

State of California
AIR RESOURCES BOARD

**Addendum to Final Statement of Reasons for
Rulemaking, Including Summary of Comments
and Agency Responses**

PUBLIC HEARING TO CONSIDER THE PROPOSED ADOPTION OF THE
AMENDMENTS TO CERTIFICATION AND TEST PROCEDURES FOR
VAPOR RECOVERY SYSTEMS AT GASOLINE DISPENSING FACILITIES (GDF)
AND CARGO TANKS

Public Hearing Date: July 25, 2013
First 15-day Public Availability Dates: March 3 - March 18, 2014
Second 15-day Public Availability Dates: September 16, 2014 - October 1, 2014
Agenda Item No.: 13-7-2

I. BACKGROUND

In this rulemaking, the Air Resources Board (ARB or Board) is amending its regulations and associated certification and test procedures for gasoline vapor recovery systems used at gasoline dispensing facilities and cargo tanks that deliver fuel to those facilities. These amendments add one new test procedure, update two certification procedures, and update five test procedures. The specific sections amended are 94011, 94014, and 94016, Title 17, California Code of Regulations (CCR).

The Staff Report or Initial Statement of Reasons entitled *INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING, AMENDMENTS TO CERTIFICATION AND TEST PROCEDURES FOR VAPOR RECOVERY SYSTEMS AT GASOLINE DISPENSING FACILITIES (GDF) AND CARGO TANKS* (Staff Report or ISOR), released June 5, 2013, is incorporated by reference herein. The Staff Report describes the proposed amendments in detail. All documents associated with this rulemaking are available on ARB's web site at <http://www.arb.ca.gov/regact/2013/cargo2013/cargo2013.htm>.

After completing the notice and comment requirements in this proceeding, ARB staff submitted the rulemaking package to the Office of Administrative Law (OAL) for review on May 28, 2014.

On July 10, 2014, OAL disapproved the rulemaking because OAL determined that it did not meet the regulatory standard for clarity as required by the Administrative Procedures Act (APA). On July 15, 2014, OAL provided ARB with a written decision setting forth the reasons for OAL's disapproval (Disapproval Decision). This notice is available on ARB's web site at <http://www.arb.ca.gov/regact/2013/cargo2013/cargo2013.htm>.

This Addendum to the Final Statement of Reasons (FSOR Addendum) updates the Staff Report and the original Final Statement of Reasons (FSOR) filed with OAL on May 28, 2014, both of which are incorporated by reference herein. Unless otherwise noted herein, nothing in this FSOR Addendum changes the analysis and conclusions set forth in the May 28, 2014, FSOR.

This FSOR Addendum begins by explaining the APA deficiencies identified by OAL in its Disapproval Decision. The FSOR Addendum then identifies and explains the modifications made to the originally proposed regulatory text to address the deficiencies identified by OAL. The FSOR Addendum also contains a summary of the comments received on the proposed regulatory amendments during the formal regulatory process, and ARB's responses to those comments.

II. ADMINISTRATIVE PROCEDURES ACT DEFICIENCIES IDENTIFIED BY OAL

In its Disapproval Decision, OAL noted several instances in which the sample data collection form provided in Test Procedure (TP)-206.4 used terminology and asked for information that was inconsistent with the test procedure. OAL also noted some other inconsistencies and typographical errors, and noted that ARB staff had failed to provide a response to one of the comments within a comment letter that was submitted during the initial 45-day public comment period.

Pursuant to Government Code section 11349.4, ARB may correct the noted deficiencies and resubmit the rulemaking package within 120 days of ARB's receipt of OAL's written decision.

ARB published a second Notice of Public Availability of Modified Text on September 16, 2014. This Notice of Public Availability of Modified Text included the proposed regulatory modifications necessary to address the APA deficiencies identified by OAL, as well as other minor modifications to correct typographical errors and further clarify the regulatory requirements. No comments were received during the second supplemental comment period.

III. MODIFICATIONS TO THE ORIGINAL PROPOSAL

As described above, OAL disapproved the proposed rulemaking because several sections did not meet the APA's clarity standard. ARB staff proposed several minor changes from the originally-proposed amended regulatory text of Certification Procedure (CP)-204, TP-204.1, TP-204.3, and TP-206.4 to address the clarity issues raised by OAL's Disapproval Decision. Staff also made changes to correct grammatical errors, clarify existing provisions, improve consistency, and make formatting and terminology more consistent with similar ARB vapor recovery certification and test procedures. These modifications are summarized in the September 16, 2014 second 15-day Notice of Public Availability of Modified Text. The modifications do not significantly change the CP and TPs.

Note that in the second 15-day public notice package, ARB erroneously included a reference to “cloud cover” in section 6.4 of TP-206.4. Since this reference was erroneously included in the proposed 15-day regulatory changes, ARB has removed this reference from the final regulatory text provided to OAL.

IV. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

Written comments in response to the ISOR were received during the 45-day comment period prior to the hearing from the following:

- Ms. Patty Senecal, Western States Petroleum Association (WSPA)
- Dr. Barry Wallerstein, South Coast Air Quality Management District (SCAQMD)

Below is a summary of each comment made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each comment, or the reasons for making no change. Comments not involving objections or recommendations specifically regarding the rulemaking or the procedures followed by ARB in this rulemaking are not summarized below. As noted in OAL’s Disapproval Decision, the original FSOR failed to include comment number 4 and the appropriate response. For the reader’s convenience, that comment and response are included herein, along with responses to all other comments received during the 45-day comment period. (No comments were received during either of the supplemental 15-day comment periods.) Additionally, since the original FSOR was filed with OAL on May 28, 2014, ARB has substantially revised its response to comment number 3 below, in order to better accommodate the commenter’s request. The full text of ARB’s revised response is included below.

1. Comment: We support the ARB’s proposal to improve test methods and harmonize California and federal requirements. (WSPA)

Agency Response: ARB staff appreciates WSPA’s support of this proposal.

2. Comment: In Section 9.1 of TP-204.1, please mention both regulations (the relevant section for Subpart BBBB is section 63.11092(f)(1)) (WSPA)

Agency Response: After consideration, ARB staff has decided not to incorporate WSPA’s request because Subpart BBBB Section 63.11092(f)(1) applies to gasoline distribution bulk terminals, bulk plants, and pipeline facilities. Section 9.1 of TP 204.1 references alternative test procedures for conducting the annual cargo tank vapor recovery certification. Title 40, Chapter I, Subchapter C, Part 63, Subpart R, section 63.425(e) lists the annual certification test method and procedure for gasoline cargo tanks.

3. Comment: Section 8 of TP-204.1 refers to ARB’s Online Cargo Tank Vapor Recovery Certification Program for test reporting. Please ensure that the online form requests all of the test information that is required to be reported under the

corresponding Federal requirements in 40 CFR 63 Subpart BBBBBB, Section 63.11094(b)(2), and that ARB's tightness certificates also satisfy all of those requirements. (WSPA)

Agency Response: To accommodate the commenter's request, ARB staff will add optional fields to the Online Cargo Tank Vapor Recovery Certification Program form to allow the optional inclusion of the information required to be reported under federal requirements in 40 CFR 63 Subpart BBBBBB, Section 63.11094(b)(2). ARB staff agrees that the addition of these optional fields will facilitate state and federal cargo tanker reporting requirements by giving cargo tank owners and operators the option to consolidate the information required by certain state and federal reporting requirements into a single form. ARB staff notes, however, that applicants are not required to include any information not expressly required under ARB's compliance procedures, and an applicant's decision not to include any optional information will not affect ARB's review of the application.

4. Comment: The Staff Report states that there are no federal regulations that are directly comparable to California's Enhanced Vapor Recovery (EVR) program. The commenter notes that there are in fact federal regulations that require Stage I (the federal equivalent to California's Phase I) vapor recovery systems to be installed on gasoline dispensing facilities with monthly throughputs of 100,000 gallons or more, and requests that the Staff Report be updated to include Subpart BBBBBB of 40 CFR 63 as a federal regulation comparable to California's EVR program. (WSPA)

Agency Response: Staff agrees with the commenter that there are federal regulations in place requiring certain gasoline dispensing facilities to install and maintain vapor recovery systems. The intent of the federal regulations is to reduce emissions associated with the storage and transfer of gasoline during marketing operations, which is consistent with California's EVR program. However, the federal regulations are not directly comparable to California's regulations because they differ in several significant ways. For example, applicability of vapor recovery requirements is more limited under federal regulations. Furthermore, federal performance standards and specifications for vapor recovery equipment are in some cases less stringent than under California's EVR program, and the federal regulations do not require vapor recovery equipment to be certified by ARB. Therefore, Staff does not view the federal regulations (including Subpart BBBBBB) as directly applicable to California's regulations for cargo tanks.

5. Comment: A better approach to addressing current problems with applying TP-201.1 to aboveground storage tanks (AST) would be to measure the volume of vapor that would otherwise be vented from the AST separate from the fuel delivery process. That measured volume can then be discounted in order to determine the full impact of the fuel delivery and the overall volumetric efficiency of the Phase I EVR system. (SCAQMD)

Agency Response: ARB staff agrees with SCAQMD's suggestion, and has revised the proposal to include a method to quantify standing loss emissions prior to conducting a Phase I transfer, then subtracting those emissions from the emissions observed in the time after the transfer is completed. The technical basis for this approach, and a description of the process that staff used to develop and test this approach, was included as Attachment 5 of the first 15-day Notice of Public Availability of Modified Text, which was made available on March 3, 2014.