

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

TITLE 14. CALIFORNIA CODE OF REGULATIONS  
Amend Section 790  
Regarding General Definitions and Abbreviations  
and  
Amend Sections 817.02, 817.03, 817.04, 818.02, 818.03  
Regarding Contingency Plan Requirements  
and  
Amend Sections 819.01, 819.02, 819.03, 819.04  
Regarding Oil Spill Response Organization Ratings

**NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) proposes to amend sections 790, 817.02, 817.03, 817.04, 818.02, 818.03, 819.01, 819.02, 819.03, and 819.04 of subdivision 4 of title 14 of the California Code of Regulations. These sections pertain to definitions for non-floating oil, contingency plan requirements, and oil spill response organization ratings. OSPR invites interested persons to present comments, statements, or arguments with respect to the regulations during the written comment period.

**PUBLIC HEARING**

OSPR has not scheduled a public hearing on this proposed action. However, pursuant to Government Code section 11346.8, OSPR will hold a public hearing if a written request is received at the address below from any interested person or his or her authorized representative no later than fifteen (15) calendar days before the end of the 45-day comment period.

**SUBMISSION OF WRITTEN COMMENTS**

Any interested person or his or her authorized representative may submit to OSPR written comments relevant to the proposed regulatory action. **The written comment period closes on Monday, August 15, 2022.** All written comments must be received by OSPR by then in order to be considered. Written comments may be submitted by mail or e-mail, as follows:

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

## **AUTHORITY AND REFERENCE**

Government Code sections 8670.29, 8670.3, and 8670.30 grant the Administrator of OSPR the authority to adopt regulations and guidelines for proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 8670.29 and 8670.30.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

### *Existing Law*

The *Lempert-Keene-Seastrand Oil Spill Prevention and Response Act* (Act) (Chapter 1248, Statutes of 1990) created a comprehensive state oil spill program including the establishment of the Office of Spill Prevention and Response (OSPR). The Act requires the Administrator to establish regulations that provide for the best achievable protection of the state's natural resources.

The Act requires that owners or operators of facilities and vessels that may pose an oil spill risk to waters of the state, to submit an oil spill contingency plan to the Administrator for approval. Additionally, these plan holders must maintain a level of readiness that allows for effective implementation of the contingency plans (Government Code sections 8670.28.5 through 8670.34).

The Act requires the Administrator to adopt and implement regulations governing the adequacy of oil spill contingency plans (Government Code sections 8670.28 and 8670.29). Among the numerous requirements, the Administrator must set standards for response, containment, and cleanup equipment and operations, which must be maintained and regularly tested and improved to protect the state's natural resources. This may be achieved by cleanup contractors known as oil spill response organizations (OSRO). Plan holders' contingency plans must identify an OSRO that is rated by the Administrator of OSPR (Government Code section 8670.30). An oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of a spill and must demonstrate evidence for sufficient on-water recovery and storage resources.

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

Adoption of these regulations will require entities involved with the transportation and handling of non-floating oils (NFO) to file an oil spill contingency plan with OSPR that lists an OSRO that has obtained an NFO rating from OSPR. OSRO's may obtain this rating by demonstrating to OSPR that they have received a Non-Floating Oils Classification from the U.S. Coast Guard (USCG), thus showing that they have the necessary equipment and specialized training to deal with the unique characteristics of a non-floating oil spill.

*Evaluation of Inconsistency or Incompatibility with Existing State Regulations*

OSPR has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations or statutes that would relate to OSRO ratings and contingency plan requirements, OSPR has concluded that these are the only regulations that concern these regulations in California.

*Document(s) Incorporated by Reference*

None.

**DETERMINATIONS REGARDING THE PROPOSED ACTION**

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

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

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

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

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

*(e) Other non-discretionary costs or savings imposed upon local agencies: None*

*(f) Costs or savings in federal funding to the state: None*

*(g) Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:*

These proposed regulations will not have a significant statewide adverse economic impact. They serve to update and expand the Group 5 oil rating for OSROs into a NFO rating per the changes to Government Code sections 8670.29, 8670.3, and

8670.30 made by Assembly Bill 936 (2019). This expansion may result in a minor cost of \$24.57 to each of the five OSROs that currently have a USCG NFO classification for the staff time to file proof of that classification with OSPR as part of their OSRO rating documentation. Because these OSROs cover over 95% of contingency plan holders with contracts that already include NFO coverage, OSPR does not anticipate any new costs to be imposed on these plan holders if they decide to begin handling NFO.

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

OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, as they affect only the OSRO industry and contingency plan holders that handle NFO.

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

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

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

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

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

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

None.

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

None.

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

None.

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

Requiring OSROs handling NFO as part of a contingency plan to demonstrate that they have met the requirements for the USCG NFO classification will ensure that these types of spills are responded to safely. This may provide a health benefit to OSRO response workers by limiting their exposure to NFO via proper equipment and training, as well as provide an environmental benefit by ensuring that these spills are effectively cleaned up.

- *Effect on small business*

This regulatory action will not affect small business. None of the businesses affected are small businesses as described and defined by sections 11346.3(b)(4)A) or 11342.610 of the Government Code.

## **CONSIDERATION OF ALTERNATIVES**

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

OSPR could identify no alternatives that would have the same desired regulatory effect or would meet the same goals for creating NFO standards for contingency plans and OSROs under the requirements of Assembly Bill 936 (2019).

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

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

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

Department of Fish and Wildlife  
Office of Spill Prevention and Response  
Attention: Andrew Benware  
1010 Riverside Parkway  
West Sacramento, CA 95605  
Phone: (916) 375-7157  
Email: <mailto:Christine.Kluge@wildlife.ca.gov> Andrew.Benware@wildlife.ca.gov

The backup contact person is: Christine Kluge at the same address, or by email at [Christine.Kluge@wildlife.ca.gov](mailto:Christine.Kluge@wildlife.ca.gov), or by phone at (916) 375-4676.

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

This notice and related rulemaking documents identified above can be accessed on OSPR’s website at <https://wildlife.ca.gov/OSPR/Legal/Rulemakings/Non-Floating-Oil>.

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

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

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

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

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