

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Section 5605 of the General Industry Safety Orders and
New Section 1550 of the Construction Safety Orders

Tank Storage Subject to Flooding, Precautionary Measures**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following sufficiently-related modifications that are the result of public comments, written comments and/or Board staff evaluation.

Section 5605. Protection of Tanks in Locations That May Be Flooded.

A modification is proposed to amend the title of Section 5605 to read: “§5605. Protection of Tanks in Areas Subject to Flooding.” The proposed modification is necessary to better reflect the Federal Emergency Management Agency (FEMA) special flood hazard areas referred to in the modification.

This section requires tanks located in areas subject to flooding to be protected in accordance with the National Fire Protection Association (NFPA) No. 30-1973 standard and was proposed for amendment by updating from the NFPA 30-1973 standard to the 2012 edition. In addition, the original proposal included Federal NFPA 30 based language (taken from 29 CFR 1910.106(b) and 29 CFR 1926.152(i)) that pertained to the installation, maintenance and protection of tanks in areas subject to flooding.

In response to public and Board comments, the proposal has been modified to delete the originally proposed subsection (b) containing federal language, thus eliminating the need for proposed subsection (a). Further modifications are proposed to require employers’ above and underground storage tanks (AST/USTs) used to store flammable and combustible liquids that were installed before October 1, 2014 to comply with specific tank flooding protection provisions of the NFPA 30-1973 or the 2012 edition. AST/USTs installed on or after October 1, 2014 shall comply with specific tank flooding provisions of the NFPA 30-2012 as set forth in the modification.

The proposed modifications are necessary to ensure that employers who use AST/USTs in California will not, in the event of a flood event, contribute to a release of hazardous materials and

loss of the holding vessel which could result in contamination, fire and explosion and serious injury or fatality to employees who could come in contact with the tank and or its product. The proposal also addresses avoidance of conflicting overlap or jurisdictional conflicts between Title 8 requirements and those imposed by and enforced through state and local agencies that administer programs pertaining to AST/UST storage. The grandfathering of older AST/USTs is necessary to account for older tanks that might otherwise have to be removed, replaced or redesigned to meet the 2012 edition of the NFPA 30 which could result in significant cost impact while adding only a modicum of safety.

A further modification includes language added to subsection (a) that refers to the definitions of areas subjected to flooding to FEMA which oversees the national disaster response efforts. The proposed modification is needed to ensure the meaning of flood zones as provided by a nationally recognized source.

As a result of the reference to FEMA in the modified language of subsection (a), a “NOTE” is added to refer to the FEMA web site for flood related definitions. This NOTE is necessary to clarify where to obtain flood related source information.

New Section 1550. Protection of Tanks in Locations That May Be Flooded.

A new Section 1550 was proposed to cross reference construction industry employers to the AST/UST provisions of General Industry Safety Orders (GISO) Section 5605. This section is now proposed to be deleted as unnecessary since the requirements of GISO Section 5605 automatically apply given the application and enforcement relationship of the GISO to the industry specific subchapters of Title 8.

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Mr. Fredrick Chun, Assistant Fire Marshal, City of Anaheim, by letter dated November 20, 2013.

Comment:

The proposed amendments appear to be vague and ambiguous in that the areas subject to flooding are not well-defined. The term “areas subject to flooding” should be defined. The regulations are not clear as to whether the scope will only apply to new installations or be retroactive to any UST or AST sites that are in areas prone to flooding. He also noted that the proposed Section 5605(b) and its subsections appear to be more stringent than its Federal counterpart standard. Finally, the proposed changes had not been fully evaluated to ensure that they do not conflict with other regulatory agencies.

Response:

The Board agrees with Mr. Chun's comments and has addressed his concerns in the amendments to the proposal. See Board staff's response to Mr. Bohon's comments below.

The Board thanks Mr. Chun for his comments and participation in the Board's rulemaking process.

Mr. Bill Taylor, PASMA-South Chapter, Legislative and Regulatory Representative, by letter, dated November 20, 2013.

Comment:

Mr. Taylor commented that the proposed regulation appears to be vague and ambiguous, in that the areas subject to flooding are not well-defined. The term "areas prone to flooding" should be defined; otherwise, any underground or above ground tank located in an area that may be on a flood zone map, regardless of the relative risk of flood, may likely have to comply with this requirement, which could cost employers several hundred million dollars for permitting, excavation, securing, backfilling, and installation of new ground cover. Further, the proposed amendments would conflict with other regulatory requirements from other state agencies.

Response:

The Board acknowledges Mr. Taylor's comments and has resolved his issues in the amendments to the proposal. See Board staff's response to Mr. Bohon's comments below.

The Board thanks Mr. Taylor for his comments and participation in the Board's rulemaking process.

Mr. Jim Bohon, Assistant Secretary, Local Program Coordination and Emergency Response, California Environmental Protection Agency, by letter dated November 22, 2013.

Comment:

The California Environmental Protection Agency (Cal/EPA) is concerned that the proposed changes have not been fully coordinated with and evaluated by the other state and local agencies that have regulatory oversight responsibilities for USTs and ASTs. Adoption of these regulations without adequate consultation and review by other state and local agencies that regulate USTs and ASTs could have a negative impact on the State's efforts to regulate these tanks, as well as impacting numerous other stakeholders. Mr. Bohon strongly encourages the Board to consult with affected agencies prior to proceeding with the proposal.

Response:

The Board accepts Mr. Bohon's comments regarding the need to coordinate the proposed changes with state and local agencies. Board staff coordinated a face to face meeting with the affected agencies (Cal/EPA, Cal/Fire, State Water Resources Control Board, and local fire district) at the Standards Board office to discuss the issues and to develop language acceptable to each agency's scope of responsibility. After several weeks of discussions for developing suitable language, Board staff modified the proposal to incorporate by reference the provisions of the NFPA 30-2012 edition chapters specific to tanks flooding and grandfathering existing tanks by providing the option of complying with either the most recent NFPA 30 edition at a future date (e.g., October 1, 2014) or the 1973 edition.

In a subsequent telephone conference held among Board staff and the agencies involved, it was agreed that the federal language initially proposed will be withdrawn and replaced with language stipulating that USTs and ASTs installed prior to October 1, 2014 located in areas that may be subjected to flooding, as defined by the FEMA, will be in accordance with the provisions of Appendix B of NFPA 30-1973 edition or the designated provisions of the NFPA 30-2012. Tanks installed on or after October 1, 2014 shall conform to the provisions of specific chapters of the NFPA 30-2012 edition which are hereby incorporated by reference. There were no additional comments following these amendments.

The Board thanks Mr. Bohon for his comments and participation in the Board's rulemaking process.

I. Oral Comments

Oral comments received at the November 21, 2013 Public Hearing in San Diego, California.

Mr. Bill Jackson, Board Member

Comment:

This proposal only applies to tanks in Group 20, and the proposed Section 1550 is not necessary. This proposal will apply to tanks associated with construction operations regardless of whether or not it is addressed in the construction standards, because the general industry standard applies to all things that are not specifically different in the construction standards.

Response:

The Board accepts Mr. Jackson's comments and Section 1550 has been removed from the proposal.

MODIFICATIONS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed on February 21, 2014.

SUMMARY OF AND RESPONSES TO COMMENTS AS A RESULT OF THE
15-DAY NOTICE OF PROPOSED MODIFICATIONS

Mr. Bill Taylor, PASMA-South Chapter, Legislative and Regulatory Representative, by letter, dated March 10, 2014.

Comment:

Mr. Taylor stated that PASMA supports the proposed modifications.

Response:

The Board thanks Mr. Taylor for his comments and participation in the Board's rulemaking process.

Mr. David Shiraishi, MPH, Area Director, Occupational Safety and Health Administration by letter dated March 18, 2014.

Comment:

Mr. Shiraishi stated that the proposed modifications appear commensurate with the federal standard.

Response:

The Board thanks Mr. Shiraishi for his comments.

ADDITIONAL DOCUMENT RELIED UPON

- Definitions of FEMA Flood Zones as they appeared on February 18, 2014 at <https://msc.fema.gov>

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

1. National Fire Protection Association, (NFPA) 30-2012, *Flammable and Combustible Liquids Code*, Chapter 21, Section 21.7.3, Chapter 22, Section 22.5.2.5, and Section 22.14, Chapter 23, Section 23.14, and Annex A.23.14.1.
2. National Fire Protection Association (NFPA) 30-1973, *Flammable and Combustible Liquids Code*, Appendix B.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the adopted action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives/no alternatives were proposed by the public that would have the same desired regulatory effect.