
State Water Resources Control Board

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 16. Underground Storage Tank Regulations

Notice of Proposed Regulatory Action

Underground Storage Tank Federal Reconciliation Regulations

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to amend, adopt, or repeal the underground storage tank (UST) regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (commencing with section 2610) (California UST Regulations) to make the California UST Regulations at least as stringent as part 280 of 40 Code of Federal Regulations (Federal UST Regulations), as amended effective October 13, 2015. These proposed amendments are administrative and technical in nature and impose new design and construction, upgrading, monitoring, notification, testing, inspecting, recordkeeping, training, and reporting requirements. These proposed amendments to the California UST Regulations will make the California's UST Regulations at least as stringent as the Federal UST Regulations and include any more stringent requirements necessary to implement chapter 6.7 of division 20 of the Health and Safety Code. The State Water Board also proposes to clarify certain requirements under existing California UST Regulations to be consistent with the Federal UST Regulations.

PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes on January 2, 2018 at 12:00 p.m. The State Water Board only will consider comments received by that time.

Please send comment letters to Jeanine Townsend, Clerk to the Board, by email at commentletters@waterboards.ca.gov, by fax at (916) 341-5620, or by mail or hand delivery addressed to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (by mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (by hand delivery)

Please also indicate in the subject line, **“Comment Letter – Proposed UST Regulations.”** Hand and special deliveries should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. Therefore, the State Water Board requests that comments larger than 15 megabytes be submitted under separate emails.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserve for **“Program Requirements and Guidance”** by going to: http://www.waterboards.ca.gov/resources/email_subscriptions/ust_subscribe.shtml. You also may call Ms. Laura Fisher at (916) 341-5870 or email her at laura.fisher@waterboards.ca.gov. **Persons who receive this notice by mail or electronic mail are already on the mailing list.**

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.3 authorizes the State Water Board to adopt regulations to implement chapter 6.7 of division 20 of the Health and Safety Code. Subdivision (c) of section 25299.3 further directs the State Water Board to assure consistency with the requirements of the Federal UST Regulations and to include any more stringent requirements necessary to implement chapter 6.7 of division 20 of the Health and Safety Code. The proposed regulations are amended to assure consistency with the requirements of the Federal UST Regulations, as amended effective October 13, 2015, and includes any more stringent requirements necessary to implement chapter 6.7 of division 20 of the Health and Safety Code. References to specific code sections are identified in the proposed amendments to the California UST Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Effective October 13, 2015, the United States Environmental Protection Agency (U.S. EPA) amended the Federal UST Regulations for UST systems. Some of the new requirements in the Federal UST Regulations became effective immediately on October 13, 2015. Other requirements have staggered implementation dates out to October 13, 2018.

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UST owners and operators in States without an approved UST Program, including California, are required to comply with Federal UST Regulations immediately. Some of the new requirements in the Federal UST Regulations are more stringent than, or are inconsistent with, the California UST Regulations. Consequently, California UST owners and operators now have two sets of requirements to meet: 1) the existing California UST program implemented and enforced by the State Water Board and the Unified Program Agencies (UPAs) (who implement the existing California UST program on the State Water Board's behalf); and 2) the U.S. EPA inspection and enforcement of those Federal UST Regulations that are more stringent than, or are inconsistent with, the California UST Regulations. The State Water Board proposes to amend the California UST Regulations to make the California UST Regulations at least as stringent as the Federal UST Regulations.

Because California does not have an approved State UST Program, UST owners and operators are required to comply with Federal UST Regulations, in addition to Health and Safety Code, division 20, chapter 6.7, section 25280 et seq. (Health and Safety Code) and the California UST Regulations. Neither the State Water Board nor the UPAs have inspection and enforcement authority for these Federal UST Regulations. This inspection and enforcement split in the program is highly undesirable. Without the regulatory changes, California UST owners and operators will continue to have two sets of UST requirements to meet. In addition, a California UST program that is not at least as stringent as the Federal UST program by October 13, 2018, when the Federal UST Regulations are fully implemented, may ultimately affect the State Water Board's continued funding from U.S. EPA.

Consistent with the effective dates of the provisions in the Federal UST Regulations, the proposed amendments to the California UST Regulations regarding, but not limited to, construction, upgrade, monitoring, inspecting, testing, training, and recordkeeping for UST systems are intended to be met as soon as the proposed regulation becomes effective, with other implementation dates staggered out to October 13, 2018. As is common practice in California and other states, the State Water Board has modified the requirements of the Federal UST Regulations where appropriate to be consistent with California's existing requirements and with groundwater protection policies. The State Water Board also proposes to clarify certain requirements under existing California UST Regulations to be consistent with the Federal UST Regulations.

The new Federal UST Regulations include, but are not limited to: 1) facility walkthrough inspections; 2) overfill prevention equipment inspections; 3) testing and inspecting equipment after a repair; 4) requirements for demonstrating compatibility; and 5) training of employees prior to the first work day. The new Federal UST Regulations also include requirements for previously deferred UST systems. California currently regulates these UST systems; however, some of the existing options for monitoring will no longer be permissible because these options are not allowed under the Federal UST Regulations. As amended, the California UST Regulations will be at least as stringent as the Federal UST Regulations and will better protect public health, safety, and the environment by reducing the risk of releases of hazardous substances to the environment. Additionally, California UST owners and operators will no longer have two sets of UST requirements to meet and future funding from the U.S. EPA will not be in jeopardy as a result of regulatory deficiencies.

The State Water Board also proposes certain amendments to the regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (i.e., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, spelling, grammar, punctuation, or renumbering or

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relocating regulatory provisions. In addition, the State Water Board is proposing the following minor edits for consistency, clarification, and updating purposes: 1) the term “overfill prevention system” is replaced with “overfill prevention equipment” throughout the chapter for clarification purposes; 2) timeframes specified in years have been replaced with timeframes specified in months throughout the chapter for greater specificity; 3) the term “calendar days” is replaced with “days;” 4) citation format is standardized, including replacing the term “subsection” with “subdivision;” 5) numbers less than 10 and units of measurement have been spelled out, numbers 10 and greater spelled out have been replaced with the numeric equivalent; 6) the terms “above” and “below” have been added in reference to the location of other requirements within the same section; and 7) the term “underground storage tank” is spelled out rather than using the acronym “UST.” To the extent that many of these amendments without regulatory effect are non-substantive and their purpose is self-evident or merely editorial, they are not discussed further herein.

The State Water Board has determined that no reasonable alternative to these proposed regulations would be: 1) more effective in carrying out the purpose for which the proposed regulations are proposed; 2) more effective and less burdensome to affected private persons, industry, local governments, and state agencies; 3) more cost effective to affected private persons, industry, local governments, and state agencies; 4) equally effective in implementing the statutory policy or other provision of law; 5) more effective at avoiding direct regulation by the federal government of businesses already subject to California UST Regulations; or 6) more consistent with California’s existing requirements and groundwater protection policies. The proposed amendments to the regulations are necessary for consistency with Federal UST Regulations and for clarification purposes. The proposed amendments do not duplicate or conflict with any federal law or federal regulation. The specific purpose and the basis for the State Water Board’s determination of the necessity of each amendment are explained in the Initial Statement of Reasons.

The State Water Board relied on an Economic and Fiscal Impact Statement and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) to amend these regulations. State Water Board staff hosted a focus workgroup in Sacramento on January 24, 2017 consisting of State Water Board staff, UST regulators, and select representatives from the UST regulated community. In addition, the State Water Board staff held two informal public workshops, one on March 13, 2017 in Sacramento and the other on March 28, 2017 in Los Angeles, consisting of UST owners and operators, UST regulators, contractors, UST component manufacturers, and other representatives from the UST regulated community to review and comment on a draft of the proposed regulations. State Water Board staff submitted a draft of the proposed regulations to U.S. EPA Region 9 and requested a review from the U.S. EPA and U.S. EPA Region 9 to evaluate if the proposed language is at least as stringent as, or provides equivalency to, the Federal UST Regulations. Finally, State Water Board staff conducted a trial with UST inspection and testing companies of the proposed forms documenting required UST inspections and testing. State Water Board staff considered and, as appropriate, incorporated into the proposed regulations the comments received from the workgroup, workshops, UST inspection and testing companies, U.S. EPA, and U.S. EPA Region 9. State Water Board staff did not rely upon any other technical, theoretical, or empirical studies, reports, or documents to amend these regulations.

In accordance with Health and Safety Code, section 25280.5, subdivision (b), it is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Health and Safety Code, chapter 6.7, to implement the provisions of the Federal UST Regulations. To comply with the law, the State Water Board is proposing regulations. As amended, the proposed regulations

avoid direct regulation by the federal government by making the California UST Regulations at least as stringent as the Federal UST Regulations.

The State Water Board evaluated whether there were any other regulations that would relate to or affect this area and found that these are the only regulations concerning installation, testing, inspecting, and reporting requirements of USTs. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of the Government Code, division 4.

COST OR SAVINGS TO STATE AGENCIES

The State Water Board has determined that there are no fiscal impacts on any State agency or program because the regulations apply to owners and operators of USTs that are regulated by UPAs who implement the existing California UST program on the State Water Board's behalf.

COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The State Water Board has determined that there is no cost or savings imposed on school districts as a result of the proposed regulations, or other nondiscretionary costs or savings imposed on local agencies or school districts.

The State Water Board estimates that there will be a cost of \$304,325 to local agencies operating a Unified Program that is not reimbursable by the State. UPAs will incur these costs when collecting and reviewing additional testing and inspection reports. These costs will be fully financed by fees for operating USTs. The State Water Board is proposing certain amendments to existing reporting requirements and imposing new reporting requirements to make specific the method of reporting specified information and documents. The proposed regulations requires that the specified information be provided on the new forms contained in the proposed regulation and are consistent with common practice and existing reporting requirements. Standardized forms reduces the amount of time both the UST regulated community and UPA invests in the review of submitted reports by streamlining the information collected and presenting the results in a simple fashion to determine if further action is required at UST facilities. Other economic impacts to most local governments are anticipated to be indirect and relatively minor.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

States which have U.S. EPA's state program approval must demonstrate that its requirements under each state program element for existing and new UST systems are no less stringent than the corresponding federal requirements. The state must also demonstrate that it has a program that provides adequate enforcement of compliance with these requirements. (Federal UST Regulations, §281.11(b).)

While California does not have U.S. EPA's state program approval, failure to adopt these amendments to the California UST Regulations by October 13, 2018, when the Federal UST Regulations are fully implemented could jeopardize \$1 million annually in future grant funding from the U.S. EPA.

BUSINESS IMPACT/SMALL BUSINESS

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The State Water Board has determined that the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its 20-year lifetime to be \$60,924,150. Approximately 80 percent of the affected businesses are small businesses. The typical business will incur approximately \$4,000 to \$7,600 over the lifetime of the proposed regulations. This cost includes annual ongoing costs of \$200 to meet new periodic inspection and reporting requirements and up to \$3,600 in capital costs that may be incurred by almost 40 percent of businesses in order to meet the overfill prevention equipment upgrade requirement. In addition to these costs, approximately 700 small businesses, or almost eight percent of small businesses, with single-walled piping may be subject to an additional \$270,000 in capital costs for meeting piping upgrade requirements and \$2,500 in associated annual ongoing costs for periodic testing in the event that their piping requires repair before permanent closure of the UST. A small business that is subject to the overfill prevention equipment upgrade requirement, piping upgrade requirements, and associated annual ongoing costs for periodic testing and inspections will incur approximately \$327,600 over the lifetime of the proposed regulations.

The State Water Board is proposing certain amendments to existing reporting requirements and imposing new reporting requirements to make specific the method of reporting specified information and documents. The proposed regulations requires that the specified information be provided on the new forms contained in the proposed regulation and are consistent with common practice and existing reporting requirements. Because the proposed regulations only implement requirements of common practice and existing methods of reporting, they will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Nor will the proposed regulatory action adversely affect small businesses in California. Some of the proposed amendments require electronic submittal of data and documents instead of the current method of filling out and mailing paper forms. Electronic submittal is via the internet using readily available technology. UPAs are assisting those regulated businesses that do not have a computer with internet access by making computers with internet access readily available for the businesses to use. The State Water Board estimates that on average UST owners and operators will incur \$50 annually per facility to comply with the reporting requirements.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The State Water Board has determined that the cost for a typical UST facility in California to comply with the proposed amendments to the California UST Regulations will be approximately \$4,000 to \$7,600 over the lifetime of the proposed regulations.

Assessment Regarding Effect on Jobs and Businesses

The State Water Board has determined that the proposed regulatory action will not have an effect on the creation of new businesses within the State of California, because the added testing, inspection, and upgrade requirements for existing equipment do not create a significant enough workload to support the creation of new businesses. The State Water Board estimates that statewide approximately 50 jobs will be created within businesses offering UST inspection and contracting services as a result of the extra workload created by the proposed regulations.

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The State Water Board has determined that the proposed regulatory action may result in up to 19 small businesses permanently closing not just their USTs, but their whole business due to their reliance on their USTs to generate revenue, if they are unable or unwilling to replace the closed USTs with new USTs that meet all of the regulatory requirements. Assuming each of these businesses employ four people, the loss of 19 businesses will result in the loss of 76 jobs. It should be noted, however, that some of these businesses may be eligible for a grant and/or a low-interest loan from the State Water Board's Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) grant and loan program to assist with the required costs.

Benefit of the Regulation for Public Health, Safety, and Welfare

The purpose of the UST Program is to protect public health and safety and the environment from releases of petroleum and other hazardous substances from tanks. The proposed regulations will improve the health and welfare of California residents, worker safety, and the state's environment because these proposed regulations regarding the construction, monitoring, and testing of UST systems are intended to reduce the risk of groundwater contamination resulting from UST releases.

EFFECT ON HOUSING COSTS

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

BUSINESS REPORTING REQUIREMENT

The State Water Board finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation apply reporting requirements to businesses.

CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable 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.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND THE RULEMAKING FILE

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. All the information upon which the proposed regulation is based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulations, and the rulemaking file are available from the contact person listed below or at the website listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulation substantially as described in this notice. If the State Water Board makes modifications that 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 fifteen (15) days before the State Water Board adopts the regulation as modified. A copy of any modified regulation may be obtained by contacting Ms. Laura Fisher, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy may also be accessed on the State Water Board website previously identified.

CONTACT PERSONS

Requests of copies of the text of the proposed regulation, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: Laura S. Fisher, Chief
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone No.: (916) 341-5870
E-mail address: laura.fisher@waterboards.ca.gov

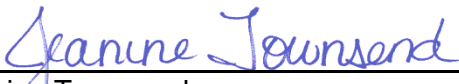
The backup contact person is:

Name: Cory Hootman
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone No.: (916) 341-5668
E-mail address: cory.hootman@waterboards.ca.gov

The documents relating to this proposed action may also be found on the State Water Board's website at the following address:

http://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/fed_rec_regs/.

November 17, 2017
Date


Jeanine Townsend
Clerk to the Board