

INITIAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS
TITLE 19, DIVISION 1, CHAPTER 15, ARTICLE 1

Authority

Health and Safety Code Section 25270.4.1

Reference

Aboveground Petroleum Storage Act, Health and Safety Code Sections 25270.2, 25270.3, 25270.4, 25270.4.1, 25270.4.5, 25270.5, 25270.6, 25270.9, 25270.12

Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, Health and Safety Code Section 25404

Water Code Section 13050

California Code of Regulations Title 27 Section 15110

Introduction

There are approximately 17,852 aboveground storage tank facilities in California that store a variety of petroleum oils and/or petroleum products. Aboveground petroleum storage tanks may leak and spill into the environment, causing contamination problems. Preventive steps taken by the industry and regulatory agencies can reduce the risk of leaks and spills.

CAL FIRE-Office of the State Fire Marshal (OSFM) is responsible for ensuring the implementation of the Aboveground Petroleum Storage Act (APSA) program element of the Unified Program. The APSA provides technical and enforcement guidance for aboveground petroleum storage to reduce the risk of leaks and spills.

Each proposed regulation supports the implementation of one or more of the OSFM's statutory responsibilities, as related to APSA. The full text of these responsibilities is found in Health and Safety Code Section 25270.4.1 and summarized below.

1. Adopt regulations implementing APSA.
2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.
3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.
4. Provide training for local Unified Program Agency enforcement entities.
5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM's responsibilities under the APSA program.

7. Develop more stringent requirements, as needed to implement the safety requirements of the APSA.

Examples of preventative measures include local Unified Program Agency (UPA) review of annual tank facility statements, review of Spill Prevention, Control, and Countermeasure (SPCC) plans prepared by the tank owner/operator, and inspections of aboveground storage tanks at tank facilities covered by the Act to determine whether the SPCC Plan was prepared and is being implemented.

The Aboveground Petroleum Storage Act is one program within the Unified Program, a multi agency state program which is overseen by the Secretary of Environmental Protection. The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring local regulatory agencies consistently apply statewide standards when they issue permits, conduct inspections and engage in enforcement activities.

Problem

The OSFM is charged with providing statewide oversight and support for the Aboveground Petroleum Storage Act. There is substantial evidence that statewide guidance is required to fully implement the APSA program and effectuate APSA's public safety and environmental protection purpose.

In alignment with the OSFM's specific responsibilities as detailed in Health and Safety Code Section 25270.4.1, the purpose of these regulations is to provide a clear source of technical guidance and distinguish each stakeholder's responsibilities under APSA. Local Unified Program Agencies (UPA) are responsible for enforcement activities, there is no state or federal approval of SPCC Plans.

Because petroleum is a complex policy issue, the law is also very complex and detailed. These regulations coordinate and highlight the state and federal laws for the regulated community, industry stakeholders, and local UPA enforcement entities. This is to provide an efficient enforcement and compliance tool for the directly affected entities of the APSA program. Supporting consistent enforcement is one of the OSFM's key responsibilities under APSA.

Federal regulations also include explicit authority for state enforcement to include more stringent requirements in order to meet the public safety purpose. More stringent technical requirements, as needed for public safety and in alignment with State law, are also included and justified.

Problem, Purpose, Rationale of this proposal (See below for Problem, Purpose, Rationale of each section)

While preventive steps taken by the directly affected public can reduce the risk of leaks and spills, these efforts also require state support and jurisdictional authorities. These regulations are aligned with legal requirements including jurisdictional authorities.

Each proposed regulation supports the implementation of one or more of the OSFM's statutory responsibilities, as related to APSA.

1. Adopt regulations implementing the Aboveground Petroleum Storage Act (APSA), Health and Safety Code Sections 25270 through 25270.13)
2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.
3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.
4. Provide training for local Unified Program Agency enforcement entities.
5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM's responsibilities under the APSA program.
7. Develop more stringent requirements, as needed to implement the safety requirements of the APSA.

Economic Impact Analysis

(A) The creation or elimination of jobs within the state.
No impact anticipated.

(B) The creation of new businesses or the elimination of existing businesses within the state.
No impact anticipated.

(C) The expansion of businesses currently doing business within the state.
No impact anticipated.

(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.
Anticipated benefit to the state's environment through the prevention or reduction of petroleum spills or other releases.

Documents Incorporated by Reference.

There are no documents incorporated by reference as part of this rulemaking.

Technical, Theoretical, and/or Empirical Study or Reports

Documents Relied Upon:

In addition to the sources noted above, the OSFM relied on the following technical, theoretical, and/or empirical studies, reports, and laws in developing the proposed regulations.

In developing these proposed regulations, the OSFM consulted with and received input from the Aboveground Petroleum Storage Act (APSA) Advisory Committee. These were

conversations only, and there were no documents relied upon in connection with these consultations.

The OSFM APSA Advisory Committee consists of local UPAs, Federal and State agencies, fire service, various industry representatives, industry standards organization, tank manufacturer/distributor, and private consulting, to provide recommendations and review the proposed regulations. Many committee members would be legally required to comply with the new regulations and are therefore directly impacted by amendments. Committee members are appointed by the State Fire Marshal.

These regulations were originally developed by the committee as a subgroup and then group consensus process between 2013 and 2018. An updated draft of the regulations was discussed and analyzed by the committee during the April 11, 2023, advisory committee meeting, as noticed on the meeting agenda.

A revised draft of the Express Terms Text and a draft of this ISOR document was placed on the agenda for the June 20, 2023, Advisory Committee meeting for further revisions and analysis by the committee. The results of the Advisory Committee activity is memorialized in the meeting minutes and in the content of the ISOR document.

Documents Relied Upon

OSFM Informational Bulletins, IB 14-005 and IB 14005-A: Under the 2014 tab
<https://osfm.fire.ca.gov/divisions/code-development-and-analysis/information-bulletins/>

1. IB: 14-005 7/25/14
Underground Fuel Storage Tanks Prohibited for Use as Aboveground Fuel Storage Tanks (PDF)
2. IB: 14-005-A 1/29/15
Addendum - Underground Fuel Storage Tanks Prohibited for Use as Aboveground Fuel Storage Tanks (PDF)

OSFM Advisory Committee Meeting materials: 2023 Meeting Information tab
<https://osfm.fire.ca.gov/boards-committees/aboveground-petroleum-storage-act-apsa-advisory-committee/#APSA2023>

3. Meeting: April 11, 2023
4. Meeting: June 20, 2023
5. Meeting: July 31, 2023

6. Laird, John. "Legislative Intent - Assembly Bill No. 1130." Letter to Dotson Wilson. 11 Sept. 2007. Journal of the Assembly, Legislature of the State of California, 2007-2008 Regular Session. Vol. 3. Sacramento: Chief Clerk of the California State Assembly, 2007-2008. 3427-3428. (ADA Compliant PDF)
<https://osfm.fire.ca.gov/media/qc2jrfwx/laird-letter-ab1130-2007-ada.pdf>

7. United States Environmental Protection Agency, Office of Emergency Management. SPCC Guidance for Regional Inspectors. 2013.

<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-guidance-regional-inspectors>

8. Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (CWA), August 1998 | US EPA. United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance.

<https://www.epa.gov/enforcement/civil-penalty-policy-section-311b3-and-section-311j-clean-water-act-cwa-august-1998>

[9. California Environmental Protection Agency \(CalEPA\), Initial Statement of Reasons, proposal to amend California Code of Regulations, \(CCR\), title 27, Division 1, Subdivision 4, Chapter 1, sections 15110 – 15330, and Appendices A – D. 2023. California Notice File Number Z2023-0314-08.](https://www.epa.gov/enforcement/civil-penalty-policy-section-311b3-and-section-311j-clean-water-act-cwa-august-1998)

<https://calepa.ca.gov/cupa/Unified-Program-Regulations-45-Day-Public-Notice-and-Comment-Period/>

Benefits

These regulations are necessary to protect public safety and the environment. There are approximately 17,852 aboveground storage tank facilities in the State that store a variety of petroleum oils and/or petroleum products. Aboveground petroleum storage tanks may leak and spill into the environment, causing contamination problems. Contamination poses a range of risks, which result in minor to very serious threats to the environment and public safety. Among other causes, leaks and spills may be due to advanced age, defects in design or installation, human error, and/or equipment failure.

Preventive steps taken by the industry and regulatory agencies can reduce the risk of leaks and spills, therefore providing a direct public safety and environmental benefit. In order to support these prevention measures, this proposed regulation will assist in the consistent implementation of the APSA program.

Directly Affected Benefit

A central goal of these regulations is to provide an efficient enforcement and compliance tool for the directly affected public of the APSA program. Because petroleum is a complex policy issue, the law is also very complex and detailed. These regulations coordinate and highlight the state and federal laws for the regulated community, industry stakeholders, and local UPA enforcement entities.

Small Business Determination

Businesses may self-identify as part of their public participation in the regulatory process. However, the public safety requirements of this program do not require disclosure of business details which would identify a “small business,” as it is defined by Government Code 11342.610.

Due to the lack of information for analysis purposes, the OSFM has determined that the proposed regulations have no “substantial” effect to small business and therefore the OSFM has not identified any alternatives that would lessen any adverse impact on small business and still fulfill the public safety purpose of the program.

Alternatives that are less burdensome and equally effective in achieving the purposes of the statute.

The OSFM staff and the Advisory Committee has thoroughly reviewed this proposed regulatory action, including both the positive and negative impacts it will place upon the local government and industry.

No alternatives considered by the OSFM or the APSA Advisory Committee would be more effective in carrying out the purpose of the proposed regulations or be less burdensome to the affected parties than this proposed regulation. Alternatives discussed during committee meetings were consistent with the eventual regulations, any choices made were determined to be the least burdensome option to accomplish the goals of the regulations.

The OSFM has determined that no reasonable alternative it considered to the regulations or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed nor would they be as effective.

They also would not be less burdensome to the affected private persons or businesses than the proposed action, nor would they be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Performance and Prescriptive Standards

The standards in these regulations are performance standards.

Determination of No Significant Economic Impact on Business

The OSFM has determined that the proposed regulations will not have a significant adverse economic impact on business. The OSFM’s Advisory Committee discussed and considered these changes. The Committee members indicated these changes would not have a significant adverse economic impact on business enterprise or individuals.

The proposed regulation will incur some effect on the regulated community, but those impacts will be generally absorbed by industry and businesses engaged with industry.

UPAs are required to implement a single fee system within each jurisdiction. Fees must be consolidated for all Unified Program activities. UPAs are required to maintain their fee structure at a level that ensures that the UPA has operating expenses while also ensuring that regulated businesses are not paying more than what is fiscally required. In addition, changes to the fee structure must be approved by the appropriate oversight

entity that supervises the UPA.

Due to these factors, a change in UPA requirement may not lead to a change in the fees charged to businesses or another direct economic impact to businesses. The UPA fee structure and guidance is found in the California Code of Regulations, Title 27, Sections 15210 and 15220.

Based on those facts and evidence, the OSFM has determined these changes would not have a significant adverse economic impact.

Duplication or Conflict.

The proposed regulations are not inconsistent or incompatible with existing state or federal regulations as they specifically relate to the implementation and enforcement requirements of the Unified Program as authorized by federal regulations and state law.

Federal regulations provide the technical basis and framework for enforcement and prevention measures related to petroleum storage. These federal regulations are found in the Code of Federal Regulations Title 40 Part 112. These regulations include the spill prevention, control, and countermeasure plans (SPCC Plan).

State law utilizes SPCC Plan requirements and imposes more stringent requirements for petroleum storage tank facilities. These requirements are found in the Aboveground Petroleum Storage Act.

Purpose, Problem, Rationale for each adoption, amendment, or repeal

Section Number	Purpose, Problem, Rationale
2200	2200 Title: APSA Program Regulations This regulation is required in order to provide directly affected individuals' clear citations of the section numbers and titles included in these regulations. The section titles are grouped for easy use by regulated entities and enforcement entities.
2210	2210 Scope: List of Duplicated Legislative and Regulatory References (a)-(d) The APSA program is one element within the Unified Program. Multiple State agencies have responsibilities under the Unified Program. While these responsibilities are distinct, the legislation and regulations for the other Unified Programs may be applicable to the APSA program. This legal landscape can be challenging to navigate. This section of is a clear and straightforward list of the source legislative and regulatory references that a directly affected person would need in order to consult the law that are used in these regulations or used to develop these regulations. Duplication of targeted sections

	<p>is necessary to fulfill the clarity standard found in 11349.1 (a)(3). Duplications have been minimized.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2220	<p>2220 Scope: Legislative References for Inclusions, Exclusions, and Conditional Status.</p> <p>(a)-(c) A clear understanding of the definitions, scope, inclusions, exclusions, and conditional status requirements is a key part of compliance for the directly affected public.</p> <p>This legislation is very complex and challenging to read, even for individuals with a significant amount of experience with the law. The legislation includes a large quantity of information and the information is not clearly categories by topics that are pertinent to the directly affected persons.</p> <p>By providing a clear list of references and showing the categories that each reference falls into, the directly affected public can more easily determine the definitions, scope, inclusions, exclusions, and conditional requirements which impact their own compliance or enforcement activities. Therefore, this section will reduce the burden of compliance and enforcement for the directly affected public. This section includes applicable definitions from statutes and regulations. In addition, other definitions that are important for the program are added.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 4. Provide training for local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2230	<p>2230 Scope: Legislation for Inclusions, Exclusions, Conditional Status</p> <p>(a) Describes the general scope of regulated entities included in the APSA program.</p>

	<p>(b) Describes the exclusions from the APSA program regulated entities.</p> <p>(c) Describes the requirements for regulated entities to maintain conditional status within the APSA program.</p> <p>(a)-(c) This legislation is very complex and challenging to read, even for individuals with a significant amount of experience with the law. The legislation includes a large quantity of information and the information is not clearly categories by topics that are pertinent to the directly affected persons.</p> <p>This section will improve the experience for directly affected by providing the majority of program categories in a single source. Duplication of targeted sections is necessary to fulfill the clarity standard found in Government Code Section 11349.1 (a)(3).</p> <p>Duplications have been minimized as much as possible, however some duplication allows the directly affected public to determine the definitions, scope, inclusions, exclusions, and conditional requirements which impact their own compliance or enforcement activities.</p> <p>Therefore, this section will reduce the burden of compliance and enforcement for the directly affected public.</p> <p>This section allows for identification of the regulations, so they may be more easily found and referred to by facilities subject to these regulations. This proposed section specifically identifies the scope for the APSA program regulations.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 4. Provide training for local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2240	<p>2240 Corrosion Protection Detail</p> <p>Corrosion is a leading cause of structural material failures and releases. Corrosion impacts many types of piping, and associated support structures. Corrosion creates vulnerabilities in aboveground petroleum storage tanks, appurtenances, and piping. Corrosion, if not addressed, presents a significant risk of causing leak and spill into the environment, causing contamination problems. Preventive steps</p>

	<p>taken by the industry and regulatory agencies can dramatically reduce the risk of leaks and spills.</p> <p>Due to the importance of this issue, it is necessary to be explicit in descriptions of these technical requirements. Reliance on academic background or other previous experience to understand the priority of corrosion protection is insufficient to fulfill the public safety purpose of the APSA program. This requirement is consistent with federal standards.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2250	<p>2250 Definition of Aggregate Petroleum Storage Capacity</p> <p>(a)-(c) While the APSA statute includes definitions for “aboveground petroleum storage tank,” and “storage capacity,” the statute does not include guidance to determine the aggregate petroleum storage capacity for facilities. It is necessary to know the aggregate number for a variety of enforcement reasons, including factors such as determining the inspection frequency for a facility.</p> <p>This section provides specific detail for directly affected entities to determine aggregate petroleum storage capacity based on their own facilities and equipment. This guidance is consistent with state and federal law. Without this guidance, the aggregate amounts may be determined differently statewide. This could create inconsistencies in enforcement, even if the aggregate numbers used were defensible from a technical standpoint.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
2260	<p>2260 Definition of Waters of the State, Applicable Legislative Definition</p> <p>“Waters of the state” is a term that is that is used in the APSA statute and these regulations but is not defined in the APSA statute. This definition appears in the Water Code, not in the APSA statute. Therefore, directly affected entities may not know how to find this term or be clear that it is defined by law.</p>

	<p>Therefore, duplication of this definition section will reduce the burden of compliance and enforcement for the directly affected public. Duplication of this statute is necessary to fulfill the clarity standard found in Government Code Section 11349.1 (a)(3).</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
2270	<p>2270 Definition of Minor Violation, Applicable Legislative Definition</p> <p>This definition appears in the general Unified Program statute, not in the APSA statute. Therefore, directly affected entities may not know how to find this term or be clear that it is defined by law.</p> <p>These regulations use the term “minor violation,” but minor violation is not defined in the APSA statute. Minor violation is a key enforcement term within the scope of the Unified Program Agency framework and must be used consistently throughout the Unified Program enforcement regulations.</p> <p>Therefore, duplication of this definition section will reduce the burden of compliance and enforcement for the directly affected public. Duplication of this statute is necessary to fulfill the clarity standard found in Government Code Section 11349.1 (a)(3).</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
2280	<p>2280 Definition of Formal Enforcement and Routine Inspection, Applicable Regulatory Definition</p> <p>The definition of “formal enforcement” and “routine inspection,” are key enforcement terms within the scope of the Unified Program Agency framework and must be used consistently throughout the Unified Program enforcement regulations.</p> <p>However, these definitions appear in another set of Unified Program regulations. Therefore, directly affected entities may not know how to find these terms. Other</p>

	<p>important enforcement guidance is also found in the outside regulations; however, those terms are not required to be compliant with these APSA regulations.</p> <p>Duplication of these definition section will reduce the burden of compliance and enforcement for the directly affected public. Duplication of these regulations is necessary to fulfill the clarity standard found in Government Code Section 11349.1 (a)(3).</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <p>2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p>
2290	<p>2290 Designed and Intended Use Violation Detail</p> <p>The law includes an explicit definition of minor violation and outlines criteria for violations that are not minor, however, this chapter does not include an explicit term for a violation that is not a minor violation. It is commonly known as a “non minor violation.”</p> <p>Information reported to the Office of the State Fire Marshal indicates that a variety of storage tanks are marketed or available for sale as Aboveground Storage Tanks; however, these tanks are not designed or intended to be used for aboveground petroleum storage. For more detailed information, please see Documents Relied Upon, Informational Bulletins 14-005 and 14-005-Addendum.</p> <p>Tanks in these categories represent a threat to human health and the environment, and may also result in an emergency response from a public safety agency; meeting the violations criteria in Health and Safety Code Section 25404(a)(3). Therefore, these violations cannot be classified as minor violations.</p> <p>Of key concern are storage tanks which are repurposed or utilized for the standards that they are not designed or fabricated for. While many of these tanks are safe for use for their designed or intended purpose, the tanks would pose significant public safety risks if used under different conditions.</p> <p>It is the intent of this section to clearly outline common types and characteristics of storage tanks which are prohibited for use as aboveground petroleum storage, the penalties for use, and to provide a reference for stakeholders to easily recognize most common problem tanks without needing additional technical education or technical staff.</p> <p>In addition, Health and Safety Code Section 25292.05, SB 445 (Hill, Chapter 547, Statutes of 2014), requires that some types of underground storage tanks are retired from use by December 31, 2025. It is anticipated that this deadline could</p>

	<p>increase the number of additional underground storage tanks that may offered for sale for aboveground use.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p> <p>6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.</p>
2300	<p>2300 Federal Regulatory Reference and Exceptions to Federal Definitions</p> <p>Federal regulations provide the technical basis and framework for enforcement and prevention measures related to petroleum storage. These federal regulations are found in the Code of Federal Regulations Title 40 Part 112. These regulations include the spill prevention, control, and countermeasure plans (SPCC Plan).</p> <p>However, there is no federal program which implements or enforces the Unified Program elements. Aboveground Petroleum Storage is one small slice of the petroleum/oil regulatory sphere, therefore some terms used in the federal legislation to describe the entire policy issue do not have the same applicability for APSA. The federal regulations and California law allow for more stringent state requirements, if the minimum requirements are aligned with the federal standards.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <p>2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p>
2310	<p>2310 Inspection Determination for facilities with less than 10,000 gallons of petroleum storage capacity that are required to prepare an SPCC Plan</p> <p>(a)-(b)</p> <p>This regulation can be explained by outlining the OSFM’s authority, the structure of APSA enforcement, and the consistency of the program.</p> <p>Authority: Among other requirements, the OSFM’s authority includes interpretation of APSA, overseeing implementation of APSA, and developing more stringent requirements as necessary to implement APSA.</p> <p>The OSFM’s regulations apply to facilities with an aggregate storage capacity for petroleum of 1,320 gallons or more, which are not explicitly excluded from the program or qualify to maintain the conditions of conditional exclusion.</p>

Structure: APSA includes criteria to categorize facilities within the following three categories: (1) included in the program, (2) excluded from the program, or (3) as qualifying to maintain status as conditionally exempt.

While the technical specifications of SPCC Plans are custom to address the conditions and risks found at each facility, the overall enforcement model is the same for each type of facility that is subject to APSA.

Consistency: The Health and Safety Code Section 25270.5 specifies that facilities with 10,000 gallons or more of storage capacity are required to be inspected at least one every three years, unless exempted due to an approved alternative inspection and compliance plan. This regulation would provide explicit authority to the UPAs to inspect the smaller facilities that are subject to APSA, or to develop an alternative plan.

This inspection requirement was added to APSA by AB 1130 (Laird, Chapter 626, Statutes of 2007). Legislative analyses from this bill did not include background information as to why explicit authority was provided to inspect facilities of this size but not addressed for other facilities.

The OSFM and the APSA Advisory Committee have both provided input that inspections are a key element of enforcement, and therefore the ability to inspect these facilities is needed to fulfill the public safety and environmental purpose of APSA.

Due to differing interpretations of APSA and the other Unified Program statutes, this regulation could be viewed as imposing a more stringent requirement or interpreting APSA to clarify a current requirement. APSA provides the OSFM with the authority to take either of these actions, in order to effectuate the public safety and environmental purposes of the APSA legislation. Therefore, the authority to take this action could be provided by Health and Safety Code Section 25270.4.1 (a) or 25270.4.1 (d). Inspections or alternative plans are consistent with the enforcement model for all facilities under APSA, this regulation increases the consistency of the program and is the least burdensome option to effectuate the purpose of the statute.

(a)(1)-(a)(3)

This regulation provides UPAs with explicit authority to inspect facilities with a smaller storage capacity. However, this regulation does not require UPAs to make these inspections. The criteria for determining inspection priority are provided in this regulation. Determinations can be made using these objective criteria. In addition, these criteria are based on information that is available to both the regulated facilities and enforcement staff.

Inclusion also meets APSA's statutory requirements to:

	<p>2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.</p> <p>3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p> <p>7. Develop more stringent requirements, as needed to implement the safety requirements of the APSA</p>
2320	<p>2320 Inspection Determination for facilities that are conditionally exempt from preparing an SPCC Plan (a)-(b) inclusive</p> <p>Tank facilities that meet the exemption conditions HSC 25270.4.5 (b) are not required to prepare and implement an SPCC Plan under APSA. An inspection for compliance with the SPCC Plan requirements of APSA is, therefore, not required at such tank facilities. The purpose of an inspection of these facilities is to confirm that the facility is meeting the requirements to maintain conditional status. The justification to provide explicit authority for inspections of conditionally exempt facilities is the same as the justification to provide explicit inspection authority for facilities with an aggregate storage capacity of 10,000 gallons or less, found above. The justification for the determination criteria is also identical.</p> <p>(c)</p> <p>The option of an alternative inspection and compliance plan is consistent with the options provide to other types of facilities in statute.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <p>2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.</p> <p>3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p> <p>7. Develop more stringent requirements, as needed to implement the safety requirements of the APSA</p>
2330	<p>2330 Overview of SPCC Plan Compliance Requirements</p> <p>(a)(1)-(8)</p> <p>These regulations are necessary for consistent implementation of APSA across the state. These subsections also make explicit the jurisdictional responsibilities of CUPAs and clarify specific enforcement responsibilities. This proposed regulation will assist in consistent implementation and enforcement of the APSA by the UPAs throughout the State of California and, in implementing this proposed regulation, the UPAs will ensure that minimum requirements are being met by each regulated tank facility for compliance with the APSA.</p>

	<p>(a)(3) Additional detail. Code of Federal Regulations, Title 40, Part 112 includes detailed requirements as to what types of SPCC Plan is required to be certified by a professional engineer. There are no state amendments to these criteria.</p> <p>(a)(4) and (a)(7) Additional detail. These requirements and timeline are established by the federal SPCC rule. The 3 and 5 year timelines are consistent with timelines established in the federal SPCC rule.</p> <p>(b) Tank facilities that meet the exemption conditions 25270.4.5 are not required to prepare and implement an SPCC Plan under APSA. Therefore, while these facilities maintain the requirements for conditional status, the requirements for compliance with SPCC Plan requirements do not apply.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2340	<p>2340 Overview of Enforcement</p> <p>(a)-(c) These subsections make explicit the jurisdictional responsibilities of CUPAs. APSA specifies that the purpose of an aboveground storage tank inspection is to determine whether the owner or operator is following the SPCC Plan requirements in Chapter 6.67. Per AB 1130, APSA does not specifically provide authority for independent evaluation of the recommendations or provisions in SPCC Plans but require review to ensure that an SPCC Plan complies with federal regulations and is implemented in compliance with federal regulations.</p> <p>This proposed regulation will assist in consistent implementation and enforcement of the APSA by the UPAs throughout the State of California and, in implementing this proposed regulation, the UPAs will ensure that minimum requirements are being met by each regulated tank facility for compliance with the APSA.</p> <p>UPAs have other Unified Program jurisdictional responsibilities outside of the APSA, they also may be implementing local ordinances. These additional</p>

authorities may provide the UPAs with the ability to make independent judgments on facilities or operations under other the legal or regulatory authorities.

(d)

Federal enforcement guidance specifies that the failure to prepare an SPCC Plan is not a minor violation. This regulation is consistent with federal enforcement regarding failure to prepare an SPCC Plan. This requirement is specifically highlighted in these regulations because UPAs have challenged the OSFM's interpretation of state and federal law regarding failure to prepare an SPCC Plan.

(e)

This subsection clarifies specific enforcement responsibilities. This requirement is clarified in these regulations because the OSFM has observed through enforcement efforts that the requirement has not been consistently implemented by UPAs. This regulation clarifies that the UPAs do have enforcement authority to implement violations that are not minor violations, per the violation criteria in Health and Safety Code Section 25404(a)(3), these violations are also known as "non minor violations."

(f)

This regulation is necessary due to an existing set of violations that has remained uncorrected for several years. The documentation for these violations is found in the California Environmental Reporting System (CERS) database. This is required for consistent implementation throughout the State.

The 6-year timeframe is consistent with 2 triennial inspection cycles. This provides sufficient time to maintain public safety while not imposing an overly burdensome timeframe on either UPAs or owner-operators.

This regulation is required in order to ensure that reports are delivered to the correct individual within the specified timeframe. It is necessary because there have been instances of reports provided to other individuals which may cause delays.

Title 27, 15200(a)(1) Currently, the regulation requires provisions to administer all program elements. The new language identifies what provisions must be identified for a complete inspection process, including pre-inspection, on and off-site inspections, post inspections, and re-inspections.

Title 27, 15200(a)(3) Added the requirement to consolidate Unified Program inspections when appropriate. For example, a regulated business that is subject to Hazardous Material Business Plan and Hazardous Waste Generator requirements would not receive two inspections over two days but would have all inspections conducted on the same day.

(g)

	<p>This 30 day timeframe is the statutory timeline to correct minor violations.</p> <p>UPA staff also respond to many types of emergencies. If UPA staff is diverted to an emergency, this process can be delayed. In emergencies such as a flood, earthquake, or wildland fire, UPA staff may be diverted to assist with the emergency. If UPA staff are directed to an emergency as declared by a local government body or the Governor, the report may be delayed until the incident has stabilized and the UPA has returned to regular service.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance. 6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM’s responsibilities under the APSA program.
2350	<p>2350 Owner or Operator Instructions During Inspections</p> <p>(a) This regulation is consistent with federal regulations. It is included here for clarity.</p> <p>(b) Remote record review commonly occurred during stay at home conditions. The review of records and interviews with staff can be performed remotely while maintaining safety standards. While record review and interviews can be performed offsite, the physical conditions of a facility can only be effectively evaluated in person. Conditions such as housekeeping, releases, spills, the condition of the tanks, piping, and appurtenances, should only be assessed in person. The OSFM has determined that video or other types of virtual inspections do not provide sufficient detail to ensure public safety. The Advisory Committee and other stakeholders concur with this conclusion.</p> <p>(c) Tank facilities that meet the exemption conditions in HSC Section 25270.4.5 are not required to prepare and implement an SPCC Plan under APSA. Therefore, while these facilities maintain the requirements for conditional status, the requirements for compliance with SPCC Plan requirements do not apply.</p> <p>Inclusion also meets APSA’s statutory requirements to:</p> <ol style="list-style-type: none"> 2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities. 3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.

	<p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p> <p>6. Support the local Unified Program Agency enforcement entities in providing outreach to regulated persons in relation to regulations relevant to OSFM's responsibilities under the APSA program.</p>
2360	<p>2360 Owner or Operator Electronic Reporting Requirements (a)- (c)</p> <p>These data fields are currently included in the California Environmental Reporting System (CERS) and the Unified Program regulations in CCR Title 27; however, Unified Program regulations do not require that the fields are completed and many tank facilities do not consistently complete these data fields.</p> <p>The answers required in these data fields are information that can be readily extracted from a tank facility's current/existing SPCC Plan and are essential for UPAs to track and prioritize inspections. This information will also be essential for the OSFM oversight of the APSA program, particularly when evaluating UPAs in their implementation of the APSA program.</p> <p>The 30 day timeframe for corrections is consistent with the timeframe for minor violations.</p> <p>(d)</p> <p>Tank facilities that meet the exemption conditions 25270.4.5 are not required to prepare and implement an SPCC Plan under APSA. Therefore, while these facilities maintain the requirements for conditional status, the requirements for compliance with SPCC Plan requirements do not apply.</p> <p>Inclusion also meets APSA's statutory requirements to:</p> <p>2. Provide interpretation of the APSA statutes to local Unified Program Agency enforcement entities.</p> <p>3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities.</p> <p>5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p>
2370	<p>2370 UPA Staff Training Minimum Requirements (a) and (b)</p> <p>This section establishes requirements for UPA staff training, including ongoing or refresher training.</p> <p>Training classes on APSA, the Code of Federal Regulations, Title 40, Part 112, SPCC Plan requirements, and other related topics are provided to UPAs annually at the California Unified Program Training conference. Classes at the training conference are generally provided in two-hour increments over a span of several days. An UPA staff may complete six hours of APSA training in less than one day</p>

	<p>at the California Unified Program Training conference, or two hours of APSA training over a span of three training conferences. The three-year frequency is consistent with the frequency that UPAs are evaluated in their implementation of the Unified Program, including the APSA program, and it is also consistent with the mandated inspection frequency for certain facilities regulated under APSA.</p> <p>Training, including refresher training, is necessary to ensure that the UPA staff conducting tank facility inspections are current in their knowledge of the requirements in APSA and the Federal SPCC rule requirements. UPA staff must be regularly trained to inspect APSA facilities effectively and consistently and identify violations.</p> <p>Documentation is required to ensure that UPA inspector initial and refresher trainings are being completed. Documentation of the training serves as a record and verification of the training.</p> <p>(c) Tank facilities that meet the exemption conditions described in proposed Section 2171(b) are not required to prepare and implement an SPCC Plan under APSA. An inspection for compliance with the SPCC Plan requirements of APSA is, therefore, not required at such tank facilities. The initial training as described in Health and Safety Code Section 25270.5(c) focuses on the SPCC Plan provisions and safety requirements for AST inspections by UPAs. Hence, UPA staff that only verify compliance with the conditional exemptions not required to complete the initial training or refresher training.</p> <p>Each proposed regulation supports the implementation of one or more of the OSFM's statutory responsibilities, as related to APSA.</p> <p>3. Oversee the implementation of the APSA requirements by local Unified Program Agency enforcement entities. 4. Provide training for local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p>
2380	<p>2380 UPA Notifications to the Regional Water Quality Control Board Health and Safety Code Section 25270.9 details the responsibility for cleanup efforts but does not specify that UPAs notify the Regional Water Quality Control Board to initiate this process. This regulation is required to provide UPAs clear guidance in the case of a spill or leak, or suspected spill or leak.</p> <p>Each proposed regulation supports the implementation of one or more of the OSFM's statutory responsibilities, as related to APSA.</p> <p>4. Provide training for local Unified Program Agency enforcement entities. 5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.</p>