

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC COMMENT PERIOD ON PROPOSED AMENDMENTS TO THE LIST OF EQUIPMENT DEFECTS THAT SUBSTANTIALLY IMPAIR THE EFFECTIVENESS OF GASOLINE VAPOR RECOVERY SYSTEMS

The Executive Officer of the Air Resources Board (ARB or Board) is proposing to amend the list of equipment defects that substantially impair the effectiveness of gasoline vapor recovery systems used in motor vehicle refueling operations. Health and Safety Code (Health and Saf. Code) Section 41960.2(c) requires the Executive Officer to adopt and periodically update the Vapor Recovery Equipment Defects List (VRED List), which is incorporated by reference in California Code of Regulations (CCR), Title 17, Section 94006(b). Such defects are sufficiently egregious to warrant the removal of the fueling point or the entire station from service until the defect is repaired.

Written comments on the proposed regulatory amendments must be received by December 14, 2015, in order to be considered by the Executive Officer. A public hearing is not currently scheduled; however, you may request the Executive Officer to conduct a public hearing. The process for requesting a public hearing is explained in the Written Comment Period and Submittal of Comments section of this notice. If a request for a public hearing is received by November 30, 2015, the public hearing will be conducted by the Executive Officer or his delegate pursuant to the authority set forth in Health and Saf. Code Sections 39515 and 39516. The time, date, and place of the hearing will be provided by separate notice.

Following the close of the comment period, the Executive Officer may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Executive Officer may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for additional written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text, if applicable, from ARB's Public Information Office, Visitor and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

#### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)**

**Section Affected:** Proposed amendment to CCR, Title 17, Section 94006(b), and the VRED List (adopted on September 23, 2002, and last amended June 11, 2012) that is incorporated by reference therein, date to be determined upon Executive Officer approval for adoption.

### **Existing Laws and Effect of the Proposed Rulemaking**

Health and Saf. Code section 41954 requires ARB to certify systems for the control of gasoline vapors, including storage and transfer, resulting from gasoline marketing operations, which include motor vehicle fueling operations. The certification is accomplished by the issuance of an Executive Order (EO) identifying the system that is certified and the conditions of certification. The sale or installation of an uncertified system is prohibited.

Health and Saf. Code Section 41960.2(c) requires the Executive Officer to 1) identify and list equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations that substantially impair the effectiveness of the systems in reducing air contaminants, and 2) periodically update the list to reflect changes in equipment technology or performance. The initial list of defects was developed in 1982 and was last amended on June 11, 2012. The current VRED List identifies each certified system by its EO number and lists defects that substantially impair the effectiveness of the system.

### **Objectives and Benefits of the Proposed Amendments to the Regulation**

ARB staff are proposing amendments to the VRED List in order to improve the clarity and effectiveness of the vapor recovery program; thereby, enhancing the ability of enforcement personnel and gasoline dispensing facility (GDF) operators to identify and repair those defects that will significantly impact the effectiveness of the vapor recovery system. Inspectors from air districts periodically inspect GDFs to ensure they are in good working order. When a component on the VRED List is documented by an inspector to contain a listed defect, Health and Saf. Code Section 41960.2(d) requires that the equipment be removed from service until it has been replaced, repaired, or adjusted and re-inspected by air district personnel.

The proposed amendments would update the current VRED List in the following three ways: 1) include the defects for equipment certified in EOs signed since the last amendment to the existing VRED List; 2) add new defect verification procedures; and 3) make editorial changes to remove minor inconsistencies and improve clarity. The amendments to the current VRED List will enhance the ability to identify, repair, or replace equipment where those defects could significantly affect the effectiveness of the vapor recovery system.

The regulation will ensure continued benefits to public health and safety, workers at and around GDFs, and the environment. The proposed action also increases the openness and transparency in businesses and government by clearly specifying the defects that air districts should look for when inspecting GDFs. The proposed action would have no effect on discrimination, fairness, or social equity.

## **DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing the proposed amendments, ARB staff has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## **COMPARABLE FEDERAL REGULATIONS**

There are no federal regulations that are directly comparable to California's VRED program.

## **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes a detailed explanation of the proposed amendments and a summary of the potential environmental and economic impacts of the proposal. The report is titled, *Staff Report: Initial Statement of Reasons for Proposed Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems*.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below under the Internet Access section, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on October 27, 2015.

## **Final Statement of Reasons Availability**

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below under the Internet Access section.

## **Agency Contact Persons**

Inquiries concerning the substance of the proposed amendments may be directed to the designated agency contact persons, Ms. Melinda Weaver, Air Pollution Specialist, Monitoring & Laboratory Division at (916) 322-8918 or Ms. Merrin Wright, Air Resources Supervisor, Monitoring & Laboratory Division at (916) 324-6191.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Ms. Sadie Macali, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

## **Internet Access**

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB website for this rulemaking at [www.arb.ca.gov/regact/2015/vrdef15/vrdef15.htm](http://www.arb.ca.gov/regact/2015/vrdef15/vrdef15.htm)

## **DISCLOSURES REGARDING THE PROPOSED REGULATION**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

### **Fiscal Impact / Local Mandate**

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 not create costs or savings 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 Government Code, Title 2, Division 4, Part 7 (commencing with Section 17500), or other nondiscretionary cost or savings to State or local agencies.

### **Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete**

The Executive Officer has made an initial determination that the proposed regulatory action would 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.

### **Cost Impacts on Representative Private Persons or Businesses**

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Results of the Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Section 11346.3(b)**

#### **Effect on Jobs/Businesses:**

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

#### **Benefits of the Proposed Amendments to the Regulation**

The objectives of the proposed amendments to the regulation are to comply with statutory requirements, to encourage and facilitate uniform enforcement across the State, to provide preventative maintenance guidance for GDF operators, and to ensure that committed emission reductions associated with the vapor recovery program will, in fact, occur.

A summary of these benefits is provided under "Objectives and Benefits," in the Informative Digest of Proposed Action and Policy Statement Overview pursuant to Government Code 11346.5(a)(3) discussion on page 1 of this notice.

### **Effect on Small Business**

The Executive Officer has determined, pursuant to CCR, title 1, section 4, that the proposed regulatory action would not adversely affect small businesses. Better detection of defective equipment may result in cost savings to GDFs because the defective equipment may be replaced while under warranty. A greater understanding of the defects for vapor recovery systems will reduce the need for more stringent standards in the future, thereby lowering compliance costs to California operators.

### **Housing Costs**

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

### **Alternatives**

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board (which includes during preliminary workshop activities), would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

### **Environmental Analysis**

ARB, as the lead agency for the proposed regulatory action, has reviewed the proposed regulatory action and concluded that it is exempt pursuant to CEQA Guidelines section 15308 – Actions Taken by Regulatory Agencies for Protection of the Environment; and by CEQA Guidelines Section 15061(b)(3) (the general rule or “common sense” exemption). The basis for reaching this conclusion is provided in Section IV of the ISOR.

### **WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Interested members of the public may provide comments in writing by postal mail or by electronic submittal. A public hearing is currently not scheduled. The public comment period for this regulatory action will begin on October 30, 2015. To be considered by the Executive Officer, written comments must be submitted on or after October 30, 2015, and received **no later than 5:00 p.m., December 14, 2015**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

If a public hearing is not scheduled, any interested person may request a public hearing pursuant to section 11346.8 of the Cal. Government Code, no later than 15 days before

the close of the written comment period. A public hearing will be scheduled if any interested person or his or her duly authorized representative requests such a hearing in writing by November 30, 2015. The request for a hearing may be submitted in the same manner as written comments.

Please note that under the California Public Records Act (Government Code, Section 6250 et Seq.), your written comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request or as part of the public review process for this regulatory action.

Additionally, ARB requests, but does not require, that persons who submit written comments to the Executive Officer reference the title of the proposal in their comments to facilitate review.

**AUTHORITY AND REFERENCE**

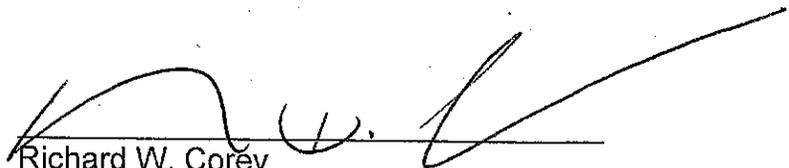
This regulatory action is proposed under the authority granted in Health and Saf. Code, Sections 39600, 39601, and 41960.2. This action is proposed to implement, interpret, and make specific Health and Saf. Code Sections 41954 and 41960.2.

**SPECIAL ACCOMMODATION REQUEST**

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD

  
Richard W. Corey  
Executive Officer

Date: October 13, 2015