

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER THE AMENDMENTS TO CERTIFICATION PROCEDURES FOR VAPOR RECOVERY SYSTEMS AT GASOLINE DISPENSING FACILITIES: ABOVEGROUND STORAGE TANKS AND ENHANCED CONVENTIONAL NOZZLES.

Public Hearing Date: April 23, 2015
Agenda Item No.: 15-3-2

I. GENERAL

A. ACTIONS TAKEN DURING THIS RULEMAKING

In this rulemaking, the Air Resources Board (ARB or Board) is amending its regulations and associated certification procedures for gasoline vapor recovery systems used at gasoline dispensing facilities (GDF) with aboveground storage tanks (AST), adopting new performance standards and specifications for enhanced conventional (ECO) nozzles utilized at non-retail GDFs and clarifying existing requirements for manufacturers of vapor recovery equipment at GDFs. The specific Sections amended and adopted are 94010, 94011, 94016, and 94017, Title 17, California Code of Regulations (CCR).

The Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report or ISOR), entitled "Initial Statement of Reasons for Rulemaking, Amendments to Certification Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities: Aboveground Storage Tanks and Enhanced Conventional Nozzles," released March 3, 2015, is incorporated by reference herein. The Staff Report contained a description of the rationale for the proposed amendments. All documents associated with this rulemaking were made available to the public and are available on ARB's website at: <http://www.arb.ca.gov/regact/2015/vapor2015/vapor2015.htm>.

On April 23, 2015, the Board conducted a public hearing to consider the amendments to the certification procedure for vapor recovery systems at GDFs with ASTs and the adoption of the certification procedure for ECO nozzles at non-retail GDFs. At the conclusion of the hearing, the Board adopted Resolution 15-8, in which it approved for adoption the proposed changes to the regulations. The Resolution directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate and if not, to take final action to adopt the regulation as set forth in attachments A and B to the Resolution. The comments received during the

public review period did not pertain to this rulemaking topic and will be addressed outside of this rulemaking activity. No updates to the Initial Statement of Reasons are necessary.

B. MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

Pursuant to Government Code Sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would create overall savings to both State and local agencies.

Overall, staff estimates the proposed regulatory action would save local governments about \$1,106,345 over five years. Staff estimates the statewide saving associated with the proposed regulatory action would be about \$423,620 for state agencies over five years. Depending on each regulated entity's particular circumstances, the ECO nozzle component of the proposed regulatory action could create some additional costs for local governments and school districts that maintain their own fleet of vehicles and which are currently allowed to operate with uncertified conventional nozzles. The potential costs and savings associated with the proposed regulatory action are described in greater detail in the ISOR and Appendix G to the ISOR. If any local government or school district's costs increase as a result of the proposed regulation, those costs would not be reimbursable under Government Code 17500 et seq. This is because the proposed regulatory action would apply generally to all entities in the State with equipment that is subject to the regulation. While the proposed regulations would impose a mandate on local agencies (and potentially on school districts), the proposed regulatory action would not result in a reimbursable state-mandated program.

The proposed regulatory action would not create any cost or savings in federal funding to the state.

C. CONSIDERATION OF ALTERNATIVES

As explained in greater detail in the Staff Report, it is assumed that the ECO nozzle requirement will impact larger businesses (rather than small businesses) as only they would generally own a large enough fleet of vehicles to justify the expense of operating their own fuel tanks. For the AST Phase I regulation, staff assumes that approximately 408 ASTs in California are owned by small businesses. As the regulation allows for a percentage of all ASTs to continue operating with their current pre-enhanced vapor recovery systems in place, a percentage of small businesses would be expected to share in the total cost savings.

As the impact to small businesses would be minimal, no alternatives were identified that would lessen an adverse impact on small businesses.

For the reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR, the Board determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective as and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

A. MODIFICATIONS APPROVED AT THE BOARD HEARING AND PROVIDED FOR IN THE 15-DAY COMMENT PERIOD

No modifications were made to the original proposal.

B. NON-SUBSTANTIAL MODIFICATIONS

ARB staff made several non-substantial modifications to the Table of Contents for CP-201 and CP-206 to correct formatting and page numbering mistakes. These modifications constitute non-substantial changes to the regulatory text because they more accurately reflect the numbering of sections and correct spelling and grammatical errors, but do not materially alter the requirements, conditions, rights, responsibilities, or prescriptions of the originally proposed text.

III. DOCUMENTS INCORPORATED BY REFERENCE

The regulation and the incorporated certification procedures adopted by the Executive Officer incorporate by reference the following documents:

1. D-200 – “Definitions for Vapor Recovery Procedures” (Adopted: April 12, 1996, as last amended: April 23, 2015)
2. CP-201 – “Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities” (Adopted: December 9, 1975, as last amended: April 23, 2015)
3. CP-206 – “Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks” (Adopted: May 2, 2008, as last amended: April 23, 2015)
4. CP-207 – “Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities” (Adopted: April 23, 2015)

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations. The documents are lengthy and highly technical test methods and engineering documents that would add unnecessary additional volume to the regulation. ARB has historically incorporated by reference these types of documents as part of its vapor recovery system certification regulations, which the Office of Administrative Law (OAL) has consistently approved. Distribution to all recipients of the California Code of Regulations is not needed because the interested audience for these documents is limited to the technical staff at a portion of regulated facilities, most of whom are already familiar with these methods and documents. Also, the incorporated documents were made available by ARB upon request during the rulemaking action and will continue to be available in the future, both on the website and by request.

IV. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period in response to the April 23, 2015 public hearing notice, and written and oral comments were presented at the Board Hearing. Listed below are the organizations and individuals that provided comments during the 45-day comment period:

Commenter	Affiliation
Lawton, John (March 29, 2015)	Himself (Lawton)
Crump, Kathi (April 20, 2015)	San Joaquin Valley Air Pollution Control District (SJVAPCD)

1. Comment: Previously approved fuel hoses, connectors and squeeze bulbs for fueling outboard engines have led to increased emissions. Staff should not just focus on the ability of brand new hoses to pass permeation tests. Vendor products should be evaluated and required to meet longevity and repair standards. [Lawton]

Agency Response: The subject of this comment does not pertain to the topic of this rulemaking activity. Staff will forward the comment to an appropriate staff person to be addressed outside of this rulemaking activity.

2. Comment: Please consider adding two additional definitions to the D-200 Definition: "Remote" as it pertains to dispenser location in regards to an AST; and "Protected" as it pertains to an AST. Both definitions would be useful in determining applicability of Executive Order VR-501 (Phase II EVR for ASTs). [SJVAPCD]

Agency Response: The subject of this comment does not pertain to the topic of this rulemaking activity. After discussion with Ms. Crump, staff will address this comment outside of this rulemaking activity.

V. Peer Review

Health and Safety Code Section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including ARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process. Here, ARB determined that the rulemaking at issue does not contain a scientific basis or scientific portion subject to peer review, and thus no peer review as set forth in Section 57004 was or needed to be performed.