

Text of Proposed Regulations (Original)

California Code of Regulations

Title 19. Public Safety

Division 1. Office of the State Fire Marshal

Chapter 15. APSA Program, Aboveground Petroleum Storage Act Program

Article 1. APSA Program Regulations

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Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.1, Health and Safety Code.

2200. Title: APSA Program Regulations:

This chapter shall be known and referred to as the Aboveground Petroleum Storage Act Regulations, APSA regulations, or these regulations.

Chapter 15, Division 1 of Title 19 of the California Code of Regulations is adopted by the State Fire Marshal under the authority of Division 20, Chapter 6.67, Section 25270, et seq. of the Health and Safety Code of the State of California.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.1, Health and Safety Code.

2210 Scope: List of Duplicated Legislative And Regulatory References

(a) Health and Safety Code Sections 25270.2, 25270.3, 25404

(b) Water Code Section 13050

(c) California Code of Regulations Title 27 Section Number 15110

(d) Title 40, Part 112, Code of Federal Regulations

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.2, 25270.3, 25404, Health and Safety Code; and Section, 13050, Water Code.

2220 Scope: Legislative References for Inclusions, Exclusions, and Conditional Status.

(a) A tank facility is subject to these regulations if it has one or more storage tanks that meet the definition of "aboveground storage tank" as referenced in Health and Safety Code Section 25270.2(a) [a only, (a)(1)-(a)(8) not included], and if at least one of the following apply:

25270.3(a)

25270.3(b)

25270.3(c)(1)-(2)

(b) A tank or tank facility is not subject to these regulations if any of the following apply, as referenced in the Health and Safety Code Sections:

25270.2 (a)(1)-(8)

(c) If a tank facility has a petroleum storage capacity of less than 1,320 gallons, these regulations do not apply to a tank in an underground area that meets the conditions as referenced in HSC Section 25270.3(c)(3) [all]

(d) Terms that are not defined in these regulations shall have the same meaning as found in Health and Safety Code Section 25270.2.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.2, 25270.3, Health and Safety Code.

2230 Scope: Legislation for Inclusions, Exclusions, Conditional Status

(a) The scope of these regulations as applied to aboveground storage tank or tank facilities is set forth in the Health and Safety Code Sections and provided below:

25270.2. [beginning of (a) only, does not include the final sentence in (a) or (a)(1)-(a)(8)]

For purposes of this chapter, the following definitions apply:

(a) "Aboveground storage tank" or "storage tank" means a tank or container that has the capacity to store 55 gallons or more of petroleum that is substantially or totally above the surface of the ground, except that, for purposes of this chapter, "aboveground storage tank" or "storage tank" includes a tank in an underground area. "Aboveground storage tank" does not include any of the following:

25270.3. A tank facility is subject to this chapter if any of the following apply:

(a) The tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) The tank facility has a storage capacity of 1,320 gallons or more of petroleum.

(c) (1) Except as provided in paragraph (3), the tank facility has a storage capacity of less than 1,320 gallons of petroleum and has one or more tanks in an underground area meeting the conditions specified in paragraph (1) of subdivision (o) of Section 25270.2.

(2) If a tank facility is subject to this chapter only pursuant to this subdivision, only those tanks that meet the conditions specified in paragraph (1) of subdivision (o) of Section (b) A tank or tank facility is not subject to these regulations if any of the following apply, as referenced in the Health and Safety Code Sections:

25270.2 (a)(1)-(8)

(b) Exclusions to these regulations as applied to aboveground storage tank or tank facilities is set forth in the Health and Safety Code Sections and provided below

25270.2 (a)(1)-(8) [(a) excluded]

25270.2. (a)(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(a) (2) A tank containing hazardous waste or extremely hazardous waste, as respectively defined in Sections 25117 and 25115, if the owner or operator of the storage tank has a hazardous waste facilities permit from the Department of Toxic Substances Control or a permit by rule authorization from the unified program agency for the storage tank.

(a)(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(a)(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(a)(4)(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(a)(4)(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(a) (5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) of this division and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations and that does not meet the definition of a tank in an underground area.

(a) (6) A transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, as set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(a) (7) A tank or tank facility located on and operated by a farm that is exempt from the federal spill prevention, control, and countermeasure rule requirements pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(a) (8) A tank in an underground area that has the capacity to store less than 55 gallons of petroleum, has secondary containment, and is inspected monthly, if the owner or operator maintains a log of inspection records for review by the unified program agency upon request.

(c) The types of aboveground storage tank or tank facilities which may qualify for conditional status are set forth in the Health and Safety Code Sections and provided below:

25270.3(c)(3) [all]

(c)(3) A tank in an underground area that would otherwise be subject to this chapter only pursuant to this subdivision is not subject to this chapter if any of the following apply:

(c)(3)(A) The tank holds hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, or other similar devices.

(c)(3)(B) The tank is a heating oil tank.

(c)(3)(C) The tank is a sump, separator, clarifier, catch basin, or storm drain.

Authority: 25270.4.1, Health and Safety Code. Reference: Section 25270.2, 25270.3, Health and Safety Code.

2240 Corrosion Protection Detail

(a) All piping and supporting components that are susceptible to corrosion and associated with an aboveground storage tank shall be provided with protection from external corrosion and designed to prevent galvanic corrosion.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.1, Health and Safety Code.

2250 Definition of Aggregate Petroleum Storage Capacity

(a) For purposes of these regulations, the aggregate petroleum storage capacity of a tank facility shall include the total shell capacity of all aboveground storage tanks and containers with a shell capacity of 55 U.S. gallons or greater including, but not limited to, tanks in an underground area, mobile refuelers, oil-filled operational equipment, oil-filled manufacturing equipment, and bulk storage containers such as drums, intermediate bulk containers, and totes.

(b) The aggregate petroleum storage capacity shall not include capacities of aboveground storage tanks, containers, or equipment that are exempt or excluded as identified in Health and Safety Code Section 25270.2.

(c) If the tank facility has less than 1,320 gallons of petroleum storage capacity and a tank in an underground area, the tank facility's total aggregate petroleum storage capacity shall include only the shell capacity of tanks in an underground area that meet the provisions described in Health and Safety Code Section 25270.2(o), unless excluded under Health and Safety Code Section 25270.3(c).

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.2, 25270.3, and 25270.4.1, Health and Safety Code.

2260 Definition of Waters of the State, Applicable Legislative Definition

The applicable definition of waters of the state is set forth in the Water Code and provided below:

Water Code Section 13050(e)

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.5 Health and Safety Code; and Section 13050, Water Code.

2270 Definition of Minor Violation, Applicable Legislative Definition

The applicable definition of minor violation is set forth in the Health and Safety Code and provided below:

HSC Section 25404 (a)(3)

(3) "Minor violation" means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other

requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation, as provided in Section 25110.8.5.

(G) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25404 Health and Safety Code.

2280 Definition of Formal Enforcement and Routine Inspection, Applicable Regulatory Definition

The terms formal enforcement and routine inspection are established in the California Code of Regulations Title 27 15110(e)(1) and 15110 (f)(1) and provided below:

CCR Title 27 15110(e)(1)

(e) (1) Formal Enforcement means a civil, criminal, or administrative action that mandates compliance, imposes sanctions, and results in an enforceable agreement or order.

Enforceable agreement or order means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated business.

CCR Title 27 15110(f)(1)

(f)(1) Routine Inspection is a regularly scheduled inspection to evaluate compliance pursuant to one or more program elements.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4, [25404.2, Health and Safety Code](#)

2290 Designed and Intended Use Violation Detail

(a) Violations of section 2290 shall not be classified as a minor violation.

(b) A tank designed and intended for underground use, or any tank used for that purpose, shall not be used as an AST as defined in Health and Safety Code Chapter 6.67. For

purpose of this regulation, underground use means placement in an excavation surrounded by backfill material and buried.

(c) A tank such as rail car, tank car, tank vehicle, or other tank designed or intended solely for transportation related use shall not be used as a stationary tank. This does not include transportation tanks within a facility for mobile operations or permitted through the local authority having jurisdiction.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.12 and 25404, Health and Safety Code.

2300 Federal Regulatory Reference and Exceptions to Federal Definitions

Terms in these regulations and the preparation and implementation of a Spill, Prevention, Control, and Countermeasure Plan (SPCC Plan) have the same meaning as defined in the Code of Federal Regulations Title 40 Part 112, with some exceptions. The exceptions are facility, owner or operator, and petroleum oil, which are defined in Health and Safety Code Section 25270.2.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.2, Health and Safety Code.

2310 Inspection Determination for facilities with less than 10,000 gallons of petroleum storage capacity that are required to prepare an SPCC Plan

(a) The Unified Program Agency may inspect tank facilities with a petroleum storage capacity of less than 10,000 gallons at least once every three years, to ensure compliance with these regulations.

Tank facilities shall be prioritized for inspections based on one or more of the following conditions:

1. A facility that has not had a routine inspection under APSA by the UPA.
2. Facilities with the most time elapsed between APSA routine inspections.
3. Threat to waters of the state.

(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.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.5, Health and Safety Code

2320 Inspection Determination for 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.

Tank facilities shall be prioritized for inspections based on one or more of the following conditions:

1. A facility that has not had a routine inspection under APSA by the UPA.
2. Facilities with the most time elapsed between APSA routine inspections.
3. Threat to waters of the state.

(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.

(c) 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).

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.1, 25270.4.5, 25270.5, [Health and Safety Code](#).

2330 Overview of SPCC Plan Compliance Requirements

(a) In order to determine if the owner or operator of a tank facility is following the SPCC Plan, a routine inspection shall include verification of the following measures:

- (1) The SPCC Plan elements are consistent with HSC Section 25270.4.5.
- (2) The SPCC Plan, including any amendments, is complete and appropriate for the tank facility.
- (3) The SPCC Plan has been certified by the owner or operator, or a professional engineer if required by the Code of Federal Regulations, Title 40, Part 112.
- (4) The SPCC Plan has been reviewed by the owner or operator at least once every five years, and the review is documented.
- (5) The appropriate containment and/or diversionary structures or equipment are provided.
- (6) The owner or operator has completed and documented the periodic inspections and applicable tests in accordance with the frequency specified in their SPCC Plan.
- (7) The training and discharge prevention briefings are conducted and documented for a minimum of 3 years. Records of training and discharge prevention briefing kept under usual and customary business practices will suffice for purposes of this subsection.
- (8) The visible discharges from aboveground storage tanks have been promptly corrected and accumulations of petroleum in diked areas are promptly removed.

(b) Section 2330 shall not apply to an inspection of a tank facility that meets the requirements of Health and Safety Code, Section 25270.4.5(b).

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.5, [Health and Safety Code](#).

2340 Overview of Enforcement

(a) These regulations shall be applied by the UPA in a manner that is consistent with the Health and Safety Code, Chapter 6.67 and the Code of Federal Regulations, Title 40, Part 112.

(b) The UPA is authorized to review the SPCC Plan and ensure plan implementation for compliance with the Code of Federal Regulations, Title 40, Part 112, HSC Chapter 6.67, and these regulations.

(c) The UPA is not authorized to evaluate the provisions and recommendations contained in an SPCC Plan independent from the provisions of the Code of Federal Regulations, Title 40, Part 112, HSC Chapter 6.67, and these regulations.

(d) The failure of any owner or operator of a tank facility to prepare an SPCC Plan shall not be classified as a minor violation.

(e) The UPA may pursue formal enforcement for any owner or operator of a tank facility who receives a non-minor violation or who fails to correct minor violations within 30 days.

(f) The UPA shall pursue formal enforcement, as defined CCR 27 Section 15110(e), to obtain compliance from any owner or operator of a tank facility with a violation that remains open or uncorrected for more than six years or after two APSA routine inspection cycles, whichever is less.

(g) An inspection report shall be provided not more than 30-calendar days after the conclusion of the inspection. This 30-calendar day timeline may be extended in the case of a state of emergency as declared by a local government body or the Governor, for any jurisdictions directly impacted and jurisdictions providing mutual aid, the report may be delayed until the incident has stabilized and the UPA has returned to regular service. The inspection report shall be provided by the UPA to the tank facility owner or operator, or authorized representative.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.2, 25270.4, [Health and Safety Code](#).

2350 Owner or Operator Instructions During Inspections

(a) The owner or operator of a tank facility shall have the SPCC Plan and all applicable required records and documentation available for review upon request by the UPA during normal working hours.

(b) Provided the tank facility owner or operator agrees to provide copies of SPCC Plan implementation records and documentation, or provide remote access to the records and documentation, the UPA may inspect or review tank facility documentation and records remotely or offsite.

(c) 2350(a) and 2350(b) shall not apply to a tank facility that meets the requirements of Health and Safety Code, Section 25270.4.5(b).

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.4.5, [Health and Safety Code](#).

2360 Owner or Operator Electronic Reporting Requirements

(a) The owner or operator of a tank facility shall submit the following information electronically to the statewide information management system, called the California Environmental Reporting System (CERS), within 12 months following the effective date of this regulation, and annually thereafter.

(1) Conditionally exempt from SPCC Plan status;

(2) Date of SPCC Plan certification or last 5-year review, whichever is more recent;

(3) Total aggregate petroleum storage capacity of a tank facility in gallons; and

(4) Number of tanks in an underground area.

(b) For purposes of subsection (a)(4), if the tank facility has a petroleum storage capacity of less than 1,320 gallons and has one or more tanks in an underground area, the number of tanks in an underground area shall not include those excluded under Health and Safety Code Section 25270.3(c).

(c) The annual submittal of information required in subsection (a) shall be in conjunction with the submittal of the tank facility statement or hazardous materials business plan as required under Health and Safety Code Section 25270.6(a).

(d) 2360(a)(2), 2360(a)(3), and 2360(a)(4) shall not apply to any owner or operator of a tank facility that meets the requirements of Health and Safety Code Section 25270.4.5 (b).

(e) Each UPA shall review the information submitted by each tank facility as required under subsection (a) and Health and Safety Code Section 25270.6(a) and ensure the information is complete.

(f) If, after review, the UPA determines that the owner or operator of the tank facility is deficient in satisfying the requirements of Section 2360, the UPA shall notify the owner or operator of those deficiencies. The owner or operator of the tank facility shall electronically submit corrected information within 30 days from the date of the notice.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.6, [Health and Safety Code](#).

2370 UPA Staff Training Minimum Requirements

(a) UPA staff who inspect tank facilities for SPCC Plan compliance must obtain at least 6 hours of refresher training every 3 years. The 3 -year cycle begins from the date of the completion of the training required by Health and Safety Code Section 25270.5.(c) or from the effective date of these regulations, whichever is more recent.

(1) The training must include SPCC Plan provisions, safety requirements for aboveground storage tank inspections, or generally accepted industry practice related to aboveground storage tanks.

(2) Training may be in the form of a seminar, lecture, conference, workshop, online training, or other similar method.

(b) Training shall be documented, and the training records maintained by the UPA. Training records shall be made available to the OSFM, upon request. Training documentation shall include, but is not limited to:

(1) Name of the trainee;

(1) Title or brief description or synopsis of the training;

(2) Name of the instructor or organization that provided the training;

(3) Date(s) of the training; and

(4) Total number of hours earned for the training.

(c) UPA staff who only inspect tank facilities that meet the requirements of Health and Safety Code Section 25270.4.5 (b) are not subject to the training requirements in Section 2370.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.5, [Health and Safety Code](#)

2380 UPA Notifications to the Regional Water Quality Control Board

The UPA shall notify the Regional Water Quality Control Board if the UPA has determined that cleanup or abatement of a release from an aboveground storage tank at a tank facility is required, or additional investigation is necessary to determine if cleanup is required, the UPA shall coordinate with the Regional Water Quality Control Board regarding the investigation, cleanup, and abatement activities.

Authority: Section 25270.4.1, Health and Safety Code. Reference: Section 25270.9, [Health and Safety Code](#)