

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
OFFICE OF SPILL PREVENTION & 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 Content
and
Amend Sections 819.01, 819.02, 819.04
Regarding Oil Spill Response Organization Ratings

FINAL STATEMENT OF REASONS

I. Date of Initial Statement of Reasons: June 21, 2022

Date of Final Statement of Reasons: October 11, 2022

II. Update to the Initial Statement of Reasons:

The Office of Spill Prevention and Response (OSPR) has adopted revisions to regulations to establish the criteria for a non-floating oil spill response organization rating. The amended regulations include sections 790, 817.02, 817.03, 817.04, 818.02, 818.03, 819.01, 819.02, 819.04 of Title 14, California Code of Regulations.

Public Comment Periods

The proposed amendments were noticed for a 45-day public comment period starting July 2, 2022 and ending August 15, 2022 (California Regulatory Notice Register No. Z2022-0621-06). No public hearings were held nor requested.

In February 2022, concurrent with this rulemaking action, OSPR noticed a separate rulemaking action proposing changes to several sections of Title 14, California Code of Regulations, which were approved by the Office of Administrative Law (OAL) on July 5, 2022 ([OAL Matter No. 2022-0525-04SR; General Provisions](#)), and that will be effective October 1, 2022. That rulemaking changed a few of the same sections being proposed for amendment in the current non-floating oil rulemaking action.

While none of the regulation text approved on July 5, 2022 overlap with the changes being proposed in this non-floating oil rulemaking action, OSPR determined that it was appropriate notice the public with a 15-day continuation notice (comment period) for the period starting August 23, 2022 and ending September 6, 2022. The 15-day continuation notice was sent by electronic mail on August 22, 2022 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).

No comments were received from the 45-day or the 15-day public comment periods.

First 15-Day Continuation of Public Comment Period: Changes to Text of Proposed Regulation

The General Provisions rulemaking (OAL Matter No. 2022-0525-04SR; General Provisions) created the new section 790.1 to consolidate provisions regarding severability into a single section. The following section that was a part of this Non-Floating Oil rulemaking had redundant text stricken as part of the General Provisions rulemaking action:

- 817.04(w)

The General Provisions rulemaking also created the new section 790.3, which consolidated into a single section various provisions about identifying information as confidential. The following subsections that were part of this Non-Floating Oil rulemaking had redundant text stricken and replaced with a cross-reference to new section 790.3 as part of the General Provisions rulemaking action:

- 817.02(c)(3)(B)4
- 817.04(e)(5)(A) through (E)
- 819.02(g)

These conforming amendments do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element, and do not have regulatory effect, because their substance is retained in the new section 790.3.

The General Provisions rulemaking similarly amended section 790.5 to consolidate into a single section various provisions about requesting a reconsideration for a decision made by OSPR. The following subsections from this Non-Floating Oil rulemaking had redundant text stricken and a cross-reference to the amended section 790.5 added as part of the General Provisions rulemaking action:

- 817.04(c)(2)(B)
- 817.04(f)(4)(A) through (C)
- 817.04(u)(7)

These conforming amendments do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element, except as described above, and have minimal regulatory effect, if any.

The General Provisions rulemaking also made changes to subsections 819.02(a); (b)(6); (c)(2)(E). The change to subsection 819.02(a) included

updating the mailing address for OSPR, updating the methods of delivery of an application to become a rated oil spill response organization, and eliminating in-person delivery as a delivery option consistent with OSPR's other regulations. The remaining changes to 819.02(b)(6) and (c)(2)(E) were non-substantive changes to punctuation and spelling.

To be clear, the changes made were non-substantive and there were no new revisions to the proposed non-floating oil regulations from this separate rulemaking action.

Clarifying Statement Regarding Changes to 817.03(d)

A non-substantive change was made to subsection 817.03(d) to include the word "have" after "must" in the sentence "Each plan holder must a contract..." after OSPR was notified by OAL. This addition makes the language consistent with similar subsections regarding "Containment Booming and On-Water Recovery" in this subchapter, and does not represent any change in current requirements, rights, or responsibilities by plan holders.

Clarifying Statement Regarding Changes to 819.04 (3)(C)

Subsection 819.04(3)(C) was amended to change all mentions of "Group 5 Oils" to "Non-floating Oil" (NFO) and amended to delete the previous requirements for an OSRO applying for a Group 5 Oils rating and replace it with the requirements for an NFO rating. These requirements include providing proof of an NFO classification from the U.S. Coast Guard (USCG) to demonstrate that the organization meets federal standards for NFO cleanup, detection, and recovery. The USCG NFO classification requires an OSRO to provide details on how it deploys its detection and recovery assets to Captain of the Port zones or Alternate Classification Cities; the proposed amendments ask OSROs to adapt this information to the applicable area contingency plans or geographic contingency plans established by OSPR but do not formally make this a mandatory requirement in order to allow OSROs flexibility to adapt this information.

III. Reasonable Alternatives to the Proposed Regulatory Action

In the course of developing the proposed regulations, OSPR considered various alternative approaches to different elements and suggestions received from the public, both during pre-rulemaking activities and during formal rulemaking comment periods. 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: OSPR develops its own oil spill response organization (OSRO) rating for response capabilities to non-floating oil that is completely separate from the U.S. Coast Guard's non-floating oil OSRO classification.

Analysis: OSPR has evaluated the response equipment and protocols necessary for a non-floating oil response and has found that the guidelines set forth by the U.S. Coast Guard in their non-floating oil classification for OSROs is appropriate and more than adequate for a response to a non-floating oil spill. Developing an independent rating that does not rely on the U.S. Coast Guard's classification would require OSROs to devote more staff time to complete the necessary forms that a separate rating program would require and would possibly involve new evaluations to maintain their rating. Additionally, maintaining equipment requirements separate from the U.S. Coast Guard's classification could mean that OSROs are forced to make large capital investments in equipment, which could potentially force OSROs out of the market and reduce California's readiness capabilities. The proposed regulations for OSPR's non-floating oil rating rely on the OSRO producing a copy of their U.S. Coast Guard non-floating oil classification, which both ensures response readiness and reduces the required OSRO staff time to file for a rating.

Based on the information the Office of Spill Prevention and Response currently possesses, and the reasons stated above, no reasonable alternative considered would be more effective in carrying out the purpose for which this regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons, or equally effective in implementing the statutory policy or law.

The proposed regulations implement, interpret, and make specific Government Code sections 8670.29, 8670.3, and 8670.30. The proposed regulations are necessary to provide specificity not found in the statutes.

IV. Local Mandate Determination

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

V. Small Business Impact

OSPR has determined that the proposed regulations have no substantial effect to small businesses. No alternatives were proposed that would lessen any adverse economic impact on small businesses.