**APSA Pre-Rulemaking Remaining Questions:**

1. STD 399 – Economic and Fiscal Impact (Attachment) (Committee Input for Economic Impact)
2. Initial Statement of Reasons (ISOR) and Notice of Proposed Action (NOPA) Remaining Questions
3. Regulations Text

Unless noted, statutory references are from the Health and Safety Code

|  |  |
| --- | --- |
| **Notes:**  **Government Code 11346.3.**  (2) The state agency, before submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal’s impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties. | Notes:  Committee Notes  Absorbable- electronic reporting.  Any owner or operator- confirm per advisory committee. |
| ISOR and NOPA |  |
| shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:  (A) The creation or elimination of jobs within the state. |  |
| shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:  (B) The creation of new businesses or the elimination of existing businesses within the state. |  |
| shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:  (C) The expansion of businesses currently doing business within the state. |  |
| shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:  (D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment. |  |
| **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (Government Code 11346.5(a)(9)):**  Is a description included of all cost impacts known to the agency that a representative person or business would necessarily incur in reasonable compliance with the proposed action?  If no cost impacts are known to the agency does the notice say: “The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action?”  **Enforcement**  **Regulated Public**  **Related Industries**  Examples:  **Case 1 – Some Cost to Business**  HCD has made an initial determination that the proposed regulatory action would have a minor impact (totaling approximately $4,193 annually) on operators of EH facilities, business owners, with a valid HCD permit to operate, since the regulatory action will increase relevant fees. Further, the total fee increases to representative private  persons acting in reasonable compliance with the proposed action (i.e., requesting permits, plan review, technical service inspection, or other services and paying the associated fees) will amount to approximate $3,667,056 annually.  **Case 2- Researching costs to businesses**  DTSC relied on a variety of sources to estimate the number of California-based manufacturers potentially impacted by this proposed regulation. DTSC searched lists of manufacturers provided in D&B Hoovers and United States Census Bureau County Business Patterns for manufacturers of nail products containing toluene. DTSC then searched manufacturers’ websites and safety data sheets (SDS) to refine the list of companies manufacturing these products. Based on the data collected from these sources, DTSC estimates there are 11 manufacturers of nail products containing toluene in California that would be potentially affected by this regulation. DTSC estimates that costs could range from $112,960 to $304,960 for individual manufacturers to fulfill the SCP regulatory requirements to submit a Priority Product Notification and complete an Alternatives Analysis report. Total estimated costs to California-based businesses range from $1,242,000 to $3,354,560. |  |
| **Is there a Cost to any local agency or school district requiring reimbursement pursuant to section Government Code 17500 et seq.?**  Are there other evidence based non-discretionary cost or savings imposed upon local agencies?  Are there anticipated costs or savings in federal funding to the state? |  |
|  |  |
| TEXT |  |
| [**25270.5.**](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=25270.5.) **- UPA Inspections – Facilities with less than 10,000 gallons that are required to prepare an SPCC Plan**    Example:  HSC 25511.  (b) In addition to the requirements of Section 25537, the unified program agency shall conduct inspections of every business subject to this article at least once every three years to determine if the business is in compliance with this article. The unified program agency shall give priority, when conducting these inspections, to inspecting facilities that are required to prepare a risk management plan pursuant to Article 2 (commencing with Section 25531). In establishing a schedule for conducting inspections pursuant to this section, the unified program agency may adopt and use an index of the volatility, toxicity, and quantity of regulated substances and hazardous materials. A unified program agency shall attempt to schedule the inspections conducted pursuant to this section and Section 25537, when applicable, during the same time period. | ADVISORY COMMITTEE:  1. Discussion of risk criteria to determine which facilities should be prioritized for inspection.  2. Is there a cost to developing an alternative inspection and compliance plan?  (a) The Unified Program Agency may inspect tank facilities with a storage capacity of less than 10,000 gallons at least once every three years, to ensure compliance with these regulations.  **Those tank facilities which …………**  **should be prioritized for inspections.**  **Example from current reporting:**  **Tank facilities should be prioritized for inspections based on the following conditions:**  **1. Most delinquent. 2. Large volumes of petroleum.**  **3. The proximity of the facility to navigable water.** |
|  |  |
|  |  |
| (b) For tank facilities that are not inspected per subsection (a), the UPA shall develop an alternative inspection and compliance plan, subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal. | ADVISORY COMMITTEE:  Does developing an alternative  Notes:  Consider the cost to both directly affected individuals- regulated entities and enforcement.  Many currently create these plans.  Fee exists for this type of facilities, however, it is unknown if the calculated fee includes inspections. |
| **Section TBD**  **UPA Inspections of facilities that are conditionally exempt from preparing an SPCC Plan**  (a) The Unified Program Agency may inspect tank facilities that meet the conditions as described in Health and Safety Code Section 25270.4.5(b) at least once every three years. Those tank facilities which are near navigable waters, potable water supplies, or sensitive ecosystems, such as wetlands and marshes should be prioritized for inspections. The primary purpose of the inspection is to determine whether the owner or operator continues to meet the conditions as described in Health and Safety Code Section 25270.4.5(b).  (b) For tank facilities that are not inspected per subsection (a), the UPA shall develop an alternative inspection and compliance plan, subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal. | ADVISORY COMMITTEE:  fiscal- developing a plan. |
| [**25270.5.**](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=25270.5.)  **Section TBD**  **UPA Staff Training**  (a) UPA staff who inspect tank facilities for SPCC Plan compliance must obtain at least 6 hours of refresher training every 3 years. | ADVISORY COMMITTEE fiscal:  The 3 year cycle for refresher training is aligned with conference attendance.  Is the cost of this refresher absorbable? |
| **25270.12**  **Tanks that do not meet the requirements of the SPCC Plan.**  Notes:   * Unintended consequences- plate or no plate * Physical indicators * Basic safety measures.   Goals:   * Do not use a tank as an AST that was previously used as an UST that was surrounded by backfill material or buried, as an AST. * Do not use transportation related vehicles as fixed tanks designed for another purpose that do not have the appropriate design qualities to act as a AST. * Clarify Venting. * Non-Compliant tanks used as AST are not minor violations.   Notes:  Including a list of UL standards that is applicable, does not unintentionally include or exclude some tanks. Can’t be too long of a list.  These are the tanks that should not be used as an AST. | ADVISORY COMMITTEE CONTENT.  Technical framework to accomplish these goals. |

**Comments below originated with Committee Member Craig Fletcher**

(1) A storage tank designed and intended for use as an Underground Storage Tank.

Fully support this comment, but recommend this be clarified to apply to tanks designed for applications involving placement in an excavation surrounded by backfill material and buried, such as those UL 58 and UL 1316, to reduce regulatory confusion due to the definition of UST in California, which captures some true ASTs installed below grade as USTs.

(2) A storage tank that has been utilized as an Underground Storage Tank.

Similar clarifying comment as above. Given CA's definition of UST, this could exclude owners who had a TIUGA classified as a UST (yet originally designed to AST standards, like UL 142) who decided to relocate this above ground elsewhere. Relocation of an AST from a basement to above ground use should not be prohibited. Recommend clarifying this using similar language as item above.

(3) A rail car, tank car, or tank vehicle, that is designed and fabricated for transportation instead of fixed use or stationary installation.

(4) A frac tank, also known as a fixed-axle storage tank.

I'm assuming you mean a frac tank used as a stationary installation in permanent fashion, and excluding dispensing. There may be instances where frac tanks are needed to store liquids containing petroleum products regulated under APSA for short periods of time for temporary storage, such as during emergency response, outages or turnarounds during maintenance, or other events where these could be used safely, provided these weren't used for dispensing. I'm not sure what the Fire Code says about these applications, but there are instances where this capability will be needed. Recommend revising this to keep flexibility for short term limited use for reasons noted above. Frac tanks are used for a myriad of hazardous liquids, including those containing petroleum compounds at varying concentrations, and have been used successfully and safely.

(5) A tank that is designed and intended to hold compressed gasses.

This clause may cause confusion for owners who have tanks and containers stored under pressure, such as pressure vessels, that may or may not be excluded under other provisions of APSA. Recommend further discussion on this provision to better understand the intent of the proposed regulation.

(c ) Aboveground Storage Tanks, as defined, shall not have the following characteristics.

(1) Pitting on the external side of the shell of the tank.

I understand this proposed regulatory comment was derived from materials previously prepared by OSFM regarding identifying USTs being used as ASTs. However, pitting on the external side of true ASTs is occasionally encountered and normally not of concern from an integrity standpoint provided it does not exceed API or STI criteria. Pitting can arise from many different damage mechanisms, and both API and STI differentiate isolated pitting from concentrated pitting during inspections.  Excluding all pitting as currently proposed is overly restrictive, unnecessary, and subject to widely varying interpretation. It would be better to revise this to reflect industry standards to avoid confusion and broad misleading unintended over-regulation. If every tank that had pitting was required to be replaced or repaired--even for the smallest of inconsequential pitting, the resultant costs to the regulated community would be very high.

(2) External corrosion, which at times will appear as “worm like” tunneling marks. Marks are still visible under a new coat of paint.

Essentially the same comment as above, but of broader extent and greater impact to the regulated community as currently written. Many ASTs, except perhaps brand new tanks, have some external corrosion, ranging from trivial cosmetic patinas to more extensive corrosion. In practice, unless the external corrosion is extreme, it rarely renders a tank not suitable for continued service by failing minimum steel thickness requirements under industry standards. (Note there are a few exceptions to this, such as certain tanks located in corrosive areas, such as coastal locations or other aggressive environments, or other circumstances). As an alternative, recommend referencing industry standard requirements, such as STI's SP001 or API's 653, for evaluation of corrosion and minimum steel thickness requirements for integrity purposes.

(d) Stationary Aboveground Storage Tanks shall have functional emergency vent with the appropriate size ratio for the volume of the storage tank.

Better language to allow for the use of a variety of emergency venting methods, resides in CFC 5704.2.7.4 Emergency Venting, and in NFPA 30, 22.7.1.1, to account for form of construction designs, including weak shell to roof joints for vertical cylindrical tanks, as well as for floating roof tanks, and other designs covered by the APSA regulations. These use terms such as "adequate relief vent capacity" or similar language captures other relieving methods and designs that may be encountered in practice. I'm not sure what is meant by "appropriate size ratio for the volume of the storage tank".

(e) The exception to subsection (d ) is as follows: Tanks having a capacity of more than 12,000 gallons that are not within the diked area or the drainage path of Class I or II liquids do not require emergency venting. Liquids classified as Class I, Class II, and Class IIIB are defined in the California Code of Regulations, Title 24, Part 9, Section 202.