



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION  
OFFICE OF THE STATE FIRE MARSHAL**

P.O. Box 944246

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**NOTICE OF PROPOSED ACTION**

**CALIFORNIA CODE OF REGULATIONS  
TITLE 19, DIVISION 1, CHAPTER 15, ARTICLE 1**

Notice is hereby given, that the California Department of Forestry and Fire Protection – Office of the State Fire Marshal (“OSFM”) or (“SFM”) proposes to amend regulations in Title 19, Division 1, Chapter 15, Article 1, as described below in the Informative Digest. (Government Code Section 11346.6)

**Introduction**

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.

Common acronyms and abbreviations used in these documents:

APSA or APSA Program, Aboveground Petroleum Storage Act or Aboveground Petroleum Storage Act Program

UPA, Unified Program Agency

Advisory Committee, the OSFM APSA Advisory Committee

SPCC Plan; Spill Prevention, Control, and Countermeasure Plan; spill prevention, control, and countermeasure plan

**Written Comment Period**

Written comments will be accepted for at least 45 days beginning November 3, 2023, through January 19, 2024. All written comments received through the end of January 19, 2024, will be considered and responded to as part of the compilation of the rulemaking file and are subject to disclosure under the Public Records Act (Government Code Section 6250, et seq.). Written comments should be directed to the OSFM.

Email: [Title19Regulations@fire.ca.gov](mailto:Title19Regulations@fire.ca.gov)

US Mail postmarked no later than January 19, 2024, to:

CAL FIRE / Office of the State Fire Marshal

P.O. Box 944246

Sacramento, California 94244-2460

Attn: Eireann Flannery, Pipeline Safety and CUPA

## **Public Hearing**

The Office of the State Fire Marshal (OSFM) is providing notice of scheduled hearing to consider the adoption of proposed regulations related to regulations for the Aboveground Petroleum Storage Act program (APSA Program). Pursuant to Government Code Section 11346.8, the OSFM will hold a public hearing on the proposed action as follows:

January 19, 2024  
9:00 am to 12:00 pm

CAL FIRE  
710 Riverpoint Court, Suite 150  
Conference Room 101  
West Sacramento, CA 95605

The public hearing facilities are accessible to persons with disabilities via building security and the elevator. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action. It is requested, but not required, that persons making oral comments also submit a written copy of their testimony at the hearing.

It is requested, but not required, that persons making oral comments also submit a written copy of their testimony at the hearing. Copies of the Notice of Proposed Action, Text of Proposed Regulations, Initial Statement of Reasons (ISOR), documents Incorporated by Reference in the text of proposed regulations, documents relied upon, and any other materials concerning this rulemaking can be accessed on the Office of the State Fire Marshal website at: <https://osfm.fire.ca.gov/divisions/codedevelopment-and-analysis/title-19-development/>

### **Use this link to join the Public Hearing virtually**

[https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%20%23%2F%2Fmeetup-join%2F19%3Ameeting\\_ZDcyZDk0MzktMmE0Ny00YmE0LWJiYTItZjg0YmQyMzZmYmE5%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522447a4ca0-5405-454d-ad68-c98a520261f8%2522%252c%2522Oid%2522%253a%252255dd5151-2626-4f47-82ff-87b7f7bc788f%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=c6675992-8f5a-48bd-b712-ceebba1ddc9e&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true](https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%20%23%2F%2Fmeetup-join%2F19%3Ameeting_ZDcyZDk0MzktMmE0Ny00YmE0LWJiYTItZjg0YmQyMzZmYmE5%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522447a4ca0-5405-454d-ad68-c98a520261f8%2522%252c%2522Oid%2522%253a%252255dd5151-2626-4f47-82ff-87b7f7bc788f%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=c6675992-8f5a-48bd-b712-ceebba1ddc9e&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true)

Meeting ID: 240 154 319 261 Passcode: y2dfQe

### **Teleconference number- audio only**

+1 650-564-3271  
Phone Conference ID: 712 737 262#

## **Authority and Reference**

### **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

## **Informative Digest/Policy Statement Overview**

### **Summary of existing laws and regulations directly related to the proposed rulemaking**

Pursuant to Health and Safety Code Section 25270.4.1, the 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 Aboveground Petroleum Storage Act Program is one program within the Unified Program, a multi agency state program which is overseen by the Secretary of Environmental Protection.

### **A description of the effect of the proposed rulemaking**

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 (UPA) enforcement entities.
3. Oversee the implementation of the APSA requirements by local UPA enforcement entities.
4. Provide training for local UPA enforcement entities.
5. To the maximum extent feasible, ensure consistency with state law and federal enforcement guidance.
6. Support the local UPA 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.

**A policy statement overview explaining the broad objectives of the regulation**

The purpose of these regulations is to provide a clear source of technical guidance and distinguish each stakeholder’s responsibilities under APSA. UPA are responsible for enforcement activities, there is no state or federal approval of SPCC Plans.

**An explanation of the specific benefits anticipated from the proposed action, including the benefit from the statute**

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.

**An explanation of the nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government.**

These regulations are necessary to protect public safety and the environment. 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.

Preventive steps taken by the industry and regulated entities reduce the risk of leaks and spills, therefore providing a direct public safety and environmental benefit.

**An evaluation of whether the proposed regulation’s consistency with existing state regulations.**

The proposed regulations are not inconsistent or incompatible with existing state regulations as they are aligned with applicable implementation and enforcement requirements of the Unified Program.

**A description of any substantial differences from existing, comparable federal regulation or statute.**

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

**Full Citation of Federal Regulations**

Title 40, Part 112, Code of Federal Regulations

**Documents Incorporated by Reference**

No documents are incorporated by reference as part of this proposal.

**Mandated by Federal Law or Regulations**

These regulations are not mandated by federal law or regulations.

**Local Mandate Determination:**

The OSFM has made a preliminary determination that adoption of these regulations will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**Fiscal Impact Estimates**

**Is there a Cost to any local agency or school district requiring reimbursement pursuant to section 17500 et seq.?**

No.

**Is there a direct costs or savings to any state agency?**

No.

**Is there other evidence based non-discretionary cost or savings imposed upon local agencies?**

No.

**Are there anticipated costs or savings in federal funding to the state?**

No.

**Housing Costs Determination**

There is no anticipated effect on housing costs.

**Initial Determination Regarding Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States**

None.

**Results of the Economic Impact Assessment**

Specify whether and to what extent the proposed regulation will affect the following:

**Creation of jobs within California**

No.

**Elimination of jobs within California**

No.

**Creation of new businesses within California**

No.

**Elimination of existing businesses within California**

No.

## **Expansion of businesses currently doing business within the state**

No.

## **Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment**

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.

## **Cost impacts on Representative Person or Business**

17,852 is the total number of businesses regulated under the APSA program. However, it is anticipated that 2,613.1-3733.1 businesses may experience an enforcement or fiscal impact as a result of these regulations. The 2,613.1-3733.1 estimates reflect the approximate number of regulated businesses that are not currently inspected on a 3 year cycle. These are facilities with less than 10,000 gallons of aggregate petroleum storage capacity and may experience an inspection within a 3 year timeframe as a result of these regulations.

Increased inspections do not necessarily lead to an increase in fees. Therefore, the additional staffing for an inspection may not have an impact to the UPA annual fees. 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.

If the UPA with jurisdiction currently inspects facilities with less than 10,000 gallons of aggregate petroleum storage capacity within the 3 year timeframe, those businesses will not experience a change in enforcement or fees as a result of these regulations.

The OSFM and the APSA Advisory Committee have determined that other impacts of these regulations would be minor and absorbable to both UPAs and regulated businesses.

## **Business Report**

The proposed regulations do not require a business report.

## **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.

## **Consideration of Alternatives**

The OSFM must determine that no alternative it considered 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **Agency Contacts:**

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## **Availability Statements**

### **AVAILABILITY OF RULEMAKING DOCUMENTS**

The OSFM will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above Sacramento 715 "P" Street address. As of the date of this notice being published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and supporting information. Copies may be obtained through the contact persons at the address and/or phone number listed above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding a public hearing, if requested, and considering all timely and relevant comments received, the OSFM may adopt the proposed regulations substantially as described in this notice. If the OSFM makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the OSFM adopts the regulations as revised. Requests for copies of any modified regulations should be directed to the contact person at the address listed above. The OSFM will accept written comments on the modified regulations for 15 days after the date on which the modifications are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Eireann Flannery at the above address and telephone number or by accessing the website listed below.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of this Notice of the Proposed Rulemaking (“NOPA”), the initial statement of reasons (“ISOR”), the text of the proposed regulations (“TEXT”) and any other materials or documents concerning this rulemaking can be accessed through the Office of the State Fire Marshal web address at: <http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/>

**PLAIN ENGLISH DETERMINATION**

The proposed Regulations were prepared pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and Section 11346.2(a)(1). The proposed regulations were written to be easily understood by the parties that will use them.