

**State of California
Office of Administrative Law**

In re:
Office of Spill Prevention and Response

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 819, 819.01, 819.02,
819.03, 819.04, 819.05,
819.06, 819.07

Repeal sections:

**NOTICE OF FILING AND PRINTING ONLY
OF EMERGENCY REGULATION(S) OR
ORDER(S) OF REPEAL**

Government Code Section 11343.8

OAL Matter Number: 2016-0927-03

**OAL Matter Type: Emergency File and Print
Only (EFP)**

This emergency readopt file and print action by the Office of Spill Prevention and Response amends eight sections in title 14 of the California Code of Regulations (CCR) to implement changes to the statewide oil spill prevention and response program pursuant to Senate Bill 861 (Stats. 2014, ch. 931). This is a statutorily deemed emergency and exempt from review by the Office of Administrative Law, pursuant to Government Code section 8670.7.5.

OAL filed this emergency regulation(s) or order(s) of repeal with the Secretary of State, and will publish the emergency regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: October 4, 2016



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Thomas M. Cullen Jr.
Copy: Christine Kluge

NOTICE PUBLICATION REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0927-03EFP
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For use by Office of Administrative Law (OAL) only

<p>NOTICE</p>	<p>REGULATIONS</p>
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 04 2016

1:45 pm

AGENCY WITH RULEMAKING AUTHORITY
OFFICE OF SPILL PREVENTION AND RESPONSE

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) STATEWIDE OIL SPILL RESPONSE ORGANIZATIONS (OSRO) RATINGS	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-1002-05EFP
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 819, 819.01, 819.02, 819.03, 819.04, 819.05, 819.06, 819.07
	REPEAL
TITLE(S) 14	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Government Code section 8670.7.5</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Christine Kluge	TELEPHONE NUMBER (916) 327-0910	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Christine.Kluge@wildlife.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9/26/16
TYPED NAME AND TITLE OF SIGNATORY Eric B. Milstein, Assistant Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 04 2016

Office of Administrative Law

**CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES
DIVISION 1. FISH AND GAME COMMISSION - DEPARTMENT OF FISH & WILDLIFE
SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE
CHAPTER 3. OIL SPILL PREVENTION AND RESPONSE PLANNING
SUBCHAPTER 3. OIL SPILL CONTINGENCY PLANS**

819. Statewide Oil Spill Response Organization (OSRO) Rating.

819.01. Purpose and Scope.

(a) The Oil Spill Response Organization Rating process was developed to ensure the capability of clean-up contractors and to facilitate the preparation and review of oil spill contingency plans. An owner or operator who is required to submit a contingency plan must, among other things, identify and ensure by contract or other approved means the availability of personnel and equipment necessary to respond to all contingency plan requirements. Plan Holders that have a contract or other approved means for the containment, on-water and terrestrial recovery and storage, and shoreline protection services of a Rated OSRO do not have to list that OSRO's response resources in their plan. A Rated OSRO is one that has received an OSRO Rating Letter (ORL) from the Office of Spill Prevention and Response (OSPR) for the containment, on-water and terrestrial recovery and storage, and shoreline protection services as listed in their application.

(b) OSROs with a terrestrial response services rating do not have to demonstrate on-water recovery capability. The need for terrestrial services is determined by the Plan Holder in their Contingency Plan. Requirements for terrestrial services are explained further in this section.

(c) The Rating levels assigned pursuant to this section are for planning purposes and may not reflect the exigencies of actual spill response.

(d) Only OSROs that receive a Rating from OSPR are eligible to enter into agreements for response services pursuant to Government Code 8670.56.6.(j)(1), for the response resources as listed in their ORL.

Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28, 8670.30 and 8670.56.6(j)(1), Government Code. Reference: Sections 8670.28, 8670.30 and 8670.56.6(j)(1), Government Code.

819.02. OSRO Application Content.

(a) General Information

LM
per agency
request
10/4/16

An individual or entity may apply for consideration as a Rated OSRO for oil spill response operations. After review of an OSRO's application for Rating, OSPR will only grant Ratings for applicable planning timeframes in each Area Contingency Planning Area or Response Planning Area, as applicable. An OSRO's existing OSRO Rating Letter (ORL) issued from the Administrator shall remain valid unless revoked, and shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance. OSROs without a current ORL must submit a completed application within 60 calendar days prior to citing the OSRO's response resources and services to comply with the contingency planning requirements for tank vessels, nontank vessels and facilities. The following information is required before an application will be reviewed:

- (1) the OSRO's name, contact person, mailing and physical addresses, facsimile and telephone numbers;
- (2) all subcontractor's name(s) (if applicable), contact person, mailing and physical addresses, facsimile and telephone numbers;
- (3) list of Plan Holders contracted with;
- (4) for the previous two years from the date of the application, documentation of California oil spills responded to or California equipment deployment exercises participated in, including personnel and equipment used for the response/exercise, as applicable;
- (5) an organizational diagram depicting the OSRO's response organization and management/command structure;
- (6) a description of the roles, responsibilities and method to interface the OSRO's organization with the State Incident Command System and/or the Unified Command Structure as required by Title 8, California Code of Regulations (CCR), Section 5192(q)(3)(A). (The OSRO may utilize the appropriate Area Contingency Plan as a reference for information on the Incident Command System/Unified Command Structure);
- (7) for each type of service, the types of oil to which the OSRO is willing and able to respond; and
- (8) a description of the OSRO's communications equipment, to include:
 - (A) the amount and type of equipment;
 - (B) the frequencies to be used; and
 - (C) the number of certified operators.

(b) Equipment and Personnel

The application shall include for each location (i.e., where the equipment is stored, moored and operated), the following information as applicable for the response equipment and personnel available to respond, indicating whether company owned/employee or subcontracted (including subcontractor's name), and dedicated or non-dedicated or OSRO-owned and controlled (as defined in Section 815.05 of this subchapter), that forms the basis for the requested Rating. Note: Ratings for six hours or earlier require sufficient dedicated response resources (as defined in Section 815.05(c)) or OSRO-owned and controlled resources (as defined in Section 815.05(k)), except for shoreline protection services in which the six hour dedicated resources requirement is specified in Section 819.02(d)(4) of this subchapter. Terrestrial services do not require dedicated response resources. The required information for on-water and terrestrial containment and recovery equipment, as applicable, shall include but not be limited to:

(1) A description of the boom to include:

- (A) total lengths of boom by type;
- (B) manufacturer name and model;
- (C) freeboard and draft;
- (D) connector type;
- (E) intended marine Operating Environments;
- (F) associated anchoring systems; and
- (G) method of delivery and deployment (e.g., trailer, vessel).

(2) A description of the skimmers (including Oil Spill Response Vessels (OSRV) to include:

- (A) total number of skimmers by type;
- (B) skimmer manufacturer name and model;
- (C) whether skimmer is self-contained or part of a system (i.e., vacuum truck);
- (D) intended skimmer marine Operating Environments as defined in Section 790, including current;
- (E) skimmer type by design (i.e., stationary, advancing, self-propelled, stationary/advancing);

- (F) skimmer manufacturer's nameplate capacity;
- (G) Effective Daily Recovery Capacity (EDRC, as defined in Section 790);
- (H) on board storage capacity integral to the skimmer;
- (I) storage capacity of the skimming system external to the skimmer (e.g., dracones, tank barges, etc.), if any, and pump rate for off loading on-board storage;
- (J) maximum draft of the skimmer; and
- (K) method of delivery and deployment (e.g., trailer, vessel).
- (L) For Oil Spill Recovery Vessels (OSRV's) used to deploy skimmers, provide the vessels engine output, LOA (Length Overall), beam, draft and the intended Operating Environments.

(3) A description of the response vessels (not including OSRV's) to include:

- (A) vessel name;
- (B) vessel length, width, and draft;
- (C) vessel type by design;
- (D) current documentation/registration;
- (E) intended marine Operating Environments;
- (F) towing capacity;
- (G) horsepower;
- (H) amount of boom on board;
- (I) amount of on-board storage for recovered liquids;
- (J) pump rate for off loading on-board storage; and
- (K) applicable design limits, including suitability for different types of oils, Operating Environments as related to adverse weather, and draft.

(4) A description of any barge and its onboard portable or fixed tanks, to store recovered oil and liquids, to include:

- (A) vessel name or official number;
- (B) length/beam/draft;

(C) maximum capacity;

(D) a copy of the vessel's Certificate of Inspection or other documentation as applicable;
and

(E) description of any vacuum trucks, including:

1. license or official number;

2. proof of current vehicle registration; and

3. maximum capacity.

(5) The required information for terrestrial containment and recovery equipment shall include, but not be limited to, a description of all heavy equipment including:

(A) backhoes.

(B) bulldozers.

(C) vacuum trucks, size and capabilities.

(D) portable or fixed storage tanks, maximum capacity.

(E) hydraulic cranes, manufacturer, size and type.

(F) pumps, size, type and capability.

(6) Any response resource listed for terrestrial services does not need to be a dedicated response resource, and may be OSRO owned or sub-contracted to meet the terrestrial service Rating and on-scene requirements.

(7) OSROs with a current OSRO Rating Letter may request that terrestrial services be added to their Rating. The Administrator will treat such a rating as a modification to the ORL and the expiration date of the ORL will remain in effect.

(8) For all equipment, all inspections and maintenance must be documented and the records maintained for three years. The location of the records must be noted in the application, and all records must be available for review during verification inspections conducted by OSPR.

(9) For any equipment not located in the ACP, or RPA and/or county(ies) within the RPA for which a Rating is sought, the applicant shall provide attestation that the equipment is transportable and available for use within the Rating time period.

(10) Equipment shall be listed only if it is in a fully operable condition. Future equipment, ordered but not yet delivered and fully operable, may be listed, but it must be listed and identified separately with its date of availability indicated.

(11) Personnel

For all personnel identified as a response resource, the application shall include for each ACP, or RPA and/or county(ies) within the RPA, as applicable, in which the OSRO is requesting a Rating:

(A) the number of personnel that are to be utilized for response activities at the six hour response level or earlier, their assignments during spill response, and whether they are dedicated or OSRO-owned and controlled or non-dedicated personnel. A list matching trained personnel by name to the equipment type and the services offered shall be made available for review during verification inspections by OSPR;

(B) the plan for mobilization of personnel including cascading additional personnel, and estimated time of mobilization;

(C) a list of the training and qualifications required for each spill response assignment including:

1. all appropriate State and federal safety and training requirements, including the OSHA requirements for Hazardous Operations and Emergency Response, and the requirements under Title 8, California Code of Regulations, Section 5192;
2. the number of trained supervisors and laborers, and the types of training received;
3. the procedures for training personnel;
4. the timelines for mobilizing and training additional response personnel not under contract; and
5. a statement by the OSRO certifying that all personnel within a job category have the requisite training and qualifications for their assignment during spill response.
6. Documentation of training and qualifications shall be maintained by the OSRO and shall be made available to the Administrator upon request.

(c) Subcontracted Response Resources

If response resources that form the basis for the assigned Rating are under contract from another party, and if the information required in this subsection is not listed elsewhere, the following information is required:

(1) On-site deployment timeframes by ACP, or RPA and/or county(ies) within the RPA, as applicable, and Operating Environments.

(2) A valid contract from each company that is providing the contracted resources shall be submitted to OSPR for review. If all subcontracts are the same, submitting one contract along with the signature pages for any additional contracts shall suffice. The contract shall include, but not be limited to, the following:

(A) the name of the company providing the resources (subcontractor);

(B) a complete listing and storage location of the specific resources being provided;

(C) the timeframe for which the agreement is valid;

(D) any limits on the availability of resources; and

(E) a signed letter from the subcontractor by an authorized individual, to the OSRO stating the following:

“The information provided regarding [subcontractor] response equipment and personnel is factual and correct to the best of my knowledge and belief. I agree to allow OSPR personnel access to my facility and records for the purpose of verifying the information contained in the Rating application in which my assets are listed. I agree to participate in announced and unannounced drills as set forth in Section 819.03 of this subchapter to verify any or all of the information regarding my response equipment and personnel contained in a Rating application”.

(3) Any drill or inspection of subcontracted response resources shall be coordinated with the OSRO whose application contains the subcontracted response resources.

(4) If the subcontracted response resources are not dedicated response resources, the OSRO must ensure the availability of non-dedicated response resources by contract in quantities equal to twice what the OSRO requires of the dedicated response resources. These non-dedicated response resources are subject to verification inspections and will be required by the Administrator to participate in an announced and unannounced drill(s).

(5) For terrestrial services only, if an Inland Facility owner/operator does not contract with a Rated OSRO for the terrestrial service requirements and capabilities described in this section and intends to meet these requirements with owner/operator-owned equipment and personnel, then the owner/operator shall seek to obtain a terrestrial services Rating.

(d) Service-specific Information

(1) List the ACP area or the GRA's (if established), or RPA and/or county(s) within the RPA, as applicable, and the Operating Environment, in which spill response services are being offered. Include for each ACP or RPA:

(A) the services being offered and/or under contract (i.e., booming, on-water and terrestrial recovery and storage, and shoreline protection services);

(B) estimated timeframes to deploy equipment/resources on scene for each service;

(C) Operating Environment(s) as described in Title 14, CCR Section 790, as applicable, including the minimum operating depth and currents for vessels, skimmers, and containment boom; and

(D) requested Rating level, as described in Section 819.04 of this subchapter.

(2) For each Rating level as described in Section 819.04, and for each service offered, a written plan of operations including a call-out list for each GRA, or ACP area if GRA's are not established, or RPA and/or county(ies) within the RPA, and Operating Environment of response coverage. The written plan of operations can be limited to the following time frames: six hours for High Volume Ports; 12 hours for Facility Transfer Areas and inland facilities; and 18 hours for Balance of the Coast (except for Shoreline Protection Ratings for small harbors which is limited to seven hours). However, a written general plan to acquire response resources beyond these time frames is still required. As applicable, the plan will describe the number(s), type(s), means of deployment, and operations of all oil spill response equipment and trained personnel, including subcontracted resources, that the applicant would use for a spill of 50 barrels, a spill of 3,125 barrels and the largest reasonable worst case spill for which the applicant would be contractually responsible.

(3) The applicant shall submit a description of the Systems Approach (as defined in Section 815.05 of this subchapter) for the services offered in a narrative format. OSRO's who are Rated only for a terrestrial service shall use the response resources listed in their application to describe the Systems Approach, in a narrative format, how they would contain and begin to respond and recover a 100 barrel spill or their Plan Holder's Reasonable Worst Case Spill volume, whichever is less, to land in the first six hours. For the equipment listed in Subsection (b), the narrative shall include, but not be limited to:

(A) for all boom:

1. describe how boom is transported and method of deployment.

(B) for all skimmers (including vessel of opportunity skimming systems (VOSS)):

1. describe how the skimmer is deployed and operated; and
2. describe how skimmer is transported.

(C) for all vessels (OSRO owned vessels, and subcontracted vessels):

1. describe how vessel is transported; and
2. describe type of spill response service the vessel is primarily to be used for (e.g., OSRV, skimming, towing boom, boom deployment).

(D) for all recovered oil and liquid storage:

1. describe how recovered oil is transported to/from storage.

(E) for heavy equipment:

1. describe how the equipment is transported and offloaded, if applicable.

(4) For all terrestrial services list the RPA or county(ies) within the RPA in which spill response services are being offered. For each RPA or county(ies), include:

(A) estimated timeframes for equipment and resources to arrive on scene; and

(B) requested Rating level, as described in Section 819.04(b).

(5) for all shoreline protection services of environmentally sensitive sites:

(A) OSRO's will receive a Rating for each Geographic Response Area (GRA). Ratings will reflect the OSRO's capability to deliver and deploy the response resources necessary to protect each type of shoreline and all applicable sensitive sites in the time frames required, as outlined in the appropriate Shoreline Protection Tables (SP Tables, see Section 790, incorporated by reference herein and posted on OSPR's website). The SP Tables shall be reviewed and updated as needed (e.g., to reflect updates to the ACPs, etc.).

1. An OSRO may propose alternatives to what is listed in the SP Tables for boats and staff only. The proposal may be tested by the Administrator any time prior or subsequent to plan approval.

(B) The following information shall be submitted with each application for a Shoreline Protection Rating for impacts within the first six hours:

1. Sensitive site name and number;
2. Expected time of impact;

3. Expected time of arrival and deployment of response resources; and
4. Amount of boom, vessels, trained personnel, and other resources necessary to protect the identified site in the timeframes required.
5. For impacts at seven hours and beyond, the total amount of response resources (boom, boats, staff, etc.) necessary to protect the remaining sensitive sites.

(C) To receive a rating for shoreline protection services, OSROs shall participate in the Sensitive Site Strategy Evaluation Program (SSSEP, as defined in Section 790), and shall comply with all local, state and federal laws, regulations and permitting requirements, including minimization measures and equipment specifications.

1. Each OSRO applying for a Rating for Shoreline Protection services shall be subject annually to at least one, but not more than four, announced SSSEP drills that test the protective response strategies that are designed to exclude or divert oil spills away from environmentally sensitive sites, in each ACP Area or ACP 2 GRA, in which they apply to provide services.

2. OSROs that participate in the OSPR SSSEP will receive a yearly schedule from OSPR which lists the sensitive sites to be drilled. The OSROs shall make arrangements to provide all the necessary equipment and personal. The Administrator will develop this schedule to assure that a representative number and type of sensitive sites that could potentially be impacted will be exercised. The schedule shall reflect OSPR's Best Achievable Protection mandate, factoring in OSPR's workload, and seasonal variability and sensitivities. OSPR will work with the OSRO to ensure that all local, state, and federal laws, regulations and permitting requirements are complied with as part of the SSSEP drill planning and implementation.

3. For marine facilities that conduct their own sensitive site drill planning and implementation, OSPR will work with the facility Plan Holder to ensure that all local, state, and federal laws, regulations and permitting requirements are complied with as part of the drill planning and implementation.

4. OSROs are required to exercise the sensitive site response strategies that are identified in the applicable ACP or Shoreline Protection Tables (SP Tables, incorporated by reference herein and posted on OSPR's website).

(D) The Rating(s) requested by the OSRO shall be justified by providing documentation specifying: location of both ACP and Plan Holder-identified sensitive sites to be protected, as determined by the OSRO; equipment and personnel; estimated time of arrival at the site to be protected; and deployment times. Announced and unannounced drills will be used to validate the Rating(s).

(E) Ratings up to and including six hours require sufficient dedicated response resources or OSRO-owned and controlled resources. (OSRO-owned and controlled resources refers to equipment owned by the OSRO, and personnel who are employed directly by the OSRO). The following table lists the applicable percentage of dedicated shoreline protection boats and staff that are required for each ACP Area or Geographic Region:

<i>Geographic Region</i>	<i>% DEDICATED RESOURCES FOR</i>
<i>(also known as ACP Area)</i>	<i>SHORELINE PROTECTION</i>
1	50% dedicated boats and staff
2	75% dedicated boats and staff
3	0% (non-dedicated boats and staff allowed)
4	0% (non-dedicated boats and staff allowed)
	*For Port Hueneme only, 75%
	dedicated boats and staff required
5	75% dedicated boats and staff
6	50% dedicated boats and staff

(F) Shoreline protection requirements for vessels operating in small harbors is included in the SP Tables, and includes a listing of small harbors throughout the state. OSROs may apply for a Rating for each small harbor by meeting the requirements in the Table. The requirements in the Small Harbor Table apply to all vessels over 300 gross tons (GT) that operate in the small harbors as listed. The following apply to the Small Harbor Table only:

1. Non-dedicated resources are allowed for shoreline protection for the vessels that operate in these harbors.
2. The amounts of boom, boats and staff, as listed, are required for the vessels that operate in these harbors. In some locations additional response resources may be

required for included or adjacent sensitive sites if this has been identified in the applicable ACPs.

3. Resource requirements can be met either with pre-positioned equipment (as identified in the owner/operator's Contingency Plan) or by a contract with a Rated OSRO. Advance notice to the OSRO is required before the Plan Holder can begin operating in the small harbor.

4. Unless otherwise specified in the Small Harbor Table, anytime that a vessel over 300 GT operates in these small harbors, that vessel shall have a contract or other approved means for a minimum of 2,500 feet of boom that can be deployed in 6 hours.

5. An OSRO may propose lesser amounts of shoreline protection resources than that listed in the Small Harbor Table, for carrying out planned projects in the Balance of the Coast, upon petitioning and approval of the Administrator. The proposal may be tested by the Administrator any time prior or subsequent to plan approval.

6. An OSRO may apply for a Temporary Small Harbor Rating for shoreline protection for a specific timeframe to cover a vessel being used for a specific project. Unannounced Drills for these temporary ratings will not require actual deployment of equipment.

(e) Attestation

The application shall contain the following language, signed and dated from the OSRO, by an authorized individual:

"The information provided regarding response equipment and personnel is factual and correct to the best of my knowledge and belief. I agree to allow OSPR personnel access to my facility, prior and subsequent to receiving a Rating, for the purpose of verifying the information contained in this application. I understand that all response resources identified for Rating purposes are subject to verification visits. I agree to participate in announced and unannounced drills as set forth in Section 819.03 of this subchapter to verify any or all of the information contained in this application, prior and/or subsequent to receiving a Rating".

(f) Confidentiality

(1) An applicant may request that proprietary information be kept confidential. 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 application that is made available for public review.

(A) An applicant may also request that any reports, or studies prepared or submitted under any OSRO certification 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 an applicant designates information as confidential, two different copies of the application must be submitted as follows:

(A) one copy must contain the confidential information. This application will be utilized in the review and Rating process; and

(B) one copy must be submitted with the confidential information removed. This copy will be available for public review. This application must contain sufficient information in place of the confidential information so that any individual reviewing the application will understand all the elements of the application.

LM
per agency
request
10/14/10

Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.10, 8670.19, 8670.28 and 8670.30, Government Code.

819.03. Application Review, Verification and Drills.

(a) Review For Rating

(1) A complete application will be reviewed within 90 calendar days of receipt or resubmission.

(2) The Administrator shall rate an OSRO upon determination that the applicant has met the requirements for the appropriate Rating levels, as outlined in Subsection 819.04(b)(2), for the equipment, services and operating environments listed in the application. The Administrator shall not issue a Rating until the applicant OSRO successfully completes an unannounced drill to verify the information in the OSRO's application.

(3) A Rating may be denied or modified if the Administrator determines that the OSRO applicant fails to meet the criteria for the Rating level of any services, based upon inspection, verification or performance of an announced and unannounced drill or actual spill, or for other reasons as determined by the Administrator. The Administrator may require the satisfactory completion of an unannounced drill of each rated OSRO prior to being granted a modified rating, or for renewal, or prior to reinstatement of a revoked or suspended rating.

(4) An unannounced drill for a terrestrial service rating will not require any equipment or personnel to be mobilized. OSRO's who apply for an additional terrestrial service rating within a different RPA, or within a different county within the RPA for which a rating has been granted, may be subject to additional unannounced drills with movement of response resources determined by the Administrator.

(b) Standards For Review

OSRO Rating Letters will be issued to OSROs subject to the following conditions:

(1) Equipment, equipment maintenance records, and personnel training records, and personnel-specific equipment qualifications must be verifiable by inspection by the Administrator. Any resources not on site at the time of an inspection will not be counted until verified by subsequent inspection.

(2) Response personnel must comply with all appropriate State and federal safety and training requirements. Safety requirements include, but are not limited to, the following (found in Title 8, California Code of Regulations):

Trenching and Shoring (Sections 1504, 1539-1547)

Electrical Safety (Sections 2299-2974)

Injury and Illness Prevention Program (Section 3203)

Employee Exposure Records (Section 3204)

Transporting Employees (Section 3702)

Crane Safety (Sections 4885-5049)

Noise/Hearing Conservation (Sections 5095-5100)

Ergonomics (Section 5110)

Respiratory Protection (Sections 5141 and 5144)

Airborne Contaminants/Employee Exposure Monitoring (Section 5155)

Confined Space (Sections 5157- 5159)

Hazardous Waste Operation and Emergency Response (Section 5192)

Hazard Communication (Section 5194)

Benzene Standard (Section 5218)

(3) Safety and training records may be inspected for verification.

(c) Inspections and Verification of Response Resources

(1) OSROs seeking a Rating are subject to unannounced inspections anytime prior and subsequent to receiving a Rating to verify the response services cited in the application. Terrestrial service ratings may be subject to one unannounced equipment verification inspection every three years, in each RPA, unless the Administrator determines that facts or circumstances compel additional inspections.

(A) Any contract or sub-contract for response resources listed in the application must acknowledge OSPR personnel's right to inspect and verify listed contracted response resources as provided in this section or those response resources will not be counted. Inspection of sub-contracted response resources shall be coordinated with the OSRO whose application contains the subcontracted response resources.

(2) The Administrator or any duly authorized representative of OSPR may do any of the following:

(A) enter the OSRO's or sub-contractor's facility or other areas where response service equipment is stored or serviced to inspect the response services cited in the application;

(B) document, photograph or videotape any response service equipment;

(C) request start up, operation, or demonstration of any response service equipment or response system cited in the application; or

(D) inspect and copy any documents, reports, equipment maintenance records, employee training records, or other information required to verify the response services cited in the application.

(3) Deficiencies noted during the inspection may result in denial of the application, or revocation or modification of the OSRO's Rating as described in Section 819.06 of this subchapter.

(4) The Administrator may accept an inspection completed by a governmental agency if all requirements of Sections 819 through 819.07 are met.

(5) OSRO Announced Drills and Inspections; and Unannounced Drills:

Announced and unannounced drills shall be conducted to verify any or all of the elements of the services provided by an OSRO in its application prior and subsequent to issuing a Rating. The Administrator may determine if actual spill response may be substituted in lieu of a drill, as described in CCR Section 820.01(k) of this subchapter.

(A) Announced Drills and Inspections

All OSROs shall submit annual drill schedules to OSPR and conduct equipment deployment drills for equipment listed in the application, including subcontracted equipment, for any services they are Rated for. The exact dates of the exercises shall be submitted 30 calendar days prior to the exercise being conducted.

1. At least 50% of all response equipment other than boom shall be exercised each year. All response equipment, including boom, shall be exercised over a two-year period. The OSRO will ensure that this equipment is identified/labeled and the same equipment is not used repeatedly for each exercise.
2. For the equipment deployment exercises, the OSRO shall operate boats, boom and skimmers in each type of Operating Environment contained in the application.
3. Documentation that these exercises/inspections have been performed shall be submitted to OSPR within 30 calendar days after completion of the exercise/inspection. The equipment deployment exercises pursuant to this subsection will also satisfy the equipment deployment exercise requirement of Section 820.01 of this this subchapter. These exercises will not fulfill the semi-annual equipment deployment exercise requirement of marine facility-owned equipment pursuant to Section 817.02(k)(1)(B).
4. OSROs shall ensure they coordinate equipment deployment exercises with all of their subcontractors. Full systems must be deployed and operating for all booming, on-water and terrestrial recovery and storage, and shoreline protection services.
5. OSROs Rated for only a terrestrial service do not need to submit a drill schedule to OSPR.

(B) Unannounced Drills

OSROs are subject to unannounced drill(s) by OSPR to verify the ability of the OSRO to respond and deploy equipment and personnel as stated in the OSRO's application, prior and subsequent to receiving a rating. Unannounced drills will only be held to verify Ratings of 24 hours or earlier. Unannounced terrestrial service rating drills shall only include equipment and personnel inspections.

1. A Rated OSRO shall be subject to one unannounced drill per year in each ACP area, and/or county(ies) within the RPA in which a Rating has been issued by OSPR. However, for ACP Area 2 only (as described in Section 790(g)(2)(B)), if an OSRO applies for and receives a Rating for six hours or earlier they shall be subject to one unannounced drill each year in each of the Geographic Response Plan Areas (GRA) identified in the ACP.

- i. The Administrator may call a drill to test every service that the OSRO intends to provide, pursuant to the OSRO's application. Plan Holders are still subject to unannounced drills for all required services, including those for which OSPR does not Rate the OSRO.
 - ii. Each OSRO applying to provide shoreline protection services shall be subject to one unannounced drill that tests their ability to provide sensitive shoreline site protection services in each Geographic Region (or Geographic Response Plan area, if established) in which they apply to provide services.
2. Significant reductions in resources, as described in Section 819.05 of this subchapter, may warrant additional unannounced drills.
3. Failure to participate in an unannounced drill may result in denial or revocation of the OSRO's Rating as described in Section 819.06 of this subchapter.
4. The Administrator may modify, suspend or revoke an OSRO's Rating if the OSRO fails to satisfactorily complete an unannounced drill.
5. The Administrator may cancel an unannounced drill at any time due to hazardous or other operational circumstances, which shall include but not be limited to:
 - i. any unsafe activity or condition;
 - ii. oil or cargo transfer operations;
 - iii. inclement weather or sea state;
 - iv. on-going spill response activities;
 - v. emergency situation as determined by the U.S. Coast Guard Captain of the Port; or
 - vi. other situations or conditions as determined by the Administrator.
6. All non-governmental costs associated with an unannounced drill are the obligation of the OSRO.
7. OSROs may identify client Plan Holder(s) who wish to receive credit for a drill as described in Section 820.01 of this subchapter.
8. The Administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the Administrator within 30 calendar days.

9. The Administrator shall determine whether an unannounced drill called upon the OSRO by a federal agency qualifies as an unannounced drill for the purpose of this section, as described in Section 820.01(j).

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Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.19, 8670.28 and 8670.30, Government Code.

819.04. OSRO Rating, Update, and Renewal Procedure.

(a) Filing

Complete applications must be filed with the Administrator of the Office of Spill Prevention and Response. Applications shall either be delivered in person or sent by registered mail with return receipt requested, or other means as approved by the Administrator to the Preparedness Branch of OSPR.

(b) OSRO Rating

(1) Upon satisfactorily meeting the requirements of this subchapter, an OSRO will receive the OSRO Rating Letter (ORL) that will state the type of response services, marine Operating Environments, ACP area, and/or county(ies) within the RPA, Rating time frame(s), the on-water or terrestrial daily recovery rate or Shoreline Protection Rating, as applicable, and any applicable conditions or restrictions. An OSRO Rating may not be assigned, transferred, or assumed. An OSRO's existing ORL issued from the Administrator shall remain valid unless modified, suspended or revoked, and shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance. OSROs without a current ORL must submit a completed application within 60 calendar days prior to citing the OSRO's response equipment and services to comply with the contingency planning requirements for tank vessels, nontank vessels and facilities.

(2) Ratings for containment booming and on water and terrestrial recovery and storage for an ACP, RPA, and/or county(ies) within the RPA will reflect the type of response service(s) offered based on the projected arrival time of the response equipment and personnel within the designated Operating Environments. Note: Ratings for six hours or earlier require sufficient dedicated response resources (as defined in Section 815.05(c)) or OSRO-owned and controlled resources (as defined in Section 815.05(k)). Ratings for containment booming services only will be limited to 12 hours or earlier. For containment booming, on-water and terrestrial recovery, and storage, "on-scene" means that the equipment is at the scene of the spill, and deployed and operating within one hour of arrival at the scene of the spill, but no later than the designated time frame for each Rating(s). The Rating time frames apply to all marine Operating Environments and are as follows:

<i>Ratings</i>	<i>Equipment On-Scene</i>
0	On-scene within 30 minutes
1	On-scene within 1 hour
2	On-scene within 2 hours (Temporary storage on-scene within 4 hours)
3	On-scene within 3 hours
4	On-scene within 4 hours
6	On-scene within 6 hours
12	On-scene within 12 hours
18	On-scene within 18 hours
24	On-scene within 24 hours
36	On-scene within 36 hours
60	On-scene within 60 hours

(3) Ratings for Shoreline Protection:

Ratings for shoreline protection will be based on the ability of the OSRO to meet the response requirements of the applicable ACP, GRA, or Shoreline Protection Tables (SP Tables, see Section 790, incorporated by reference herein and posted on OSPR's website). Note: Section 819.02(d)(4)(D) lists the applicable percentage of dedicated shoreline protection boats and staff that are required for each Geographic Region. The OSRO Rating Letter (ORL) for Shoreline Protection will list the applicable SP Tables or ACP/GRA sites and time frames for which the OSRO has been Rated. To receive a rating for Shoreline Protection, the OSRO must participate in the Sensitive Site Strategy Evaluation Program, as described in Section 819.02 (d)(4)(C) above.

(4) Group 5 Oil Recovery Endorsement: Equipment that is owned or under contract and identified to be used for response to Group 5 oils shall be made available for inspection upon request of the Administrator. This includes, but is not limited to, the following:

(A) Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;

- (B) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;
- (C) Dredges, pumps, SCUBA equipment, certified divers or other equipment and personnel necessary to recover oil from the bottom and on the shoreline; and
- (D) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

(c) Updates

(1) To maintain the OSRO's assigned Rating level, the following information shall be updated and submitted to OSPR:

(A) the current list of the OSRO's client Plan Holders, submitted whenever there is a change in the list; and

(B) the current list of all owned and subcontracted oil spill response equipment and trained personnel listed in the application, that forms the basis for the assigned Rating, submitted within one year, and annually thereafter, of the anniversary date of the original Rating.

(d) Renewal

(1) Ratings will be assigned for a period of three years unless suspended or revoked by the Administrator or assigned a modified Rating level. An OSRO shall file an application for renewal at least 90 calendar days prior to the expiration of the Rating. Renewal applications shall have the same content as a new application, and shall follow the same review, verification and drill procedures as a new application. Modification of a Rating shall not affect the three year period.

(2) Ratings may be renewed earlier at the request of the OSRO in the event the OSRO has sustained a significant increase or decrease in response resources.

(3) The Administrator may require an earlier or more frequent Rating renewal than that required in Subsection (d)(1) above. The OSRO will be notified in writing if an earlier renewal is required. The notice will include an explanation of the reasons for the earlier Rating renewal. The circumstances that would warrant an earlier renewal include, but are not limited to, the following:

(A) a change in regulations;

(B) the development of new oil spill response technologies as determined by the Administrator;

(C) deficiencies in oil spill response capability identified by the Administrator as part of the Coastal Protection Review;

(D) an increased need to protect plant and wildlife habitat;

(E) deficiencies in oil spill response capability identified during an oil spill;

(F) deficiencies in oil spill response capability identified during an announced or unannounced drill;

(G) significant reductions to the OSRO's response capability; and

(H) any other situation deemed appropriate by the Administrator.

Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.28 and 8670.30, Government Code.

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819.05. Notice of Reduction in Response Resources.

(a) The OSRO shall notify the Administrator of significant reductions in equipment, personnel or management 14 calendar days in advance. This notice may be oral, followed by a written notice as soon as possible, or in writing by facsimile or letter. If the reduction is unforeseen, oral notice shall be given immediately after becoming aware of such change. The notice shall include the identification of backup resources sufficient to maintain the OSRO's Rating level, subject to approval by the Administrator.

(1) A significant reduction is one that would affect the OSRO's ability to respond consistent with their assigned Rating level.

(b) It is the responsibility of the OSRO to verify and report to the Administrator any significant reductions in subcontracted equipment and personnel listed in the OSRO's application.

(c) Failure to notify the Administrator of significant reductions in response resources may result in the modification of a Rating level or revocation of the OSRO Rating Letter.

Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.28 and 8670.30, Government Code.

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819.06. Rating Modification, Suspension, Revocation, or Denial.

(a) Criteria:

(1) Criteria for modification. The Administrator may modify an OSRO Rating at any time if the OSRO is not in compliance with the conditions of the Rating. The OSRO shall only perform at the modified Rating level until or unless the original Rating is reinstated.

(2) Criteria for suspension. The Administrator may suspend a Rating at any time if the OSRO is not in compliance with the requirements of this subchapter. In the situation where a Rated OSRO has refused to participate in an announced or unannounced drill, except as provided in Section 819.03(c)(5)(B), or is unable to successfully complete an announced or unannounced drill due to significant reductions in response resources, the Administrator may suspend the Rating at any time after the announced or unannounced drill is called. An OSRO with a suspended Rating shall not provide those services until the Rating is either modified or reinstated. The Administrator may revoke an OSRO Rating if the OSRO fails within 60 calendar days of written notification pursuant to Subsection (b) below to correct deficiencies that were the cause of a Rating suspension, or if statutory enactments subsequent to the issuance of the Rating conflict with the purposes of the OSRO Rating program.

(3) Criteria for Denial. The Administrator may deny an OSRO Rating if the OSRO has failed to provide the information required in the Rating application as set forth in Section 819.02, or has failed to satisfy the Application review criteria set forth in Section 819.03. If the Administrator decides to deny an OSRO Rating, the Administrator shall issue a written statement of the basis for the denial. After receiving the written statement of denial from the Administrator, the OSRO shall wait 90 calendar days before submitting a new application.

(b) Procedure For Modification, Suspension, Revocation, or Denial.

(1) When the Administrator believes there are valid grounds for modifying, suspending, revoking, or denying a Rating the OSRO shall be notified in writing of the modification, suspension, revocation or denial by certified or registered mail. A proposed revocation notice shall be issued after the 60 day period required by subsection (a)(2) above. The notice shall identify the Rating to be modified, suspended, revoked or denied and the reason(s) for such modification, suspension, revocation or denial, and inform the OSRO of the right to request reconsideration of a modification, suspension, revocation or denial. The Administrator may amend any notice of modification, suspension, revocation or denial at any time.

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Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.28 and 8670.30, Government Code.

819.07. Reconsideration and Hearing Procedures.

(a) Request for reconsideration of a modification, suspension, revocation or denial. Any person may request reconsideration if that person is one of the following:

(1) An applicant for an OSRO Rating or renewal who has received written notice of denial; or

(2) An OSRO who has a Rating modified, suspended, or revoked.

(b) Method of requesting reconsideration. Any person requesting reconsideration of an action must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the Administrator.

(2) The request for reconsideration must be received by the Administrator within 20 calendar days of the date of notification of the decision.

(3) The request for reconsideration shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(c) The Administrator shall notify the OSRO of his or her decision within 15 calendar days of the receipt of the request for reconsideration. This notification shall be in writing and shall state the reasons for the decision. The notification shall also provide information concerning the right to a hearing and the procedures for requesting a hearing.

(d) Hearing.

The OSRO may, within 15 calendar days after receipt of notice that reconsideration has been denied, request a hearing in writing.

(1) Any hearing required under this subchapter shall be conducted by an independent hearing officer according to the procedures specified in Government Code Section 11500 et seq. (Administrative Adjudication: Formal Hearing) and shall be scheduled as expeditiously as possible.

(2) After conducting any hearing pursuant to this section, the hearing officer, shall issue a written decision within 30 calendar days after the hearing is held. The decision of the hearing officer shall constitute the final administrative decision.

Note: Authority cited: Sections 8670.7, 8670.7.5, 8670.28 and 8670.30, Government Code. Reference: Sections 8670.28 and 8670.30, Government Code.

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