

**CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES
DIVISION 1. FISH AND GAME COMMISSION - DEPARTMENT OF FISH AND GAME
SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE**

ILLUSTRATION OF CHANGES

The Office of Spill Prevention and Response is proposing changes to the regulatory text of sections 826.01 and 826.03 of Title 14 of the California Code of Regulations. Those changes are illustrated as follows:

The original proposed express terms is illustrated with single underline for added text and ~~single strikethrough~~ for deleted text.

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TITLE 14. NATURAL RESOURCES
DIVISION 1. FISH AND GAME COMMISSION-DEPARTMENT OF FISH AND GAME
SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE
CHAPTER 3. OIL SPILL PREVENTION AND RESPONSE PLANNING
SUBCHAPTER 4. OIL SPILL CONTINGENCY PLANS, NONTANK VESSELS

§ 826.01. Plan Submittal.

(a) Plans:

Unless otherwise exempt, each owner/operator of a nontank vessel shall provide an oil spill contingency plan for that nontank vessel. The plan may be specific to an individual nontank vessel or may apply to a fleet of nontank vessels. All nontank vessel-specific elements required by Subsections 827.02(a) through (f) of this subchapter shall be addressed for an individual nontank vessel or all the nontank vessels included in a Fleet Plan.

(1) Response Elements:

(A) Nontank Vessel Fleet Plans

Fleet contingency plans may be submitted by an owner/operator that has a number of nontank vessels that transit the same or substantially the same routes in marine waters. Nontank vessels may be added to a fleet tank vessel contingency plan providing all of the requirements of this subchapter are met.

1. A fleet contingency plan shall contain all prevention and response elements required pursuant to this subchapter.

(2) Incorporation of Other Plans and Reference Documents

An individual or fleet contingency plan shall contain all prevention and response elements required pursuant to this subchapter. Citing specific relevant sections of appropriate reference material may be an acceptable alternative to reproducing the full text, maps, diagrams, etc., in the contingency plan. The Administrator will determine if such submissions or citations adequately meet the requirements of this subchapter prior to final plan approval. Examples of plans or other reference documents that may be submitted or cited include, but are not limited to, the following:

(A) Plans Submitted to International, Federal or State Authorities: Appropriate sections of plans submitted to and approved by any state, federal or international authority may be either submitted or cited, as approved by the Administrator, to meet part of the requirements contained in this subchapter. These references may include documents submitted to comply with California's tank vessel contingency plan requirements, U.S. Coast Guard requirements, or the International Safety Management (ISM) Code.

(B) Federal Area Contingency Plans (ACP) and Geographic Response Plans (GRP): Information from ACP's and GRP's currently in effect which meet the requirements of

Subsections 827.02(g) through (n) may be cited. Information from ACP's and GRP's that are not currently in effect must be submitted.

(C) Privately Prepared Reference Documents: Private companies may prepare reference documents specifically intended to address part or all of the requirements of Subsections 827.02(g) through (n) of this subchapter. These documents may incorporate other plans or reference documents pursuant to this Subsection 826.01(a)(2). With a company's authorization, a plan holder may submit such a document in its entirety to meet part or all of the requirements of Subsections 827.02(g) through (n).

(D) Rated OSRO:

When contracting with an OSRO, Rated by OSPR pursuant to Title 14, California Code of Regulations (CCR) Section 819.02, to meet the oil spill response requirements under this subchapter, the owner/operator may cite the Rated OSRO application in lieu of listing the OSRO's response resources which meet the requirements of 14 CCR Section 819.02.

1. An OSRO Rating does not guarantee the performance of an OSRO, nor does the use of an OSPR-Rated OSRO in a contingency plan relieve the plan holders of their ultimate statutory and regulatory responsibility to ensure the adequacy of the spill response resources identified in their contingency plan.

(E) If approved by the Administrator, plans, reference texts and other materials not listed above may be submitted to meet part of the requirements of this subchapter.

(b) Time frames:

(1)(A) A nontank vessel shall submit a contingency plan that is received by OSPR at least five working days prior to entering marine waters.

(B) Nontank vessel owner/operators shall notify the Administrator by facsimile prior to entering marine waters for the harbors of Humboldt Bay, Port Hueneme, Monterey Bay, and San Diego, and the ports of Stockton and Sacramento.

(c) Receiving Agencies:

(1) One copy of the applicable contingency plan (either hard copy or electronic media - see Section 826.02) covering each Geographic Region the nontank vessel transits shall be delivered to the Office of Spill Prevention and Response. Delivery of the plan may be in person or by registered mail with return receipt requested, or the equivalent. Additional hard copies shall be provided to an OSPR regional office upon request.

(2) Within two working days of a request from the Administrator, additional copies (hard copy or electronic media) shall be mailed by the plan holder to the State Oil Spill Technical Advisory Committee.

(3) Any additional copies shall be submitted within two working days of a request by the Administrator.

(d) Confidentiality:

~~(1) A plan holder may request that proprietary information, including reports or studies, be kept confidential, by following the process described in section 790.3 of chapter 1. Such a request must include justification for designating the information as confidential. The Administrator will make a determination regarding that information which may be considered confidential and removed from any copy of the plan that is made available for public review.~~

~~(A) A plan holder may also request that any reports or studies prepared or submitted under any contingency plan requirements be designated as proprietary information. Such a request must include justification for designating the report or study as confidential.~~

~~(2) Any information designated as confidential must be clearly identified as proprietary.~~

~~(3) If a plan holder designates information as confidential, two different copies of the plan must be submitted as follows:~~

~~(A) one copy shall contain the confidential information. This plan will be utilized by the Administrator in the review and approval process;~~

~~(B) one copy shall be submitted with the confidential information removed. This copy will be available for public review. This plan must contain sufficient information in place of the confidential information so that any individual reviewing the plan will understand all the notification, prevention and response elements of the plan.~~

~~(C) Any plan submitted to any state agency, as required by this section, must include all confidential information.~~

Note: Authority cited: Sections 8670.28 and 8670.29, Government Code. Reference: Sections 8670.28, 8670.29 and 8670.31, Government Code.

§ 826.03. Plan Review and Approval.

(a) No nontank vessel shall operate in marine waters until the owner/operator is notified that the contingency plan meets the minimum requirements listed in this subsection. A contingency plan shall be reviewed for these minimum requirements within five working days of notification that the nontank vessel is entering marine waters, and the vessel owner/operator shall be notified in writing that: 1) the plan meets the minimum requirements; or 2) the plan is deficient and what specific information is needed, and that the nontank vessel shall not enter marine waters until the following information has been provided:

(1) Nontank vessel name, call sign, official number, length, gross tonnage, fuel type and total volume, capacity of largest fuel tank, destination, intended route while in marine waters, and address and telephone number of both the owner and operator;

(2) Evidence of a contract or other approved means (as defined in Section 790 of this subdivision), documenting that the oil spill response organization(s) and certified spill management team named in the plan will provide the requisite equipment and

personnel in the event of an oil spill, for each Geographic Region the nontank vessel transits;

(3) Identification, including telephone number and facsimile number, of a Qualified Individual; and

(4) Evidence of financial responsibility in the amount of three hundred million dollars (\$300,000,000). Documentation that a California Certificate of Financial Responsibility is being processed will fulfill this requirement.

(b) Time frames:

(1) After notification that the plan meets the minimum requirements specified in Subsection (a), each plan shall be reviewed for all the requirements of this subchapter and be approved or denied within 180 days.

(2) The Administrator shall determine whether each plan complies with the regulations governing the contingency planning process. If the administrator determines that a plan is inadequate, a written explanation of deficiencies shall be sent to the plan holder.

(3) Upon notification of a plan's deficiencies, the plan holder will have 90 days to submit a new or modified plan, or make corrections to their original plan. Such a re-submittal shall be treated as a new submittal and processed according to the provisions of this section (b).

(c) Prior and subsequent to plan approval, the Administrator may make an on-site inspection and require an unannounced drill of all or part of any contingency plan submitted in order to determine the plan's adequacy pursuant to the authority in Government Code Section 8670.10(a).

(d) Public Review and Comment: Contingency plans will be made available for review by any interested member of the general public at the headquarter's office of OSPR.

(1) Any person interested in reviewing the plan shall contact the Administrator to request an appointment to review the plan at the headquarter's office of OSPR. Copies of the plans will be provided at the cost of duplication.

(2) Any interested person may review a plan and submit written comments prior to the Administrator's approval or disapproval of the initial plan or plan updates. Such comments will be taken into consideration in the Administrator's review process.

(e) Plan Approval:

(1) Unless the Administrator determines otherwise on a case-by-case basis, a contingency plan will be considered to be effective upon notification per Subsection (a) pending final approval unless and until the owner/operator is notified that the plan is inadequate per Subsection 826.03(f).

(2) A contingency plan shall be approved if it adequately addresses all of the requirements specified in this subchapter.

(3) Any revised plan submitted by an owner/operator in response to a notification of inadequacy shall be considered approved unless otherwise notified by the Administrator within the time frames established in Section 826.03(b).

(4) The Administrator shall consider any comments submitted by other agencies or interested parties when approving or disapproving the plan.

(5) The Administrator shall notify the plan holder when a contingency plan has been approved. The Administrator shall issue a letter of approval and certificate describing the conditions of approval, if any, and specifying the expiration date of the Letter of Approval and certificate.

(f) Denial or Revocation of Plan:

(1) Approval shall be denied or revoked if a plan does not comply or maintain compliance with this subchapter.

(2) If approval of a contingency plan is denied or revoked, the Administrator shall notify the plan holder in writing of the reasons for denial or revocation and provide an explanation of those actions necessary to secure approval.

(A) the plan holder shall have 90 calendar days from notification of a denied plan to submit a new or revised plan that incorporates the recommended changes, during which time the plan is considered effective pending final approval. The Administrator may, however, revoke the plan and deny entry to the nontank vessel if the plan has significant deficiencies that result in the inability of the plan holder to maintain a level of readiness as required by this subchapter.

(B) No nontank vessel shall operate in marine waters if it fails to gain approval of its contingency plan after the second submission until a subsequent submission is approved.

(C) If a plan holder fails to address plan deficiencies within 90 calendar days from notification of a denied plan, the Administrator may, without further notice, declare the plan null and void.

(g) ~~Appeals:~~ Request for Reconsideration.

The plan holder may ~~appeal~~ request reconsideration of a decision made by the Administrator regarding the denial of approval, denial of exemption, or revocation of a contingency plan, in accordance with ~~the~~ by following ~~provisions:~~ the process described in section 790.5 of chapter 1.

~~(1) the plan holder may submit a written request for reconsideration to the Administrator regarding any decision of denial or revocation of approval. Requests must be submitted within 15 working days from the date the plan holder receives notice that final approval of the plan has been denied. The request must contain the basis for the reconsideration and, if available, provide evidence which rebuts the basis for the Administrator's decision regarding the plan;~~

~~(2) within 15 working days following the receipt of the request for reconsideration, the Administrator shall send the plan holder a notice that the decision has been rescinded and that the plan is approved, or that the Administrator rejects the request for reconsideration and shall adhere to the earlier decision;~~

~~(3) the plan holder may, within 15 working days after receipt of notice that reconsideration has been denied, request a hearing in writing. No such hearing may be requested unless and until all remedies pursuant to this section have been exhausted. The Administrator shall conduct a reconsideration hearing upon request;~~

~~(4) the proceedings and hearings under this section shall be conducted in accordance with Chapter 4.5 (commencing with Section 11400) of Part I of Division 3 of Title 2 of the Government Code, including the right of judicial review as provided for in Section 11460.80 of the Government Code.~~

(h) Proof of Approval:

The Letter of Approval shall be presented upon request to the operator of a marine facility or vessel providing fuel prior to an oil transfer.

(i) Liability: Approval of a plan does not constitute an express assurance regarding the adequacy of the plan in the event of a spill nor does it constitute a defense to liability on the part of the operator or owner.

Note: Authority cited: Sections 8670.28, 8670.29 and 8670.32, Government Code.
Reference: Sections 8670.28, 8670.29, 8670.31 and 8670.32, Government Code.