

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE EFFECTIVE AND
OPERATIVE DATES FOR ENHANCED VAPOR RECOVERY STANDARDS IN THE
REGULATION FOR CERTIFICATION OF
VAPOR RECOVERY SYSTEMS OF DISPENSING FACILITIES
(GASOLINE SERVICE STATIONS)

Public Hearing Dates: November 18, 2004
Agenda Item No.: 04-10-6

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking (“staff report”), entitled “Initial Statement of Reasons for Proposed Rule Making, Public Hearing to Consider Proposed Amendments to the Effective and Operative Dates for Enhanced Vapor Recovery Standards in the Regulation for Certification of Vapor Recovery Systems of Gasoline Dispensing Facilities (Service Stations)”, released October 1, 2004, is incorporated by reference herein. The Final Statement of Reasons updates the Staff Report by summarizing the public comments received and presenting the Board’s responses to the comments.

On November 18, 2004, the Air Resources Board (the “Board” or the “ARB”) conducted a public hearing to consider the amendment of the certification procedure for vapor recovery systems at gasoline dispensing facilities. The amendment was limited to portions of the certification procedure that define the effective and operative dates for performance standards and specifications.

After consideration of formal comments received during the 45-day public comment period prior to the hearing, the Board directed staff to modify the regulations and provide a further 15-day period for public comment on these modifications. The modified regulations were made available to the public for comment between December 29, 2004, and January 13, 2005, pursuant to Government Code Section 11346.8(c). The “Notice of Public Availability of Modified Text” was mailed by December 29, 2004, as required by title 1, CCR, section 44.

At the November 18, 2004, public hearing, the Board adopted Resolution 04-41 approving amendment of the regulation that incorporates by reference the revised certification

procedure. The revised regulation is title 17, California Code of Regulations (CCR), sections 94011. The incorporated amended certification procedure is Method CP-201, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities.

Fiscal Impacts. The regulatory amendments provide cost savings for station owners by allowing one, rather than two, equipment upgrades to meet full EVR Phase II requirements. The ARB has determined that some gasoline station operators may save \$1,500 to \$22,000 by avoiding two equipment upgrades. The ARB is not aware of any costs that a representative private person or business would necessarily incur in reasonable compliance with the adopted action. Gasoline dispensing facilities operated by state and local agencies, such as the Department of General Services, California Highway Patrol or Caltrans may realize similar cost savings.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that this regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, except as discussed above, or other nondiscretionary savings to state or local agencies.

The Executive Officer has determined that this regulatory action 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, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that this regulatory action will affect small businesses that own or operate gasoline service stations.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements in the regulations and incorporated documents that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The Board has further determined that no alternative considered by the agency would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

II. Changes to the Originally Proposed Certification and Test Procedures

At the hearing the staff presented, and the Board approved, modifications to the regulations originally proposed in the Staff Report released on October 1, 2004, in response to comments received and continuing review since the Staff Report was published. The modifications affect the text of certification procedure CP-201. The modifications are set forth in the Notice of Availability of Modified Text dated December 29, 2004.

Modifications to the Text of the Proposed Regulations and Detailed Statement of Reasons

Modifications to CP-201

CP-201 is the certification procedure that contains the Phase I and Phase II standards and specifications and references the test procedures to be used during the certification of vapor recovery systems.

Table 2-1 of CP-201 provides the operative and effective dates for the vapor recovery requirements. As originally noticed, several operative and effective dates were proposed for revision, including a one-year extension in the effective date for Onboard Refueling Vapor Recovery (ORVR) Compatibility. Table 2-1 has been modified to provide a phase-in of the ORVR compatibility requirement for three station throughput categories. The effective dates are changed to require that the highest throughput stations comply first, as indicated in the table below. The phase-in schedule will minimize excess emissions resulting from the delay and avoid a last minute installation crunch for an estimated 3500 stations given the limited number of installation contractors. The phase-in will also assist districts in orderly processing of permit revisions expected for these equipment upgrades. Note that the final compliance date for existing stations is four years after the effective date of the ORVR compatibility standard.

Station Annual Throughput (gal/yr)	ORVR Compatible System Installation Deadline
<i>>2 million</i>	<i>September 1, 2005</i>
<i>1 million to 2 million</i>	<i>January 1, 2006</i>
<i>< 1 million</i>	<i>March 1, 2006</i>

A new section has been added to CP-201 to define how to calculate gasoline station throughput for compliance with the above schedule. Section 2.4.5 states that the facility gasoline throughput for calendar year 2003 shall be used for purposes of determining compliance with the ORVR compatibility deadlines.

III. Summary of Comments and Testimony Received in Response to 45-Day Notice and Received at Hearing and Agency Responses

List of Comments Received (written comments unless otherwise noted)

STAKEHOLDER	AUTHOR
Automotive Trade Organizations of California, Inc. (AUTO-CA)	Will L. Woods*
California Air Pollution Control Officers Assoc. (CAPCOA)	Larry Greene (oral and written)
California Independent Oil Marketers Association (CIOMA)	Jay McKeeman*
California Service Station and Automotive Repair Association (CSSARA)	Dennis DeCota*
Cross Petroleum	Jim Cross (oral only)
Dresser Wayne (Wayne)	Scott Negley
G&M Oil Company	Jennifer Talbert (oral only)
NO GO Nozzle	Jim McCommons
San Diego Service Station Coalition (SDSSC)	Jim Lantry*
Western States Petroleum Association (WSPA)	Steven Arita* (oral & written)

* written comments submitted jointly by AUTO-CA, CIOMA, SDSSC, CSSARA and WSPA

1. Comment by AUTO-CA, CIOMA, SDSSC, CSSARA and WSPA

The joint letter provided by these gasoline marketer associations support ARB's reasons and justifications that it will not be feasible for operators to upgrade thousands of service stations by the current April 1, 2005 ORVR deadline. Further, extending the ORVR compliance deadline is also consistent with the intent of the December 12, 2002 ARB Board adopting resolution. These gasoline marketers support the staff's recommendation to extend the ORVR compatibility deadline to April 1, 2006 and amend the EVR regulations to be consistent with the extensions provided in Executive Orders G-70-203 and G-70-205. This action will provide station owners with the option to upgrade vapor recovery equipment once to achieve full EVR compliance.

Steve Arita of WSPA provided oral testimony at the board hearing that reiterated support of staff's proposal.

Response

Staff appreciates AUTO-CA, CIOMA, SDSSC, CSSARA and WSPA support of the proposed amendments.

2. Comment by AUTO-CA, CIOMA, SDSSC, CSSARA and WSPA

These gasoline marketers support the proposed 15-day changes which incorporates three installation milestone requirements based on throughput. The proposed 15-day revisions are consistent with CAPCOA's recommendations to ensure ORVR compatible systems are installed by the proposed new deadline.

Steve Arita of WSPA provided oral testimony at the board hearing that confirmed support of the ORVR compatibility phase-in schedule as proposed by staff.

Response

Staff appreciates AUTO-CA, CIOMA, SDSSC, CSSARA and WSPA support of the proposed 15-day changes.

3. Comment by CAPCOA

CAPCOA agrees that the April 1, 2005 deadline to install ORVR compatible Phase II vapor recovery systems cannot reasonably be met and should be extended through a change in the ARB vapor recovery regulations. CAPCOA recommends the following installation schedule to help ensure ORVR compatible systems are installed by the new deadline.

ORVR Compatibility Deadlines Proposed in CAPCOA Letter	
Station Annual Throughput (gal/yr)	ORVR Compatible System Installation Deadline
<i>>2 million</i>	<i>August 1, 2005</i>
<i>1 million to 2 million</i>	<i>December 1, 2005</i>
<i>< 1 million</i>	<i>February 1, 2006</i>

Mr. Larry Greene provided oral comments at the Board hearing on behalf of CAPCOA. Mr. Greene's comments supported the one-month extension for each installation deadline as proposed in staff's 15-day changes and shown below:

Station Annual Throughput (gal/yr)	ORVR Compatible System Installation Deadline
<i>>2 million</i>	<i>September 1, 2005</i>
<i>1 million to 2 million</i>	<i>January 1, 2006</i>
<i>< 1 million</i>	<i>March 1, 2006</i>

Response

Staff agrees that the ORVR compatibility phase-in schedule proposed by CAPCOA is desirable. Staff has modified the originally suggested CAPCOA installation schedule slightly, by adding an additional month to each deadline. The additional month was added as an EVR Phase II system was not certified by January 1, 2005 as expected.

4. Comment by Cross Petroleum

Cross Petroleum is a family-owned business based in Redding that owns and operates 12 gasoline dispensing facilities. Cross Petroleum supports staff's recommendation on the ORVR compatibility extension to avoid upgrading equipment more than once.

Response

Staff appreciates the support from Cross Petroleum.

5. Comment by G&M Oil Company

G&M Oil Company operates 115 gas stations in southern California. G&M Oil supports the ORVR deadline extension and the CAPCOA milestones.

Response

Staff appreciates the support from G&M Oil Company.

6. Comment by Wayne

Wayne comments that it is critical that ARB take a position immediately with respect to defining whether secondary UST processors will be required for EVR-approved balance systems. Given there is conflicting information (and limited access to real data) as to whether stations open 24 hours can maintain the 0.25 inch requirement, there are a significant amount of development and equipment dollars being expended by industry in advance of meeting an uncertain regulation.

For example, there has been increased activity to convert legacy assist vapor recovery systems to balance when this expense might be better spent on tank management systems if it is determined that this will indeed be necessary for all vapor recovery types. Providing more clarity around this issue will better serve all stakeholders.

Response

This comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. ARB staff agrees that additional data regarding balance system pressures is desirable. ARB staff is currently working with several balance system manufacturers to collect pressure data at service station that shuts down at night to determine if EVR pressure limits can be achieved. A report on the study results is expected by March 2005.

7. Comment by NO GO Nozzle

NO GO Nozzle comments that vapors will escape if the nozzle isn't inserted fully into the filler pipe. NO GO believes that current nozzles are 50% effective. The only way to guarantee 100% effectiveness is to have the nozzle lock into the filler pipe fully inserted into the sealed position. NO GO has a patent pending on a locking nozzle that will reduce emissions and prevent drive-off theft. NO GO provides contact information if ARB is interested in the nozzle described.

Response

This comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. Staff disagrees that existing vapor recovery nozzles are 50% efficient. Staff notes that existing ARB certified vapor recovery systems have demonstrated 95% vapor collection efficiency. Certification testing includes measurement of vapor emissions at the vehicle fill-pipe during a minimum of 100 vehicle fuelings. Staff supports improvements in nozzle designs and invites NO GO Nozzle to submit an application for ARB certification if interested in marketing the nozzle in California.

VI. Summary of Comments Received in Response to the "15-Day" Notice

No comments were received during the notice period starting December 29, 2004 and concluding January 13, 2005 at 5:00 pm. One late comment was submitted after 5:00 pm as shown below.

Comment by WSPA

On November 18, WSPA, in addition to other industry representatives, testified in support of the proposed On-Board Refueling Vapor Recovery (ORVR) timeline revisions. WSPA has conducted a review of the December 29, 2004, 15-day notice and again would like to reiterate its continued support for the proposed regulatory amendments.

Response

As noted above, this comment was received after the close of the 15-day comment period. Without waiving this objection, staff responds as follows. Staff appreciates the continued support of WSPA on the proposed amendments.