

## **Attachment to Economic and Fiscal Impact Statement (STD 399)**

Title 14, California Code of Regulations  
Amend Sections 817.02, 817.03, 817.04, 818.02, 818.03  
Regarding Contingency Plan Content  
and  
Amend Sections 819.01, 819.02, 819.03, 819.04  
Regarding Oil Spill Response Organization Ratings  
and  
Amend Section 790  
Regarding General Definitions and Abbreviations

### **Background**

The U.S. Coast Guard (USCG) recognized in 2016 that non-floating oil (NFO) is broader than just Group 5 oils and includes other heavy oils that show characteristics that may cause the oils to submerge or sink. According to the USCG, the oil spill response capabilities required to detect and recover NFO differs significantly depending on the operating area, environmental conditions, and the type of oil spilled. Standard response methods designed for floating oils are inadequate and difficult to apply when most of the oil is submerged or has sunk to the bottom. To address this, the USCG released guidelines for Oil Spill Recovery Organizations (ORSOs) that added a new classification for NFO that specified the required training, personnel, and equipment an OSRO needs to respond to an NFO spill. The California State Legislature passed Assembly Bill 936 in 2019 to amend sections 8670.29, 8670.3, and 8670.30 of the Government Code, which requires OSPR to create regulations for contingency plan holders and OSROs handling NFO that are at least as stringent as the USCG's requirements.

### **Page 1**

#### **A. ESTIMATED PRIVATE SECTOR COST IMPACTS**

##### *3. Describe the types of businesses (Include nonprofits)*

OSPR's current regulations allow OSROs to voluntarily apply for an OSRO rating by submitting an application outlining their equipment, personnel, and response capabilities. OSROs maintain their rating with OSPR by reapplying for their rating every three years. These ratings include ratings for containment, recovery, and storage for spills that occur in marine waters, inland waters, or on land (terrestrial). Additional ratings are available for shoreline protection and for Group 5 oil recovery and containment. OSROs must reapply for their rating every three years. Current regulations stipulate that contingency plan holders must retain an OSRO rated by OSPR as part of their plan. The proposed regulations replace the Group 5 oils rating with a rating for NFO, which an OSRO can apply for by submitting a copy of their application for USCG NFO classification, a narrative of equipment and personnel deployment if one is not included within the copy of their USCG classification application, and proof of their classification with their OSPR OSRO rating application. Contingency plan holders

handling NFO must retain an OSRO rated for NFO under these proposed regulations.

There are currently five companies classified by the USCG to respond to non-floating oil in California: MSRC, NRC, Clean Harbors, Marine Pollution Control Corporation, and T&T Salvage. Together they cover all of the marine ports, and over 95% of OSPR's contingency plan holders retain services from either MSRC or NRC. We anticipate no major change to the five OSRO's already rated by OSPR to handle Group 5 oils, as they already have the USCG NFO classification. By providing a copy of their USCG NFO classification documents an OSRO will give OSPR full visibility of the equipment and personnel it has available for an NFO response without having to generate new paperwork, but there may be costs associated with the staff time necessary for an OSRO to file the copy of their USCG NFO classification with OSPR. While it may cost more for a non-rated OSRO to acquire the equipment and trained personnel to obtain a USCG NFO classification, these costs already exist under the USCG's current regulations and are not created or inflated by these proposed regulations. In recent years OSPR has received an average of one new application for an OSRO rating per year, with none of those applications being for a rating for Group 5 oils.

Contingency plan holders, including marine facilities, small marine facilities, inland facilities, mobile transfer units (MTUs), and rail, are already required to retain OSRO services under OSPR's current regulations. The costs for retaining OSROs tend to scale with the size of the plan holder's reasonable worst case spill volume, which would not change under these proposed regulations. Contracts between OSROs and contingency plan holders specify the types of oil that an OSRO is able to respond to, and the standard contracts for the five OSROs currently rated for Group 5 oils already specify Group 5 oils and NFO as being included within the provided services. OSPR does not anticipate any additional costs to resubmit contingency plans for the nine Group 5 oils plan holders who are currently working with NFO and are already covered by these five OSROs as nothing would change for them.

These regulations add the requirement for small marine facilities and MTUs to specify if they are handling NFO in their contingency plans and to retain an OSRO rated for NFO. However, as mentioned above over 95% of contingency plan holders are covered by two OSROs currently offering NFO coverage as part of their standard retainer: MSRC and NRC. All five OSROs represent nearly all of the contingency plan holders, which includes small marine facility and MTU plan holders, reducing the likelihood that they would need to change their plan to retain a new OSRO. Given that the current regulations for small marine facilities and MTUs do not include requirements for Group 5 oil, it is unlikely that these entities will begin handling it now, further reducing the likelihood of having to change their plan to retain an OSRO rated for NFO.

Non-floating oil is also costly to refine due to the costs associated with removing the particulates which are prevalent in that particular form of crude oil. While the per barrel price of crude oil is currently higher than in the previous two years (average annual price of \$36.86/barrel in 2020 vs an average price of \$84.87/barrel for the first two months of 2022 according to the U.S. Energy Information Administration), a change in

demand would not necessarily force contingency plan holders, such as vessels transporting oil or processing facilities, to incur a new cost from these regulations (U.S. Energy Information Administration, U.S. Crude Oil First Purchase Price, 2022).

California's infrastructure for transporting crude by rail is more limited than states such as Washington, and only one facility currently has the capacity to unload a full train shipment per day, adding to the economic issues that make it unlikely for an increase of crude-by-rail transportation of NFO, such as Canadian tar sands, in the near future (CA Energy Commission, Crude Oil, Petroleum & Renewables Update to OSPR Technical Advisory Committee, October 2021). As of 2020 only 0.4% of crude oil received by refineries in California was transported by rail.

Additionally, some facilities in California are converting to process renewable fuels, which would prevent them from processing non-floating oils such as the Canadian tar sands. There are currently five active conversion projects within the state: Phillips 66 and Marathon are converting two existing diesel hydrotreaters to renewable diesel production; Chevron, Global Clean Energy, and World Energy are converting refineries in El Segundo, Bakersfield, and Paramount to renewable diesel, respectively (California Energy Commission; Crude Oil, Petroleum & Renewables Update to OSPR Technical Advisory Committee; April 2022). The conversion of additional facilities to process renewable fuels will likely continue as California gets closer to its goal of lowering its carbon emissions to 40% of 1990 levels by 2030 to achieve carbon neutrality by 2045, as set out in Executive Order B-55-18, which would further reduce the demand for refining non-floating oils within the state (Executive Order B-55-18, September 10, 2018).

The term "small business" is defined in subsection 11346.3(b)(4)(A) of the Government Code as one that is independently owned, not dominant in their field, and having fewer than 100 employees. Based on this definition, none of the OSRO's with a current USCG NFO classification that are directly impacted by these regulations meet the qualifications of a small business, as they are dominant players in a small field and have a presence in multiple states. As applying for an OSRO rating is a voluntary process, it is unlikely that other OSRO's would desire to enter this niche market and incur the existing costs to meet the USCG's non-floating oil classification requirements for trained personnel and equipment.

## **Page 2**

### **B. ESTIMATED COSTS**

*1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime?*

These costs can be generously estimated as requiring up to one hour of OSRO staff time for processing and submitting a copy of the OSRO's USCG non-floating oil (NFO) classification and the application for that USCG classification to OSPR. Using the mean hourly wage for Hazardous Materials Removal Workers in California from the U.S. Bureau of Labor Statistics, we estimate the average cost to one of the five OSROs with current USCG NFO classifications as \$26.80 to prepare and submit their documentation

to OSPR, as seen in Table 1.

**Table 1: Wage Data for Hazardous Materials Removal Workers**

Classification	Hourly Wage (Mean)	Annual Salary (Mean)	Source (Bureau of Labor Statistics)
Hazardous Materials Worker	\$26.80	\$55,750	<a href="https://www.bls.gov/oes/current/oes474041.htm">https://www.bls.gov/oes/current/oes474041.htm</a>

Applying the average cost of \$26.80 to all five OSROs with a current USCG non-floating oil classification yields a total cost of \$134 in the first year. OSRO's must recertify their rating with OSPR every three years under current regulations, so spreading the previous total cost over three years yields an average annual ongoing cost of \$44.67 for these five OSROs to refile with OSPR for an NFO rating. It should be noted that these OSROs are already required to file documents with OSPR to obtain an OSRO rating and refile once every three years to maintain that rating, and these regulations do not affect that process aside from requiring the five OSROs currently rated by OSPR for Group 5 oils to refile for a NFO rating.

The definition for "non-floating oil" under the proposed regulations is "a Group 5 oil as defined in section 155.1020 of Title 33 of the Code of Federal Regulations and any Group 5 oil that is diluted with a diluent for transport." This definition change will not significantly affect contingency plan holders that currently transport or handle Group 5 oils as they already retain OSROs rated for handling Group 5 oils by OSPR in their contingency plans, and the estimated costs to the five OSROs currently rated for Group 5 oils by OSPR are so small that they will be absorbed and not passed on to plan holders.

While some vessel plan holders transporting Group 5 oils diluted with diluent may have to adjust their contingency plans to include an OSRO rated for non-floating oil, the costs of retaining that rated OSRO would not be substantially different from their current OSRO retainer and would not represent a significant cost increase or decrease. This would also apply to any small marine facilities and MTUs that elect to begin handling NFO and consequently update their contingency plans to include an OSRO rated for NFO per the added requirements of these regulations. Given the market trends for converting refineries to renewable fuel production as described in Part A, OSPR does not expect a significant increase in the volume of non-floating oil transported into the state, thus we do not expect many vessel contingency plan holders to change their plans to include an OSRO rated for NFO.

While there are high existing costs associated with acquiring the USCG's NFO classification, such as acquiring the equipment and trained personnel (divers, dredges, etc.) to meet their requirements, these regulations do not create any new additional costs outside of the one described for filing proof of USCG classification with OSPR. Applying for a NFO rating from OSPR, or any OSRO rating, is a voluntary procedure that OSROs undergo to distinguish themselves from businesses that perform generic salvage and hazardous materials cleanup.

*2. If multiple industries are impacted, enter the share of total costs for each industry:*

Almost the entirety of the costs mentioned in the previous question are borne by the five OSROs with a current USCG NFO classification. Those five OSROs cover more than 95% of the contingency plan holders with OSPR, and their contracted services include NFO coverage. While some contingency plan holders outside of that group may face some price differences from finding and retaining a rated OSRO if they decide to begin handling NFO, these costs would be relatively miniscule and difficult to quantify, thus approximately 100% of the economic costs are expected to be borne by the OSRO industry.

### **C. ESTIMATED BENEFITS**

The different hydrocarbon fractions in a crude oil from any given source may have widely varying chemical and physical properties. Lighter fractions may spread rapidly, float on the surface of the water, and evaporate to the atmosphere quickly. In contrast, heavier fractions may be denser than water, and can sink or become suspended in the water column beneath the surface due to various processes. These processes are collectively known as "weathering," and the important point is that the properties of the spilled oil can change during spill response.

Federal regulations separate oils by groups, with Group 5 being considered the heaviest. However, refined oils may also be a mix of light and heavy hydrocarbon fractions. Of particular relevance, the development of Canadian tar sands as an oil source has raised concerns regarding spill response. The heavy bitumen from the tar sands is diluted with lighter hydrocarbons to facilitate transport. Diluted or blended oil may not be considered a Group 5 oil depending on how diluted the blend is, but portions of the oil once spilled will separate and sink. While OSPR's existing regulations for contingency planning addresses Group 5 oils, it does not address some of the most problematic types of NFO, including diluted Group 5 oil, that are more broadly defined by the U.S. Coast Guard in its 2016 Guidance.

OSPR anticipates that requiring OSROs to have USCG certification will ensure that plan holders handling NFO will have adequate response capabilities that meet the standards specified in the USCG's Guidelines for the OSRO Classification Program, including trained divers and the appropriate equipment for NFO detection and removal. While having the appropriate personnel and equipment would improve the health and environmental outcomes of an NFO spill, it is difficult to quantify these benefits in the absence of data, as there have been very few NFO spills in California.

## FISCAL IMPACT STATEMENT

Page 5

### B. FISCAL EFFECT ON STATE GOVERNMENT

*3. No fiscal impact exists. This regulation does not affect any State agency or program.*

Under current regulations OSROs are already required to obtain ratings from OSPR by submitting information via paper or electronic forms. These forms are processed by an Oil Spill Prevention Specialist (OSPS 1) as part of OSPR's OSRO program. The proposed regulations replace the current process for filing a Group 5 rating application with a nearly identical one for NFO and should not significantly change the workload of the OSPS 1 assigned to the OSRO program.

Likewise, a similar system exists for processing contingency plans. As plan holders are already required under current regulations to file any changes in their plans with OSPR, any changes that could occur from a plan holder electing to handle NFO would already be covered by the current process. The only other potential fiscal cost would come from a change to the drill and exercise requirements of plan holders, but those do not change under these regulations, thus presenting no additional fiscal impact from these regulations.