

**FINAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS
TITLE 19, DIVISION 1, CHAPTER 11, ARTICLE 1**

UPDATE TO THE INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR), released November 3, 2023, is incorporated by reference herein, and contained a description of the rationale for the adoption of the proposed regulations. On November 3, 2023, all documents relied upon and referenced in the ISOR were made to the public.

The original text of the proposed regulations was made available to the public for at least 45 days starting November 3, 2023, through January 19, 2024. A public hearing was held on January 19, 2024.

The Office of the State Fire Marshal (OSFM, SFM) received 20 public comments from six (6) people on the text as originally noticed during the 45-day comment period and public hearing. Upon review and consideration of the comments received, the OSFM determined that modifications to text of the regulations were necessary.

Modifications to the text of the proposed regulations and an addendum to the ISOR, which are incorporated by reference herein, were released for an additional 15-day public comment starting September 25, 2024, through October 13, 2024. The SFM received eight (8) comments from three (3) people. No comments were received on October 14, 2024. The SFM also received one (1) comment after October 14, 2024. Upon review of the comments received during the second comment period, the OSFM determined that no additional modifications to the text of the regulations or documents incorporated by reference were necessary.

There have been no changes in the applicable laws or to the effects of the proposed regulations from those described in the Initial Statement of Reasons (ISOR) published with the Notice of Proposed Regulatory Action.

The OSFM has considered all relevant matters presented to it and recommends approval of the proposed regulatory action.

45-Day Public Comment Period

The original text of the proposed regulations was made available to the public for at least 45 days starting November 3, 2023, through January 19, 2024.

Public Hearing

A public hearing was held on January 19, 2024.

15-Day Public Comment Period

The OSFM made available to the public an addendum to the ISOR and modifications to the text of the proposed regulations for 15 days from September 25, 2024, through October 13, 2024. No comments were received on October 14, 2024.

Summary of Laws and Regulations

Each proposed regulation supports the implementation of one or more of the Office of the State Fire Marshal's (OSFM) statutory responsibilities, as related to Aboveground Petroleum Storage Act (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 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.

Other laws and regulations include:

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

A board or committee meeting is not required to adopt these regulations.

Consideration of Alternatives

For the reasons set forth in the Initial Statement of Reasons (ISOR), responses from the APSA Advisory Committee and staff to comments received during public comment, and this Final Statement of Reasons (FSOR), the OSFM has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective as and less burdensome to affected private persons, or would be more cost effective to affected persons and equally effective in implementing the statutory policy or other provisions of the law than the action taken by the OSFM.

Alternatives to the Regulation

The OSFM invited interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the public comment period.

1. An alternative was proposed by Kevin Buchan of WSPA [Western States Petroleum Association]. Evaluation of this alternative was considered and further discussed in the response to comments received.

The alternative was ultimately rejected because the proposed alternative does not meet the statutory requirements of the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program or the APSA program and is not in line with the Advisory Committee and the OSFM's goals.

Health and Safety Code Section 25270.4.1 requires the OSFM to provide interpretation of the APSA to UPAs. These regulations are included because they provide an interpretation of statute that is required to maintain public safety and protect the environment.

The commentor argued Sections 2290(a) and 2340(d) [renumbered as Sections 1607(a) and 1612(d), respectively] of these regulations would attempt to modify or redefine Health and Safety Code Section 25404(a)(3) by changing the term "minor violation" and would limit the agency's ability to make discretionary policy decisions based on the ground level circumstances. The two violations are the use of a rail car as a stationary tank and failure to prepare a Spill Prevention, Control, and Countermeasure (SPCC) Plan. Failure to prepare an SPCC Plan is not considered a minor violation, per the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (CWA), August 1998, United States Environmental Protection Agency (US EPA), Office of Enforcement and Compliance Assurance.

The Advisory Committee and the OSFM have observed that the two specified violations are consistently misclassified as minor violations due to incorrect interpretation of Health and Safety Code Section 25270.4.1.

Health and Safety Code Section 25404(a)(3) lists criteria that would exclude a violation from classification as a minor violation. All other Advisory Committee members and the OSFM agree that there are no ground level circumstances in which the two violations listed in the proposed regulation would meet the criteria specified in 25404(a)(3).

The enforcement requirements for minor violations are less stringent and UPAs cannot do formal enforcement on minor violations. Misclassifying the two specified violations hides the serious risk inherent to these situations and increases the risk of leaks and spills from aboveground petroleum storage. There was significant discussion in the Advisory Committee meetings regarding the need for these inclusions to reduce the risk posed by these violations.

Discussion of this issue can be found in the Advisory Committee Meeting Materials from June and July 2023, January 2024, and the ISOR.

Refer to the response to public comments E1 for more detail.

2. An alternative was proposed by Kevin Buchan of WSPA and Nicholas Crain of the County of Riverside. Evaluation of this alternative was considered and further discussed in the response to comments received. The commentors seek a revision of Section 2330 (a)(7) [renumbered as Section 1611(a)(7)] to clarify the requirements for saving training and discharge prevention briefing documentation. In addition, one commentor requests a definition of discharge prevention briefing be included.

The alternative was considered. A modification to the original text of the proposed regulations was made to further clarify that the documentation for training and briefing documentation is expected to be maintained for a certain period. The modification also alleviates the confusion that training and discharge prevention briefing are expected to be completed continuously over a period of time. Refer to the changes made to the original proposal regarding Section 2330(a)(7) [renumbered as Section 1611(a)(7)].

Finally, discharge prevention briefings are explicitly required and explained by federal regulation, Code of Federal Regulations (CFR) Title 40, Section 112.7(f)(3). A directly affected person would be generally familiar with the task and the California implementation of the APSA program. No issues have been identified that indicate the OSFM needs to provide additional interpretation regarding discharge prevention briefings.

Refer to the response to public comments C7 and E2 for more detail.

3. An alternative was proposed by Nicholas Crain of the County of Riverside. Evaluation of this alternative was considered and further discussed in the response to comments received.

However, the alternative was ultimately rejected because the proposed alternative seeks to revise statutory language and define a term used in the regulations. The OSFM and the Advisory Committee originally included excerpts from statute in these regulations because the statute is highly complex, and the jurisdictional guidance is not clearly distinguished in statute. These regulations coordinate and highlight the state and federal laws for the regulated community, industry stakeholders, and local UPA enforcement entities. Certain statutory language was duplicated in the original text of the regulations for clarity only. Duplication enables persons which are affected or subject to this proposed regulation to access the requirements in a location with which they are familiar without having to go to the statute.

After further review and reflection, modifications to the original text of the proposed regulations were made. In lieu of duplicating statutory language, specific references to the applicable sections in Health and Safety Code, Chapter 6.67, to delineate the scope of these regulations to be consistent with the scope and applicability of the Aboveground Petroleum Storage Act were included for simplicity.

Refer to the changes made to the original proposal regarding Section 2230 and response to public comment D1 for more detail.

4. An alternative was proposed by Nicholas Crain of the County of Riverside. Evaluation of this alternative was considered and further discussed in the response to comments received.

After further review of the comments and alternative, the OSFM determined that modifications to the original text of the proposed regulations were necessary. The terms 'tank facility' and 'petroleum' as used in APSA were also used in the proposed regulation.

Refer to the response to public comment D3 for more detail.

Alternatives Determination

In accordance with Government Code section 11346.9(a)(4), the OSFM has thoroughly reviewed this proposed regulatory action, including both the positive and negative impacts it will place upon the industry. No alternatives considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would they be as effective as and less burdensome to affected private persons or businesses than the proposed action, and more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The OSFM did not consider any other reasonable alternatives to be less burdensome to businesses in carrying out the purposes of the proposed regulation beyond that previously identified in the Initial Statement of Reasons.

Small Business Effects

The OSFM has determined that the proposed regulations have no "substantial" effect to small business and the OSFM has not identified any alternatives that would lessen any adverse impact on small business and still allow the OSFM to effectively enforce the regulations.

Public Comments

Additional irrelevant comments during the 45-day public comment period and public hearing were received in response to the Notice of Proposed Action. However, these comments are irrelevant as they are not directly related to the contents of the regulations.

Additional irrelevant comments during the 15-day public comment were received. No comments were received on October 14, 2024. No additional modifications were made to the text of the proposed regulations as a result of public comments received during the 15-day comment period.

Only objections or recommendations directed at the agency's proposed action or the procedures followed by the agency in proposing or adopting the action are summarized and responses provided, as permitted by Government Code, Title 2, Section 11346.9.

CHANGES MADE TO THE ORIGINAL PROPOSAL

Upon review and consideration of the comments received during the initial 45-day public comment period and public hearing, the OSFM determined that modifications to text of the regulations were necessary.

These regulations were originally proposed for the California Code of Regulations, Title 19, Division 1, Chapter 15. Since Chapter 15 includes existing regulations on fire hazard severity zone, the chapter for these regulations was modified to Chapter 11, which is a repealed chapter on transportation of flammable liquids in cargo tanks on highways. This change avoids conflicting regulations within the same chapter for differing OSFM program requirements. Consequently, all section numbers were also modified with the change in chapter.

General formatting modifications, including appropriate use of abbreviations and capitalizing certain words in section titles, and fixing typographical errors have been applied to ensure these regulations are clearer and consistent.

The table of contents was deemed unnecessary and did not meet the necessity standards in Government Code Section 11349.1(a)(1). Therefore, it was removed.

The original proposal for these regulations also included duplication of applicable state laws and regulations to fulfill the clarity standard of the Government Code Section 11349.1(a)(3). After further reflection, the duplication of specific statutory and regulatory sections for clarity was deemed unnecessary. Duplication of applicable state laws and regulations were replaced by referencing those specific applicable state laws and regulations. This change simplified these regulations.

Changes to the regulatory text, as it was originally noticed, are summarized below.

- Chapter number – The chapter number was changed from 15 to 11, since chapter 15 includes existing regulations on fire hazard severity zone. Chapter 11, which is a repealed chapter on transportation of flammable liquids in cargo tanks on highway, was chosen for these regulations. This change avoids conflicting regulations within the same chapter for differing OSFM program requirements.
- Section numbers – As a consequence of the change in chapter number, all section numbers were also revised, starting with Section 1600.
- Table of contents – The table of contents showing section numbers and section titles was removed, since it was deemed unnecessary after further review.
- Section 2200 – This section was renumbered as Section 1600 to reflect the change in chapter. After further review, the sentence regarding these regulations being adopted by the OSFM under the authority provided in APSA was removed as it was deemed unnecessary. The authority to adopt these regulations are incorporated in the authority note for each proposed section of these regulations.
- Section 2210 – This section was deemed unnecessary and, therefore, removed. This section did not meet the necessity standards in Government Code Section 11349.1(a)(1). This change removes redundancy, since references listed in this section are provided in the proposed regulations Sections 1601, 1602, 1603, 1604, and 1605.

- Section 2220 – This section was renumbered as Section 1601 to reflect the change in chapter. The ‘conditional status’ within the section title was removed to reflect additional changes to the section content.

Subsection (a), which contained the general scope of regulated entities subject to these regulations, was modified into two new separate subsections (a) and (b) for clarity and simplicity, based on the two APSA statute references, Health and Safety Code Sections 25270.2(a) and 25270.3. The modified subsection (a) emphasized the tank facility applicability criteria found in Health and Safety Code Section 25270.3, while the modified subsection (b) focused on the aboveground storage tank as defined in Health and Safety Code Section 25270.2(a).

The originally proposed subsection (b) was modified to subsection (c) to reflect the addition of a new subsection (b). The word ‘storage’ was inserted before ‘tank or tank facility’ for consistency with the APSA term ‘storage tank’. The phrase ‘any of the following apply, as’ was modified to ‘it meets any of the criteria’ for clarity. The acronym for Health and Safety Code (HSC) was also used for formatting consistency. The word ‘Sections’ was modified to the singular word ‘Section’ for grammar correction. A period was inserted at the end of this subsection to denote a sentence.

The originally proposed subsection (c) was modified to subsection (d) to reflect the addition of a new subsection (b). The word ‘as’ was removed for consistency with the other subsections. A period was inserted at the end of this subsection to denote a sentence. The word ‘[all]’ regarding the subsections in HSC Sections 25270.3(c)(3) was deemed unnecessary and removed for clarity.

The originally proposed subsection (d) was modified to subsection (e) to reflect the addition of a new subsection (b). The abbreviation for Health and Safety Code (HSC) was also used for formatting consistency.

- Section 2230 – After further reflection, the duplication of specific sections of the APSA statute for clarity on the scope of these regulations was deemed unnecessary. Hence, this section was removed. The scope of these regulations was referenced in Section 1601 with citations to the applicable sections of the APSA statute. This change simplified these regulations and addresses the comment by Nicholas Crain of Riverside County. Refer to the response to public comment D1 for more detail.
- Section 2240 – This section was renumbered as Section 1606 to reflect the change in chapter and rearranged for a more appropriate placement after the sections on definitions.
- Section 2250 – This section was renumbered as Section 1602 to reflect the change in chapter. The acronym for Health and Safety Code (HSC) was also used for formatting consistency.

- Section 2260 – This section was renumbered as Section 1603 to reflect the change in chapter. The section title was modified for clarity by removing the words ‘Applicable Legislative Definition’, which were deemed unnecessary after further reflection, and the change simplified the section title.

Duplication of the statutory definition for the term ‘waters of the state’ was deemed unnecessary after further reflection. For consistency in these regulations, the duplication of the statutory the definition for ‘waters of state’ was replaced by referencing the applicable Section 13050 of the Water Code for the ‘waters of the state’ definition. This change simplified these regulations.

‘Waters of the state’ is referenced in the APSA statute three (3) times. In two of those three instances, the Water Code is referenced. Also referenced in APSA is the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). Hence, the Water Code definition for ‘waters of the state’ was determined the most appropriate for these regulations.

A Health and Safety Code (HSC) definition exists within Division 5 (Sanitation) in the chapter for Sewers/Sewage, but this HSC definition was deemed unsuitable for these regulations. Other definitions of the waters of the state, which were also deemed unsuitable, are found other state codes but they do not apply to APSA: Government Code Section 8670, Harbors and Navigation Code Section 775.5, Public Resources Code Section 71200, Revenue and Tax Code Section 46027, and Vehicle Code Section 9840.

- Section 2270 – This section was renumbered as Section 1604 to reflect the change in chapter. The section title was modified by removing the words ‘Applicable Legislative Definition’, which were deemed unnecessary after further reflection, and the change simplified the section title.

Duplication of the statutory definition for the term ‘minor violation’ was deemed unnecessary after further reflection. For consistency in these regulations, the duplication of the statutory the definition for ‘minor violation’ was replaced by referencing the applicable Section 25404 of the Health and Safety Code. This change simplified these regulations.

- Section 2280 – This section was renumbered as Section 1605 to reflect the change in chapter. The section title was modified by changing ‘Definition’ to the plural word ‘Definitions’ to address a typographical error. The section title was also modified by removing the words ‘Applicable Regulatory Definition’, which were deemed unnecessary after further reflection, and the change simplified the section title.

Duplication of the regulatory definitions for ‘formal enforcement’ and ‘routine inspection’ was deemed unnecessary after further reflection. For consistency in these regulations, duplication of the regulatory definitions for ‘formal enforcement’ and ‘routine inspection’ was replaced by referencing the applicable Section 15110 in Title

27 of the California Code of Regulations. This change simplified these regulations. In addition, recent amendments to the Unified Program regulations in Title 27 of the California Code of Regulations were also effective July 1, 2024. Hence, the current regulatory reference for 'routine inspection' was also modified from Section 15110(f)(1) to Section 15110(g)(1) to reflect the current Unified Program regulations in Title 27 of the California Code of Regulations.

- Section 2290 – This section was renumbered as Section 1607 to reflect the change in chapter.

In subsection (a), 'section' was modified to 'Section' (first letter is capitalized) for formatting consistency. Section 2290 was modified to Section 1607 to reflect the change in chapter for these regulations.

In subsection (b), the one instance of the acronym 'AST' was removed and spelled out as 'aboveground storage tank'. The acronym for Health and Safety Code (HSC) was also used for formatting consistency. For clarification, Chapter 6.67 was modified to Section 25270.2(a), which defines an aboveground storage tank in Chapter 6.67 of the Health and Safety Code.

In subsection (c), the first sentence has been modified for clarity by removing the words 'tank such as', 'or other tank designed or intended solely for transportation related use', and 'stationary'. Within the first sentence, 'or' has been inserted before 'tank vehicle' for grammar, and 'storage' has replaced the word 'stationary' for consistency with the term 'storage tank' found in Health and Safety Code Chapter 6.67. The phrase 'in a permanent or fixed installation at a tank facility' has also been inserted at the end of the first sentence to further clarify and describe the term 'stationary tank' to have only one meaning, as required in CCR Title 1, Section 16(a)(1). The second sentence ('This does not include transportation tanks within a facility for mobile operations or permitted through the local authority having jurisdiction.') was deemed unnecessary with the additional modifications to this subsection (c) and, therefore, removed.

These changes also address the comment received by Kevin Buchan of WSPA.

- Section 2300 – This section was renumbered as Section 1608 to reflect the change in chapter.

This section was modified for clarity by merging the two sentences. This section identifies and clarifies the three APSA terms that are considered exceptions to the federal terms when preparing and implementing an SPCC Plan. Hence, the word 'some' was deemed unnecessary and, therefore, deleted. After 'exceptions' in the first sentence, the phrase was added, 'to the following terms, which are defined in HSC Section 25270.2.' to indicate the three exceptions which have their own definition in APSA. The word 'tank' was inserted in front of 'facility' for consistency with the term 'tank facility' in Health and Safety Code Chapter 6.67. The word 'oil' was

removed after 'petroleum' for consistency with the term 'petroleum' in Health and Safety Code Chapter 6.67.

These changes also address the comment received by Nicholas Crain of Riverside County.

- Section 2310 – This section was renumbered as Section 1609 to reflect the change in chapter. The section title has been modified by capitalizing the first letter of certain words for formatting consistency. In the section title, the word 'Tank' was inserted before 'Facilities' to be consistent with the term 'tank facility' in Health and Safety Code Chapter 6.67.

Subsection (a)(1) was modified to spell out the acronym for 'UPA' upon first use, which was 'Unified Program Agency'.

In subsection (b), the phrase 'subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal' has been removed after further reflection. Although the alternative inspection and compliance plan is subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal as described in Health and Safety Code Section 25270.5(b), the approval process does not belong exclusively in these regulations. An equivalent plan is required to be prepared and implemented by other Unified Program requirements, specifically Health and Safety Code Section 25404.2 and the California Code of Regulations, Title 27, Section 15200. The APSA statute is connected to these Unified Program requirements. Hence, the approval process is outside the scope of these regulations.

In the authority and reference note, a period was added at the end for proper formatting.

- Section 2320 – This section was renumbered as Section 1610 to reflect the change in chapter. The section title was modified by capitalizing the first letter of certain words for formatting consistency. In the section title, the word 'Tank' was inserted before 'Facilities' to be consistent with the term 'tank facility' in Health and Safety Code Chapter 6.67.

In subsections (a) and (c), the acronym for Health and Safety Code (HSC) was used for formatting consistency.

In subsection (b), the phrase 'subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal' has been removed after further reflection. Although the alternative inspection and compliance plan is subject to approval by the Secretary for Environmental Protection and the Office of the State Fire Marshal as described in Health and Safety Code Section 25270.5(b), the approval process does not belong exclusively in these regulations. An equivalent plan is required to be prepared and implemented by other Unified Program requirements, specifically Health and Safety Code Section 25404.2 and the California Code of

Regulations, Title 27, Section 15200. The APSA statute is connected to these Unified Program requirements. Hence, the approval process is outside the scope of these regulations.

In the authority and reference note, a period was added at the end for proper formatting.

- Section 2330 – This section was renumbered as Section 1611 to reflect the change in chapter.

In subsection (a)(7), the first sentence was broken down into two sentences for clarity to address two public comments received (Nicholas Crain of Riverside County and Kevin Buchan of WSPA). The first sentence focuses only on the training and discharge prevention briefing requirements. In the new second sentence, the phrase ‘Records of the training and discharge prevention briefings are’ is inserted before ‘documented for a minimum of 3 years.’ The new second sentence was included for the purpose of documenting the training and discharge prevention briefing requirements. Documentation serves as a record and verification of the training and discharge prevention briefings.

In subsection (b), Section 2330 has been changed to Section 1611 to reflect the change in chapter for these regulations. Also, the acronym for Health and Safety Code (HSC) was used for formatting consistency.

- Section 2340 – This section was renumbered as Section 1612 to reflect the change in chapter.

In subsection (a), the acronym for Health and Safety Code (HSC) was used for formatting consistency.

In subsection (f), typographical errors including formatting were fixed. ‘In’ was inserted before ‘CCR’. ‘Title’ was inserted after ‘CCR’. Also, a comma was inserted after ‘Title 27’.

In subsection (g), the last sentence was removed and incorporated into the first sentence for clarity. In the first sentence, after ‘provided’ the phrase was inserted ‘to the tank facility owner or operator or authorized representative’. This change also clearly identifies at the beginning of subsection (g) to whom the inspection report is issued rather than at the end of subsection (g).

- Section 2350 – This section is renumbered as Section 1613 to reflect the change in chapter.

In subsection (c), references to Section 2350 were modified to Section 1613 to reflect the change in chapter for these regulations. Also, the acronym for Health and Safety Code (HSC) was used for formatting consistency.

- Section 2360 – This section is renumbered as Section 1614 to reflect the change in chapter.

In subsection (a), the phrase ‘the effective date of this regulation’ was removed and replaced with a placeholder for the Office of the Administrative law to insert the actual effective date of these regulations for clarity. The insertion of one effective date of these regulations reduces confusion in the event after these regulations become effective, and amendments to these regulations are made in the future, then the effective date of the approved amendments also change.

In subsections (b), (c), (d) and (e), the acronym for Health and Safety Code (HSC) was used for formatting consistency.

In subsections (d) and (e), references to Section 2360 were modified to Section 1614 to reflect the change in chapter for these regulations.

- Section 2370 – This section is renumbered as Section 1615 to reflect the change in chapter.

In subsection (a), the extra space between the number ‘3’ and the hyphen symbol within the second sentence was removed. This change fixes a typographical error. Also in the second sentence, the acronym for Health and Safety Code (HSC) was used for formatting consistency.

The phrase ‘the effective date of these regulations’ was removed and replaced with a placeholder for the Office of the Administrative law to insert the actual effective date of these regulations for clarity. The insertion of one effective date of these regulations reduces confusion in the event after these regulations become effective, and amendments to these regulations are made in the future, then the effective date of the approved amendments also change.

In subsection (b), the phrase ‘but is not limited to’ has been removed for clarity.

In subsection (c), the acronym for Health and Safety Code (HSC) was used for formatting consistency. Also, Section 2370 was modified to Section 1615 to reflect the change in chapter for these regulations.

In the authority and reference note, a period was added at the end for proper formatting.

- Section 2380 – This section was renumbered as Section 1616 to reflect the change in chapter.

45-DAY PUBLIC COMMENT AND PUBLIC HEARING

Origin of Comment A: Scott Fazekas, City of Paramount

Comment A1: This comment states that the regulations may include a mandate for local agencies to adopt regulations.

OSFM Response: The OSFM and Advisory Committee do not concur with this interpretation of the regulations and also do not observe any content in the Express Terms (ET or Text), Initial Statement of Reasons (ISOR), or statutes that could be interpreted to require local agencies to develop regulations.

Comment A2: This comment asks if the jurisdiction for these regulations includes aboveground oil refineries.

OSFM Response: The jurisdiction for the Aboveground Petroleum Storage Act (APSA) is defined in Health and Safety Code (HSC) Sections 25270.2 and 25270.3. The scope of the proposed regulations, which include HSC Sections 25270.2 and 25270.3, are referenced in the proposed regulations Section 1601.

APSA does apply to aboveground oil refineries. APSA is the authority for the proposed regulations. The regulations apply to the same jurisdiction as APSA and do not expand the scope of APSA.

Comment A3: If new work under construction is required, is there an applicable effective date? Or will the regulations require retrofitting existing facilities?

OSFM Response: The OSFM and the Advisory Committee state that the proposed regulations are not construction standards and would not propose any technical changes related to construction or equipment.

The local Authority Having Jurisdiction (AHJ) would be the appropriate reference for construction standards applicable to each UPA jurisdiction or location.

Comment A4: This comment notes the regulations include a reference to pipeline safety. The commenter asks if these regulations are applicable to pipelines above ground as well as tanks.

OSFM Response: The jurisdiction for APSA is defined in Health and Safety Code Sections 25270.2 and 25270.3. The scope of the proposed regulations, which include HSC Sections 25270.2 and 25270.3, are referenced in the proposed regulations Section 1601.

APSA program regulations are not applicable to intrastate or interstate pipelines. APSA regulations are applicable to tank facilities, certain aboveground storage tanks, and associated piping within the tank facility.

Origin of Comment B: Chris Bagley, Synterra Corp

Comment B1: This comment asks if the regulations are newly developed or existing regulations that were formerly with a different agency.

OSFM Response: The regulations are new. The regulations apply to the same jurisdiction as APSA and do not expand the scope of APSA.

The jurisdiction for APSA is defined in Health and Safety Code Sections 25270.2 and 25270.3. The scope of the proposed regulations, which include HSC Sections 25270.2 and 25270.3, are referenced in the proposed regulations Section 1601.

Origin of Comment C: Daniel Yniguez, Los Angeles (LA) County

Comment C1: This comment asks why Inspection Determinations for the specified facilities was made permissive instead of mandatory.

OSFM Response: The ISOR provides detailed discussion and determinations regarding this question. For the detailed response, refer to the ISOR pages 13-14, regarding Sections 2310 and 2320 [renumbered as Sections 1609 and 1610, respectively].

Comment C2: This comment asks why proposed regulations section 2330 [renumbered as Section 1611] does not include California Environmental Reporting system (CERS) actions taken after submittal.

OSFM Response: These questions are addressed by proposed regulation Sections 1610 (e) and 1610 (f).

Comment C3: The commentor asks why these regulations propose a 6 year or two inspection cycle time period for resolving open or existing violations.

OSFM Response: Health and Safety Code Section 25270.4.1 requires the OSFM to provide interpretation of the APSA to UPAs.

The focus of this section is to clarify that UPAs have the statutory authority to pursue formal enforcement. Formal enforcement is a key element to implementation of the APSA. However, the statute does not explicitly state that UPAs have the authority to pursue formal enforcement nor does it explicitly state when the UPA initiate formal enforcement. This regulation meets the OSFM's statutory responsibility to interpret the APSA.

This regulation is not a policy change. This regulation also does not preclude the UPA from pursuing formal enforcement using a shorter timeframe. This regulation is to ensure that UPAs pursue enforcement actions and do not let violations stand for significant periods of time.

However, it is understood that the resources of the UPAs vary widely, and additional time may be required to pursue activities that may resolve the violations before formal enforcement is pursued.

Comment C4: This comment asks why proposed regulation section 2350 [renumbered as Section 1613] does not address after hours spill response.

OSFM Response: The OSFM and Advisory Committee clarified that the after-hours spill response is out of the scope of these regulations.

Specifically, the SPCC Plan is not an emergency response document for the UPAs to access during an emergency. Facility staff are required to have knowledge of the emergency elements of the SPCC Plan. Also, the SPCC Plan is required to be organized so that portions describing procedures to be used when a discharge occurs will be readily usable in an emergency by facility staff.

Comment C5: This comment asks the time period for UPAs (the enforcement agency) to review CERS submittals, per proposed regulations Section 2360 [renumbered as Section 1614].

OSFM Response: The OSFM and Advisory Committee clarified that broad decisions regarding CERS submittals or review would be out of the scope of these regulations.

CERS is a database under the oversight of the California Environmental Protection Agency (CalEPA), for which all Unified Program entities are required to submit their information.

If a CERS submittal review period or deadline is proposed, it would be under the authority of the CalEPA-Unified Program not APSA program individually.

Comment C6: This comment asks a number of questions related to communications between the UPAs and owners or operators through CERS.

OSFM Response: The OSFM and Advisory Committee clarified that broad decisions regarding CERS notifications would be out of the scope of these regulations.

CERS is a database under the oversight of the CalEPA, for which all Unified Program entities are required to submit their information.

If a CERS notification or other procedure is required, it would be under the authority of the CalEPA-Unified Program not the APSA.

Comment C7: This public comment asks questions related to the UPA Staff Training requirements in the proposed regulations 2370 [renumbered as Section 1615]. This comment asks if there is a standard or accreditation for the UPA Staff Training instructor.

In addition, the public comment asks if trainings are limited to a 6 hour continuous time period.

OSFM Response: The OSFM and Advisory Committee respond that the proposed regulation includes detailed standards for content of the APSA training and does not include detailed requirements for the instructor. It would be an undue burden to also create specific requirements for instructors, as there is a limited pool of available instructor and applicable standards for APSA specific training.

The text of the proposed regulation Section 1615 does not state that the 6 hours of training must be continuous. The regulation states that UPA staff “must obtain at least 6 hours of refresher training every 3 years,” and that “training may be in the form of a seminar, lecture, conference, workshop, online training, or other similar method.” The ISOR starting on page 19 provides examples of training which are in shorter time periods than 6 hours.

Origin of Comment D: Nicholas Crain, Riverside County

Comment D1: This comment requests revisions to proposed section 2230 (b) because it does not flow and is confusing to read, because there is a typo in (c)(2) and (c)(3), and to remove the term conditional status.

OSFM Response: After further review and reflection, the OSFM determined that this section and its subsections should be removed from the proposed regulations. Duplications of sections of the APSA statute have been removed for simplicity. The modifications to the text of the regulations, released September 25, 2024, reflect this change.

Comment D2: This comment requests a specific citation to 40 CFR section 112.8 in Section 2240 [renumbered as Section 1606] of the proposed regulations. Per the commentor, this question is to determine if exposed and buried piping are required to follow comparable standards.

OSFM Response: Section 1606 is proposed so that facility owners or operators shall provide protection to all piping and supporting components from corrosion.

The proposed regulation does not direct or define how this goal is accomplished. Owners or operators tank facilities should use best management practices as established in applicable industry standards to achieve this goal for this requirement. The intent is to not be prescriptive but performance-based, consistent with performance-based requirements of the Federal requirements in the Code of Federal Regulations (CFR), Title 40, Part 112.

APSA tank facilities are already required to meet the 40 CFR 112 section 112.8 piping requirements, if applicable, when preparing and implementing an SPCC Plan that meets Federal requirements.

Comment D3: This public comment, regarding proposed section 2300 [renumbered as Section 1608], states that the terms petroleum oil and facility are not defined in Health and Safety Code 25270.2 but may be found in 40 CFR 112.2.

OSFM Response: The OSFM agrees with the comment. HSC Section 25270.2 (h) defines “petroleum” and HSC Section 25270.2 (n) defines “tank facility.”

The OSFM determined that modifications to the text of the proposed regulations were necessary.

Regarding the exceptions in Section 1608, the term ‘tank facility’ replaces ‘facility’ and ‘petroleum’ replaces ‘petroleum oil’. Both terms ‘tank facility’ and ‘petroleum’ are consistent with and defined in APSA.

The federal regulations use federal terms, ‘facility’ and ‘petroleum oil’, which have slightly different definitions compared to the state APSA.

Comment D4: The public comment states that Section 2330 (a)(7) [renumbered as Section 1611] could be misinterpreted to limit discharge prevention briefings to 3 years in contrast to an ongoing requirement.

OSFM Response: The OSFM has acknowledged the concern. After further review of this comment, the OSFM determined that modifications to the text of the proposed regulations were necessary.

The first sentence in Section 1611 is broken down into two sentences for additional clarification, so that the first sentence focuses only on the training and discharge prevention briefing requirements, while the new second sentence is included for the purpose of documenting the training and discharge prevention briefing requirements.

Documentation serves as a record and verification of the training and discharge prevention briefings.

Origin of Comment E: Kevin Buchan, WSPA (Western States Petroleum Association)

Comment E1: This public comment states that proposed sections 2290 (a) and (c) and 2340(d) [renumbered as Sections 1607(a) and (c) and 1612(d), respectively] would impede enforcement of the regulations and would enlarge the scope of the statute (Health and Safety Code Section 25404(a)(3)).

This public comment also requests that the term ‘stationary tank’ in Section 2290(c) [renumbered as Section 1607(c)] be defined, since it will have significant LPG (liquefied petroleum gas) storage operations at refineries.

OSFM Response: The OSFM and Advisory Committee both agree that there are no physical or technical conditions in which the three situations described in Sections 1607 or 1612 could meet the definition of a minor violation, HSC Section 25404(a)(3).

The two proposed regulations were developed to make explicit that there is no agency discretion in these situations. It is necessary to include this additional detail in the regulations because interpretation of these conditions as minor violations causes an increased risk to public safety and the environment, and this misinterpretation has been observed in enforcement activities.

These regulations do not expand or otherwise change the jurisdiction of APSA. The jurisdiction for APSA is defined in Health and Safety Code Sections 25270.2 and 25270.3. LPG is not subject to APSA, and, therefore, not subject to these regulations.

The OSFM acknowledges the concern about the term 'stationary tank'. After further review, the OSFM determined that modifications to the text of the proposed regulations were necessary to ensure that 'stationary tank' has only one meaning, as required in CCR Title 1, Section 16(a)(1). 'Stationary tank' was changed to 'storage tank' to be consistent with the term as used in HSC Chapter 6.67, and the phrase 'in a permanent or fixed installation at a tank facility' has also been inserted after 'storage tank' to further clarify and describe the term 'stationary tank' to have only one meaning.

For details on the modifications to the text of the regulations regarding Section 2290 [renumbered as Section 1607], refer to the changes made to the original proposal of this FSOR.

Comment E2: This public comment requests that Section 2330 (a)(7) [renumbered as Section 1611(a)(7)] be revised and include further definitions.

OSFM Response: This public comment is answered in the answer to public comment D4.

Note: There are no comments designated for F, G, and H.

Origin of Comment I: Larry Sweetser, Sweetser & Associates

Comment I1: This commenter asks about the APSA jurisdiction and if the regulations require AST engineer certification for 55 gallon drums.

OSFM Response: The jurisdiction for APSA is defined in HSC Sections 25270.2 and 25270.3. The scope of the proposed regulations, which include HSC Sections 25270.2 and 25270.3, are referenced in the proposed regulations Section 1601.

These regulations do not create specified requirements for 55 gallon drums outside of the current APSA requirements.

Comment I2: This commentor asks if portable tanks on maintenance vehicles should be included in storage capacity calculations.

OSFM Response: HSC Sections 25270.2(a), 25270.2(l), and 25270.2(m) define storage tank, storage, and storage capacity as it applies to APSA. These regulations do not change the statutory definitions of storage, storage tank, and storage capacity.

Section 1602 on the aggregate storage capacity would include the capacity of the portable tanks on maintenance vehicles, if such portable tanks meet the definition of a storage tank under APSA. However, the fuel tank that powers the movement of the vehicle is not included in the capacity calculation, for consistency with the Federal SPCC requirements.

15-DAY PUBLIC COMMENT

Origin of Comment J: Mario Salinas, Imperial County

Comment J1: This commentor states that there is no mechanism to monitor a leak or release within buried piping connected to aboveground storage tanks. The commentor stated that it is important to develop a regulation requiring owners or operators of aboveground storage tanks to have a mechanism or method to monitor secondary containment piping for any leaks or releases.

OSFM Response: The OSFM acknowledges and appreciates the comment and will take it into consideration in the future, but believes that it is beyond the scope of these regulations.

The Federal requirements in 40 CFR 112, Section 112.8(d)(4) currently require an owner or operator of a tank facility to conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

Also, there are existing regulations in the fire code, in California Code of Regulations, Title 24, Part 9, Section 5703.6.2.2, that addresses monitoring of below-grade or underground piping connected to specific aboveground storage tanks called tanks in underground areas.

Origin of Comment K: Wendy Sanders, Yorke Engineering, LLC

Comment K1: The commentor asked if Section 1606 applies to aboveground and below ground piping.

OSFM Response: This proposed regulation Section 1606 applies to all piping, which includes applicable aboveground and below ground piping that is integral to a storage tank within a tank facility applicable to APSA.

HSC Section 25270.2(n) defines a tank facility, which includes piping that is integral to the storage tanks applicable to APSA. Piping integral to such storage tanks may be installed aboveground or below ground. This regulation does not change the statutory definition of a tank facility, nor does it expand the scope of APSA.

Comment K2: The commentor stated that the justification for Section 1606 is not clear.

OSFM Response: The OSFM does not concur with the comment. This proposal is necessary as preventive steps to reduce the risk of leaks and spills as described in the ISOR, starting on page 9 for the originally proposed Section 2240 [renumbered as Section 1606].

Comment K3: The commentor asked with which federal standards Section 1606 is consistent.

OSFM Response: Although this regulation does not impose retroactive requirements as does the federal requirements in 40 CFR 112, Section 112.8(d)(1), this regulation remains consistent with federal requirements in 40 CFR 112, Section 112.8(d)(1) regarding corrosion protection on buried piping. In addition, the legislation directs the OSFM to adopt regulations to implement the APSA, including any more stringent requirements. The federal requirements in 40 CFR 112, Section 112.7(j) also explicitly requires SPCC Plans to include any applicable more stringent State rules and regulations.

This regulation is also consistent with existing construction standards.

Comment K4: The commentor stated the phrase 'susceptible to corrosion' in Section 1606 is interpretive and asked what that meant.

The commentor was concerned it's a difficult requirement to evaluate and if only certain components on non-stainless steel tanks should be evaluated.

OSFM Response: The proposed regulation does not direct or define how this goal is accomplished. Tank facility owners or operators should use best management practices as established in applicable industry standards to achieve this goal for this requirement. The intent is to not be prescriptive but performance-based, consistent with performance-based requirements of the Federal requirements in 40 CFR 112.

APSA tank facilities are already required to meet the 40 CFR 112, Section 112.8 piping requirements, if applicable, when preparing and implementing an SPCC Plan that meets Federal requirements.

The proposed regulation Section 1606 applies to the piping integral to the storage tanks at an APSA tank facility. This proposed regulation Section 1606 does not apply to storage tanks.

Comment K5: The commentor asked how a CUPA inspector would address Section 1606 without being a professional engineer or have special expertise.

OSFM Response: The OSFM understands the concern and will take it into consideration when training Unified Program Agency (UPA) inspectors in the future. However, it is outside the scope of these regulations.

UPA inspectors are already required by APSA to inspect certain tank facilities for compliance with the SPCC Plan requirements, including the piping requirements of 40 CFR 112 section 112.8, if applicable. APSA explicitly states that such inspections do not require the oversight of a professional engineer. UPA inspectors are, however, required by APSA to complete and pass an initial aboveground storage tank inspector training program that focuses on the SPCC Plan provisions and safety requirements for aboveground storage tank inspections. Section 1615 of these proposed regulations will also require UPA inspectors to complete refresher training.

As outlined in the 2007 Laird letter and included in the proposed regulations Sections 1611 and 1612, an UPA's review of an SPCC Plan includes determining whether the SPCC Plan was prepared and is being implemented in compliance with the federal requirements. APSA does not specifically provide authority for an independent evaluation of the recommendations or provisions in SPCC Plans.

Comment K6: The commentor stated that requirements in Section 1611(a)(7) are established by the Federal SPCC rule (40 CFR 112). However, recordkeeping requirements under the Federal SPCC rule are only for inspections and tests, not training.

OSFM Response: The OSFM understands the concern. However, the legislation directs the OSFM to adopt regulations to implement the APSA, including any more stringent requirements.

Although training and discharge prevention briefings are required in 40 CFR 112, Section 112.7(f), there is no federal requirement to explicitly ensure training or discharge prevention briefings are being implemented by the owner or operator of a tank facility. Hence, the OSFM is addressing this gap by explicitly requiring documentation, which serves as record and evidence that training and discharge prevention briefings are being implemented.

Origin of Comment L: Kevin Buchan, WSPA

Comment L1: The commentor stated that Section 1601(b) should be removed since it's inconsistent with APSA. The commentor also stated that APSA does not apply to any storage tank that meets the definition at HSC Section 25270.2(a), only those that are a part of a tank facility that meets the criteria in HSC Section 25270.3(a) through Section 25270.3(c).

OSFM Response: The OSFM does not concur with the comment.

The comment does not take into consideration the other subsections in Section 1601, which lay out the scope of these regulations and delineate the inclusions and exclusions to these regulations for consistency with the APSA. Due to the complexity of the statute, the OSFM

deemed it necessary to address all the APSA inclusions and exclusions in the proposed regulation Section 1601 using separate statements and subsections. The inclusions to these regulations are clarified in Subsections (a) and (b), while the exclusions are specified in Subsections (c) and (d).

APSA is the authority for the proposed regulations. The regulations apply to the same jurisdiction as APSA and do not expand the scope of APSA.

Origin of Comment M: Jennifer Manning, Barghausen Consulting Engineers

Comment M1: The commentor asked whether an aboveground storage tank storing greater than 10,000 gallons of additive at a fuel dispensing facility will be regulated under the new regulations. The facility also has underground storage tanks containing fuel.

OSFM Response: The jurisdiction for APSA is defined in HSC Sections 25270.2 and 25270.3. The scope of the proposed regulations, which includes references to HSC Sections 25270.2 and 25270.3, are clarified in the proposed regulation Section 1601.

APSA does apply to an aboveground storage tank with a capacity to store 55 gallons or more of petroleum, although there are exceptions. For purposes of APSA, petroleum is defined in HSC Section 25270.2(h). If the additive meets the APSA definition of petroleum or contains petroleum, then APSA does apply to the aboveground storage tank containing additive.

APSA is the authority for the proposed regulations. The regulations apply to the same jurisdiction as APSA and do not expand the scope of APSA.