

State of California
AIR RESOURCES BOARD

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE
REGULATION FOR THE CERTIFICATION OF VAPOR RECOVERY SYSTEMS FOR
CARGO TANKS**

Resolution 19-9

April 25, 2019

Agenda Item No.: 19-4-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 41954 of the Health and Safety Code requires the Board to adopt procedures, including performance standards, for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations;

WHEREAS, section 41962 of the Health and Safety Code requires the Board to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions from cargo tanks that deliver fuel from bulk storage facilities to Gasoline Dispensing Facilities, requires CARB to annually certify that cargo tank vapor recovery systems meet these standards, and prohibits operation of an applicable tank vehicle transporting gasoline without such certification;

WHEREAS, section 41962(f) of the Health and Safety Code requires CARB to charge a reasonable fee for certification, not to exceed its estimated costs of the Program, as a condition of certification; authorizes the Department of the California Highway Patrol to collect the certification fees; and requires transfer to the Air Pollution Control Fund the amount of those fees necessary to reimburse the state board for the costs of administering the certification program;

WHEREAS, on April 18, 1977, the Board first approved performance standards for controlling emissions from cargo tanks used to transfer gasoline from loading terminals and bulk plants to gasoline dispensing facilities, along with requirements for certification of compliance with the standards;

WHEREAS, on April 18, 1977, the Board adopted Certification Procedure (CP) 204 for Vapor Recovery Systems of Cargo Tanks;

WHEREAS, from 1977 until 1996, the Department of the California Highway Patrol collected annual cargo tank vapor recovery certification fees;

WHEREAS, on April 12, 1996, the Board adopted California Code of Regulations, title 17, section 94014, codifying and amending CP-204, took over the implementation of the certification program from the California Highway Patrol, and assessed an annual certification fee of \$20.00 for the regulation of each cargo tank;

WHEREAS, CARB has continued to charge \$20.00 per annual certification since 1996, despite approving other amendments to the Vapor Recovery Program regulation at California Code of Regulations, title 17, section 94014, and CP-204 and test procedures incorporated by reference therein, on March 17, 1999, July 25, 2013, and November 7, 2014;

WHEREAS, the annual certification fee of \$20.00 recovers approximately \$120,000 per fiscal year, and staff estimate expenses for fiscal year 2018-2019 to be approximately \$433,000;

WHEREAS, the amount of annual certification fees necessary to reimburse the Board for the costs of administering the certification program may change as a result of factors including inflation, fluctuating labor costs, and the costs of additional necessary expenditures;

WHEREAS, California Code of Regulations, title 17, section 94014, and CP-204 lack language setting the annual certification fee or providing a mechanism to update the fee to recover changed costs;

WHEREAS, staff has proposed amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks at title 17, California Code of Regulations, section 94014, as set forth in Appendix A to the Initial State of Reasons released to the public on March 5, 2019;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter VII of the Staff Report;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, regulated industry stakeholders have requested that CARB provide compliance assistance;

WHEREAS, the Board finds that:

Setting an annual certification fee that enables full recovery of Cargo Tank Vapor Recovery Program costs is necessary to meet statutory requirements and for full and effective program implementation.

The proposed amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks establishing a regulatory formula to calculate and, as necessary, adjust the annual certification fee are an efficient and appropriate mechanism to recover Program costs that may change over time.

The proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks meet the statutory requirements to collect a certification fee in the amount necessary to recover but not to exceed the estimated Program costs identified in section 41962 of the Health and Safety Code;

The proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks were developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

The proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

The proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the

record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption amendments to section 94014, Title 17, California Code of Regulations, as set forth in Attachment A.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by CARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment A. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop and provide the requested compliance assistance and work with the affected industry to increase compliance with the Cargo Tank Vapor Recovery Program.

I hereby certify that the above is a true and correct copy of Resolution 19-9 as adopted by the California Air Resources Board.

Cristina Granados, Clerk of the Board

Resolution 19-9

April 25, 2019

Identification of Attachments to the Board Resolution

Attachment A*: Proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks section 94014, Title 17 California Code of Regulations, as set forth in Appendix A to the Initial Statement of Reasons, released March 8, 2019.

*Attachment A is NOT attached to the proposed resolution; it is simply described on this page.