

**Proposed Amendments
to the
California Code of Regulations
Title 23. Water**

**Division 3. State Water Resources Control Board
and Regional Water Quality Control Boards
Chapter 16. Underground Tank Regulations**

**INITIAL
STATEMENT OF REASONS**

**November 2019
State Water Resources Control Board
Division of Water Quality**

Chapter 16. Underground Tank Regulations

The State Water Resources Control Board (State Water Board) proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (California Underground Storage Tank (UST) Regulations). These proposed amendments include both modifications to the local agency reporting requirements and modifications to the reporting requirements for UST owners and operators.

The State Water Board proposes to amend the requirements in California UST Regulations, section 2713 regarding the data that local agencies must provide to the State Water Board pursuant to California UST Regulations, section 2713. The UST performance measures that the State Water Board reports to the United States Environmental Protection Agency (U.S. EPA) under the federal Leaking Underground Storage Tank Trust Fund Corrective Action Cooperation Agreement for California and the State Water Board Cooperative Agreement Work Plan (federal UST performance measures) have been amended. In addition to these federal UST performance measures, the State Water Board must report compliance inspection data to the U.S. EPA pursuant to the Federal Energy Policy Act of 2005.

The State Water Board proposes to amend the UST performance measures that each local agency must report to the State Water Board semiannually (local agency UST performance measures) consistent with the amendments to the federal UST performance measures. The State Water Board also proposes to add a new requirement that local agencies provide compliance inspection data through the California Environmental Reporting System (CERS), the statewide web-based system used to collect and report hazardous material related data. Finally, the State Water Board is proposing to simplify the existing local agency reporting requirement regarding red tags. These amendments to the local agency UST performance measures are necessary so that the State Water Board can provide complete and accurate reporting of all federal UST performance measures to the U.S. EPA.

The State Water Board also proposes to amend the requirements in California UST Regulations, section 2716 to clarify UST owners and operators designated UST operator visual inspection responsibilities. These proposed amendments clarify the corrective actions that must be reported on the “Underground Storage Tank Designated Underground Storage Tank Operator Visual Inspection Report” and the UST owner or operator signature requirement for this form. The State Water Board is proposing a corresponding modification to the signatory statement on the “Underground Storage Tank Designated Underground Storage Tank Operator Visual Inspection Report” (Appendix XIII).

The State Water Board proposes several additional amendments to forms contained in the appendices of the California UST Regulations. These forms were added to the California UST Regulations in 2018 for consistency in reporting and to simplify the reporting process. The State Water Board proposes to amend the “Underground Storage Tank Monitoring System Certification Form” (Appendix VI) and the “Underground Storage Tank Secondary Containment Testing Report Form” (Appendix

VII) to remove the interstice test reporting requirement. There is no separate statutory or regulatory requirement to conduct this communication testing and it may be impossible or infeasible on many existing UST systems.

In addition, the State Water Board proposes to add a requirement to the “Underground Storage Tank Spill Container Testing Report Form” (Appendix VIII) and the “Underground Storage Tank Overfill Prevention Equipment Inspection Report Form” (Appendix IX) that the service technician provide the expiration date of the technician’s training and certification for spill container testing and performing the overfill equipment inspection, respectively. This addition is necessary to ensure compliance with training and certification requirements and is consistent with all other forms that require service technician information in the California UST Regulations.

The State Water Board also proposes certain amendments to the forms for consistency, clarification, and updating purposes. These amendments include: 1) edits to terminology used for clarification and consistency purposes; 2) modifications intended to simplify the reporting process, such as deleting the requirement to attach the test method used and adding check boxes for construction exceptions to reduce the need to write explanatory comments; 3) removing unnecessary duplicative instructions; and 4) combining or modifying questions on the “Underground Storage Tank Overfill Prevention Inspection Report Form” (Appendix IX) for clarification purposes.

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

The State Water Board has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern reporting requirements for local agencies and UST owners and operators.

The State Water Board did not rely on any technical, theoretical, or empirical studies, reports, and documents in proposing these amendments to the California UST Regulations. The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) in proposing these amendments to the California UST Regulations. The Form 399 is available on the State Water Board’s website at:

https://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/report_regs.

The specific purpose and the basis for the State Water Board’s determination of the necessity of each amendment are explained herein.

Consideration of Alternatives

The State Water Board believes 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; or 5) more consistent with California's existing requirements and groundwater protection policies.

The State Water Board has considered the alternatives discussed below. Interested persons may present statements or arguments with respect to alternatives to the proposed amendments during the written comment period or at a hearing, if a hearing is requested, on this matter.

Alternative 1

The State Water Board considered only amending the local agency reporting requirements in California UST Regulations, section 2713 and not amending California UST Regulations, section 2716 or the forms in the California UST Regulations. This alternative would allow the State Water Board to meet the requirements to report the federal UST performance measures and compliance inspection date to the U.S. EPA. This alternative, however, would not address the concerns that the regulated community has expressed with California UST Regulations, section 2716 or the forms in the California UST Regulations. If the State Water Board does not amend California UST Regulations, section 2716 or the forms in the California UST Regulations, the regulated community will remain subject to a potentially burdensome interstice testing requirement, local agencies will not have the information they need to readily verify service technicians have the required training and certification, and the forms will not be improved by modifying them for consistency, clarification, and updating purposes.

Alternative 2

The State Water Board considered only amending UST owner or operator reporting requirements in California UST Regulations, section 2716 and the forms in the California UST Regulations and not amending California UST Regulations, section 2713. This alternative would address the concerns that the regulated community has expressed with California UST Regulations, section 2716 or the forms in the California UST Regulations. This alternative, however, would not allow the State Water Board to meet the requirements to report the federal UST performance measures and compliance inspection date to the U.S. EPA. If the State Water Board cannot fully comply with the U.S. EPA reporting requirements, the State could lose funds provided through the Leaking Underground Storage Tank Trust Fund Corrective Action Cooperation Agreement and the State Water Board Cooperative Agreement Work Plan.

Alternative 3

The State Water Board considered making no changes to the reporting requirements for local agencies or UST owners and operators. This alternative, however, is not reasonable because it would not: 1) enable the State Water Board to meet the requirements to report the federal UST performance measures and compliance inspection date to the U.S. EPA; or 2) address the concerns that both the regulators and the regulated community have expressed with California UST Regulations, section 2716 or the forms in the California UST Regulations. If the State Water Board cannot fully comply with the federal UST reporting requirements, the State could lose funds provided through the Leaking Underground Storage Tank Trust Fund Corrective Action Cooperation Agreement and the State Water Board Cooperative Agreement Work Plan. If the State Water Board does not amend California UST Regulations, section 2716 or the forms in the California UST Regulations, the regulated community will remain subject to a potentially burdensome interstice testing requirement, local agencies will not have the information they need to readily verify service technicians have the required training and certification, and the forms will not be improved by modifying them for consistency, clarification, and updating purposes.

ECONOMIC IMPACT ANALYSIS/ ASSESSMENT

The State Water Board has prepared this Economic Impact Analysis/Assessment in accordance with Government Code section 11346.3, subdivision (b).

CHAPTER 16. UNDERGROUND TANK REGULATIONS

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Creation or Elimination of Jobs within the State of California (State)

The State Water Board estimates that the proposed regulatory action will not have an effect on the creation or elimination of jobs within the State as a result of the proposed amendments because the amendments to the UST owner or operator reporting requirements do not create or eliminate a significant enough workload to support the creation or elimination of jobs within the State.

Creation of New Businesses or the Elimination of Existing Businesses within the State

The State Water Board estimates that the proposed regulatory action will not have an effect on the creation of new businesses or elimination of existing businesses doing business within the State because the amendments to the UST owner or operator reporting requirements do not create or eliminate a significant enough workload to support the creation of a new business or elimination of an existing business.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The proposed amendments will simplify, standardize, and update reporting requirements for UST owners and operators and for local agencies, which may assist in earlier identification of compliance issues that may result in UST releases and will assist the State Water Board in maximizing the coordination, consolidation, and consistency of the regulation of USTs throughout the state. As a result, these proposed amendments may decrease the risk of soil and groundwater contamination resulting from UST releases, improving the health and welfare of California residents, worker safety, and the State’s environment.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business.

The proposed action will not directly affect businesses statewide because the amendments to the UST owner or operator reporting requirements do not create a significant workload to support the creation of a new business or elimination of an existing business, and the expansion.

SPECIFIC PURPOSE AND NECESSITY OF EACH PROPOSED AMENDMENT

ARTICLE 10. PERMIT APPLICATION, QUARTERLY REPORT AND TRADE SECRET REQUEST REQUIREMENTS

SECTION 2713. LOCAL AGENCY REPORTING REQUIREMENTS

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Subdivision (b)** – Adds “each” in front of the first use of the term “local agency” for clarification and consistency purposes.
2. **Subdivision (c)(4)** – Modifies the UST performance measures that each local agency must report to the State Water Board semiannually (local agency UST performance measures) consistent with the amendments to the federal UST performance measures. These modifications to the local agency UST performance measures are necessary so that the State Water Board can provide complete and accurate reporting of all federal UST performance measures to the U.S. EPA.

Local agencies have collected and reported federal UST performance measures for the last 14 years. In 2018 the U.S. EPA changed the UST performance measures and report format that states must use in reporting. New reporting requirements now include spill prevention, overfill prevention, corrosion protection, financial responsibility and designated operator training and inspections. Previously, local agencies reported three federal performance measures (spill containment, overfill protection, and cathodic protection) as a single performance measure. In addition to

now reporting these federal UST performance measures as separate elements, three new reporting requirements have been added: 1) financial responsibility; 2) designated operator training; and 3) designated operator inspections.

The State Water Board has worked to simplify the new reporting process by utilizing data in CERS to automate the reporting procedures for the local agency. The State Water Board expects the new semiannual report preparation to take less overall time than its predecessor.

3. **Subdivision (c)(5)(A)** – Modifies the semiannual reporting requirement local agencies provide to the State Water Board to make it less onerous on local agencies. The modification simplifies the existing requirement for local agencies to report red tags applied to USTs by replacing the requirement to provide the “names of the owner and operator of the tank system” with the CERS identification number.
4. **Subdivision (d)** – Adds a new local agency reporting requirement. This subdivision requires local agencies to report to the State Water Board those UST facilities for which they have not completed a compliance inspection during the last year, if any. Under existing California UST Regulations, section 2712(e), local agencies are required to perform UST compliance inspection every 12 months for all UST facilities within their jurisdiction.

In addition to the compliance inspection requirement under the California UST Regulations, the State Water Board has an annual reporting requirement under the Federal Energy Policy Act of 2005 to the U.S. EPA to confirm that the State Water Board is meeting the federal requirement to inspect all USTs at least once over the past three years. The U.S. EPA has formally requested the State confirm the inspection data using CERS. CERS is the electronic reporting system maintained by the California Environmental Protection Agency, that contains all UST construction and monitoring data as submitted by the facility owner and operator, and local agency inspection information. To accurately complete this report, local agencies must annually review UST inspection data stored in the in CERS and report to the State Water Board only those facilities in their jurisdiction that have not been inspected during the previous year and provide the reason those facilities had not been inspected.

This new reporting requirement is necessary in order to ensure that local agencies are meeting the inspection requirement in the California UST Regulations and so that the State Water Board can meet the federal UST reporting requirement in the manner requested by the U.S. EPA. This reporting requirement is tailored as narrowly as possible by only requiring local agencies to the State Water Board those UST facilities for which they have not completed a compliance inspection during the last year, if any. The proposed regulations additionally describe the information that must be included in the report for clarity and consistency.

5. **Subdivision (e)** – Adds “each” in front of the first use of the term “local agency” for clarification and consistency purposes.

SECTION 2716. DESIGNATED UST OPERATOR VISUAL INSPECTION

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Subdivision (b)(2)** – Adds “release detection” in front of the term “alarm history” to clarify that the required response to alarms is specific to leak detection alarms and does not include other alarms on the UST system, such as overfill or air quality alarms, which are not part of the designated UST operator visual inspection. This amendment is consistent with the “Underground Storage Tank Designated Underground Storage Tank Visual Inspection Report” in Appendix XIII.
2. **Subdivision (b)(8)** – Replaces the term “leak” with the term “release,” which is defined, for clarification and consistency with California UST Regulations.
3. **Subdivision (b)(9)** – Adds “service” in front of the term “technician” for clarification purposes. Containment sump alarms only can be responded to by a “service technician,” as defined in section 2611. This amendment is consistent with the “Underground Storage Tank Designated Underground Storage Tank Visual Inspection Report” in Appendix XIII. Also, replaces the term “leak” with the term “release,” which is defined, for clarification and consistency with California UST Regulations.
4. **Subdivision (e)** – Modifies the UST owner or operator signatory requirement for the “Underground Storage Tank Designated Underground Storage Tank Operator Visual Inspection Report” (Appendix XIII) by clarifying that the UST owner or operator must sign each report acknowledging the results of the inspection, even if no compliance issues have been identified. This modification is necessary because there has been significant confusion in the regulated community regarding whether the UST owner or operator must sign the report if no compliance issues are identified. The signatory statement on the “Underground Storage Tank Designated Underground Storage Tank Operator Visual Inspection Report” is being modified consistent with the modification to this subdivision.

APPENDICES

GENERAL TO APPENDICES

1. Existing forms use both “Expiration Date” and “Training Certification Expiration Date” to mean the same thing. For consistency and clarification purposes, “Training Certification” has been added in front of each use of the term “Expiration Date.”

2. Removed “Underground Storage Tank” and “UST” from “Underground Storage Tank Service Technician” or “UST Service Technician” for consistency throughout appendices and consistency with California UST Regulations.
3. Existing forms have been modified for accessibility purposes and to comply with Government Code section 11546.7. These technical or non-substantive modifications include changing the pagination of the forms to allow for larger font and combining similar data fields to fit the proposed page layout.
4. Existing forms include requirements to attach the test procedures used. These requirements throughout the forms have been modified so that test procedures only must be provided if requested by the local agency. This modification has been made in response to local agency concerns about the additional work and storage required to manage the required documents. Since the number of test procedures is limited, the local agencies generally will have the test procedures used already on file. Additionally, the associated “# of Attached Pages” has been deleted since test procedures no longer will need to be attached to the forms.

APPENDIX VI. UNDERGROUND STORAGE TANK MONITORING SYSTEM CERTIFICATION FORM

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Sections VIII, X, XIV, and XVI** - Change the term “leak” to “release” for clarification and consistency with the definition in regulation.
2. **Section XIV** - Section XIV of the existing “Underground Storage Tank Monitoring System Certification Form” requires UST owners or operators to provide vacuum, pressure, or hydrostatic (VPH) monitoring equipment test results to the local agency, including test results confirming the interstice communication of the secondary containment on systems installed with VPH monitoring. The State Water Board has determined that communication testing may be impossible or infeasible on those UST systems that were constructed without two accessible interstice ports. Existing testing technology requires two test ports at opposing ends of the tested area. Many existing UST systems were constructed with only a single test port or a second test port in a confined sump that is inaccessible after installation. For these reasons, the interstice test reporting requirement is removed from this form.

APPENDIX VII. UNDERGROUND STORAGE TANK SECONDARY CONTAINMENT TESTING REPORT FORM

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Section III** – Section III of the existing “Underground Storage Tank Secondary Containment Testing Report Form” requires UST owners or operators to provide secondary containment test results to the local agency, including test results confirming the interstice communication of the secondary containment on systems installed before July 1, 2004. The State Water Board has determined that communication testing may be impossible or infeasible on those UST systems that were constructed without two accessible interstice ports. Existing testing technology requires two test ports at opposing ends of the tested area. This testing currently is required during installation of new USTs. Many existing UST systems, however, were constructed with only a single test port or a second test port in a confined sump that is inaccessible after installation. For these reasons, the interstice test reporting requirement is removed from this form.
2. **Sections VII, IX, XI, and XIII** – Removes the requirement to describe the interstitial communication verification method in each of these sections consistent with the deletion of the requirement in section III to provide communication testing results.

APPENDIX VIII. UNDERGROUND STORAGE TANK SPILL CONTAINER TESTING REPORT FORM

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Section II** – Modifies this section to require that the service technician provide the expiration date of the technician’s training and certification for spill container testing. This allows the local agency to readily verify that the service technician is trained and certified at the time interval recommended by the manufacturer but no greater than every 36 months. (California UST Regulations, section 2715(f)(2)(C).) This modification also makes this form consistent with all other forms requiring service technician information in the California UST Regulations
2. **Section III** – Modifies this section by removing duplicative instructions requiring specifying the method used for cathodic protection and the method used to keep the spill container method in section V if “other” is marked. The question regarding the spill container capacity also is modified to clarify that the service technician conducting the spill container testing must indicate whether each spill container has a minimum capacity of five gallons, excluding the fill riser volume within the container, as required by California UST Regulations, section 2635(b)(2).
3. **Section IV** – Adds “tightness” in front of the term “test results” for clarification purposes. The term “tightness” identifies the specific test requirements, ensuring the spill container is tested for leaks. The addition of the term “tightness” excludes other test types such as volume testing.

APPENDIX IX. UNDERGROUND STORAGE TANK OVERFILL PREVENTION EQUIPMENT INSPECTION REPORT FORM

Specific Purpose and Necessity of the Proposed Regulatory Action

1. **Section II** – Modifies this section to require that the service technician provide the expiration date of the technician’s training and certification for performing the overfill equipment inspection. This allows the local agency to readily verify that the service technician is trained and certified at the time interval recommended by the manufacturer but no greater than every 36 months. (California UST Regulations, section 2715(f)(2)(D).) This modification also makes this form consistent with all other forms requiring service technician information in the California UST Regulations.
2. **Section III** – Modifies this section by combining the questions “Is the fill piping secondarily contained?” and “Is the vent piping secondarily contained?” to simplify recording and evaluating the results of the inspection because secondary containment for both vent piping and tank riser piping determines whether the provision of California UST Regulation, section 2636(a) is satisfied. The question requiring the service technician to determine if flow restrictors are installed on vent lines also is modified to clarify that the service technician must verify if flow restrictors installed on vent lines interfere with overfill prevention equipment to determine if the overfill prevention equipment will activate when the stored substance reaches the correct level in the tank as required by 2637.2(b). In addition, this section is modified by removing duplicative instructions requiring specifying the method used for cathodic protection and the method used to keep the spill container method in section V if “other” is marked.

APPENDIX XI. UNDERGROUND STORAGE TANK DESIGNATED UNDERGROUND STORAGE TANK OPERATOR IDENTIFICATION FORM

Specific Purpose and Necessity of the Proposed Regulatory Action

Modifies the “Underground Storage Tank Designated Underground Storage Tank Operator Identification Form” to remove from the document Type of Action header the “Change of Owner or Operator” selection box, because this selection box gives the incorrect impression that the form must be updated or replaced upon a change in the owner or operator.

APPENDIX XIII. UNDERGROUND STORAGE TANK DESIGNATED UNDERGROUND STORAGE TANK OPERATOR VISUAL INSPECTION REPORT

Specific Purpose and Necessity of the Proposed Regulatory Action

Modifies the “Underground Storage Tank Designated Underground Storage Tank Operator Visual Inspection Report” to clarify for both the UST regulated community and local agencies the reporting requirements for the designated UST operator inspection. The existing form requests that the designated UST operator answer “yes,” “no,” or “NA” to multiple questions and requires that that all answers of “no” or “NA” be explained in section III of the form. The response of “NA” has been removed from these questions to prevent repetitive comments in section III of the form. In place of “NA,” specific conditions under which the questions would not be applicable have been added to form. If the designated UST operator conducting the inspection marks the box for the existence of one of these specific conditions, then the designated UST operator would not answer that individual question. For example, if there is no overfill equipment on the UST(s) being inspected, the designated UST operator would check the box for “No overfill equipment” and would not provide a response as to whether the overfill equipment has been inspected within the past 36 months. In addition, the line numbers have been removed from sections III and V of the form to allow greater flexibility in recording and responding to compliance issues discovered during the inspection. The document key also has been changed to define newly included acronyms.

1. **Section III** – Modifies this section by removing the requirement for the designated UST operator to provide an explanation for each item marked “NA” since this option has been removed from the form. In addition, the line numbers have been removed for flexibility in documenting compliance issues.
2. **Section V** – Modifies this section by removing the line numbers for flexibility in documenting follow up actions to compliance issues noted in Section III.
3. **Section VI** – Modifies this section by clarifying the requirement of the UST owner or operator to review and acknowledge the inspections results by signing the document. This signatory statement modification is consistent with the amended language proposed for California UST Regulations, section 2716 and clarifies that the UST owner or operator must sign each report acknowledging the results of the inspection, even if no compliance issues are identified. The section title also has been changed to clarify the requirements of the UST owner or operator.
4. **Section VIII** – Modifies this section by removing the “NA” selection boxes and adding a conditional statement box identifying if monitored sumps do not exist. An unintended result of the existing form is that designated operators must select “NA” and list this construction exception incorrectly as a compliance issue on each subsequent report. This modification allows designated operators to check the conditional statement box without providing any additional explanation or listing this

construction exception as though it is a compliance issue on each subsequent report. Also, modifies the section title to include “Release Detection” to clarify the alarm types that require a response and removed “leak detection” from one of the questions for consistency with the California UST Regulations.

5. **Section IX** – Modifies this section by removing the “NA” selection boxes and adding a conditional statement box identifying if under- dispenser containment does not exist at the facility. An unintended result of the existing form is that designated operators must select “NA” and list this construction exception incorrectly as a compliance issue on each subsequent report. This modification allows designated operators to check the conditional statement box without providing any additional explanation or listing this construction exception as though it is a compliance issue on each subsequent report. Also, replaces the term “leak” with the term “release,” which is defined, for clarification and consistency with California UST Regulations.
6. **Section X** – Modifies this section by removing the “NA” selection boxes and adding conditional statements in the questions provided on the form for specific construction exceptions for overfill prevention, VPH monitored UST systems, secondarily contained tanks, or not required. An unintended result of the existing form is that designated operators must select “NA” and list these construction exceptions incorrectly as compliance issues on each subsequent report. This modification allows designated operators to check the applicable conditional statement box without providing any additional explanation or listing these construction exceptions as though they are compliance issues on each subsequent report.