirements. [Commenter 23d]

*OSPR Response: OSPR rejects this comment. No revisions were made to subsections 830.8(b) related to the comment.*

No other comments were received during the third 15-day comment period.