

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to the Certification of Vapor Recovery Systems for Cargo Tanks (Title 17, California Code of Regulations, § 94014).

DATE: April 25, 2019

TIME: 9:00 A.M.

LOCATION: California Environmental Protection Agency
California Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., April 25, 2019, and may continue at 8:30 a.m., on April 26, 2019. Please consult the agenda for the hearing, which will be available at least ten days before April 25, 2019, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on March 8, 2019. Written comments not physically submitted at the hearing must be submitted on or after March 8, 2019, and received **no later than 5:00 p.m. on April 22, 2019**. CARB requests that when possible, written and email statements be filed at least 10 days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

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

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

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral 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.

Additionally, the Board requests but does not require that persons who submit written comments to the Board 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 California Health and Safety Code (HSC), Section 41962. This action is proposed to implement, interpret, and make specific sections 41962(f) and 41962(i).

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (GOV. CODE, § 11346.5, subd. (a)(3))

Sections Affected: Proposed amendments to California Code of Regulations, title 17, section 94014, last amended November 7, 2014. Proposed amendments to CP-204 “Certification Procedure for Vapor Recovery Systems of Cargo Tanks,” last amended November 7, 2014, incorporated by reference in California Code of Regulations, title 17, section 94014.

Background and Effect of the Proposed Regulatory Action:

On April 18, 1977, the Board first approved performance standards for controlling emissions from cargo tanks used to transfer gasoline from loading racks and requirements for certification of compliance with the standards. From 1977 to 1996, the California Highway Patrol initially implemented the certification program. In 1996, CARB took full responsibility for implementing of the Cargo Tank Vapor Recovery Program (CTVRP or Program). When CARB took over the implementation, CARB established a \$20.00 fee, which has not been adjusted to reflect changes in the California Consumer Price Index or certification program needs over the last 23 years.

While implementing the regulation, CARB adopted and established procedures for certifying vapor recovery equipment installed on cargo tanks and procedures for testing and certifying the equipment annually. Independent contractors typically test cargo tanks. They then submit test results to CARB for review. CARB issues each cargo tank that passes the annual required testing a non-transferable and non-removable decal, which the cargo tank operator places on the cargo tank in a location that can be readily seen. CARB regulations prohibit storage tank operators at terminals or bulk plants from transferring gasoline to cargo tanks with invalid or expired decals. In addition, Health and Safety Code (HSC) statutes prohibit air districts from adopting cargo tank performance standards more stringent than those adopted by CARB, but they can inspect and test cargo tanks to verify compliance with CARB requirements.

CARB has gone through several rulemakings since the inception of the Program. However, none of the adopted changes provide a mechanism to address the fee for the

certification of cargo tanks. Therefore, CARB intends to address a variety of issues related to the CTVRP fee through the proposed amendments. The primary goal of the proposed amendments is to establish language that would allow CARB to evaluate CTVRP costs and subsequently revise the certification fee as necessary to recover costs going forward. Health and Safety Code section 41962 requires collection of “a reasonable fee, not to exceed [CARB’s] estimated costs,” that will “reimburse the state board for the cost of administering the certification program,” as a condition of certification. To meet the statutory requirement to reimburse the Board, the assessed fee must recover the cost of the resources needed to efficiently and effectively implement the Program. However, CARB has not adjusted the certification fee since it assumed implementation of the regulation in 1996, and CARB is currently not collecting sufficient fees to recover the cost of administering the CTVRP. Currently, there is no regulatory mechanism to adjust the certification fee to recover costs. If adopted, the proposed amendments would provide a method to assess Program costs and make necessary fee adjustments to adequately fund the CTVRP and meet its statutory requirements.

The proposed amendments establish a regulatory methodology that provides for a transparent and consistent process that CARB would use to assess CTVRP costs and adjust certification fees going forward. Importantly, the proposed amendments address the Program’s deficit of funding and resources and current inability to recover necessary program expenses. The current, decades-old annual certification fee of \$20 brings in approximately \$120,000 per year, but Program expenses for fiscal year 2018-2019 are approximately \$433,000. Further, as discussed in Appendix F of The Staff Report (Initial Statement of Reasons), the apparent current compliance rate is 81 percent. Comprehensive funding and implementation of the Program ensures that the intended emission reductions of the existing regulation are achieved.

CARB may also consider other changes to the sections affected, as listed on page two of this notice, during the course of this rulemaking process.

Objectives and Benefits of the Proposed Regulatory Action:

The proposed amendments would allow for the periodic adjustment of the certification fee for the CTVRP, depending on economic variables and resource needs of the Program. Inclusion of a fee-calculation methodology would allow the certification program to remain revenue-neutral over time. With a formula that provides a consistent method of calculating the Program costs and subsequently calculating the necessary fee to recover those costs, CARB would provide transparency to the fee payers and other stakeholders. The proposed amendments would fulfill the requirement of Health and Safety Code section 41962(f) to “charge a reasonable fee for certification, not to exceed [CARB’s] estimated costs,” and to “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.”

As of December 2018, regulated entities’ compliance rate was about 81 percent.

Staff estimate that comprehensive, efficient, and effective implementation of the Program would necessitate expenditures of approximately \$1,172,000 (based on fiscal year 2018-2019 expenses), or an estimated additional \$1,052,000 beyond current fee proceeds and \$739,000 beyond current expenditures. Fully funding the CTVRP would provide the resources necessary to achieve and maintain the intended emission reductions of the existing regulation, and the proposed amendments would allow for recovering the cost of these resources.

Comparable Federal Regulations:

Currently there are federal standards comparable to California's CTVRP standards which can be found in the Code of Federal Regulations, Title 40, Part 63, Subpart R section 63.425(e) - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). Because of the severe and unique air pollution problems facing California, CARB's gasoline vapor control standards are more stringent than comparable federal standards.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

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

The proposed amendments, on their own, would not have a direct impact on fees or increase costs, because they would only provide a mechanism for CARB to update fees to recover Program costs. However, implementation of the proposed amendments is likely to result in a fee increase if the proposed amendments are finalized and the Executive Director applies the proposed formula to recover the program costs. The following analysis and disclosure therefore apply to this likely result of finalizing the proposed amendments.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would create costs or savings to any State agency, would not create costs or savings in federal funding to the State, and would impose a mandate on local agencies or school districts, whether or not reimbursable by the State under Government Code, title 2,

division 4, part 7 (commencing with section 17500), and other nondiscretionary cost or savings to local agencies.

The proposed amendments would not constitute a reimbursable mandate because the proposed amendments apply generally to all entities operating affected sources. Therefore, they do not constitute a “Program” imposing any unique requirements on local agencies as set forth in section 17514 of the Government Code. The proposed changes apply to all agencies operating affected sources and, as outlined in the HSC section 41962, requires charging a certification fee in the amount necessary to administer the program, not to exceed estimated costs.

Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:

Local government entities that require cargo tank certification would incur additional costs as a result of a fee increase via implementation of the proposed amendments. There are 17 cargo tanks associated with local agencies that underwent certification for the year 2018 and registered in the Cargo Tank Certification System Database. Based on this, the certification fee would increase by utilizing the proposed formula to take into account Program costs and other economic variables specified in the ISOR. Utilizing the formula, these factors would result in a small increase in the amount of \$185 per cargo tank per year and an annual average increase of \$3,247, should all cargo tanks owned by local agencies certify.

Cost or Savings for State Agencies:

State agencies who require cargo tank certification would incur new costs as a result of the proposed amendments. There are currently 11 tanks registered with the Cargo Tank Certification System that are associated with a State agency. However no state agencies pursued a certification for the year 2018, so it is possible there would be no impact on state agencies in the coming years.

The fee revenue received by CARB as a result of this proposed regulation is also a fiscal impact on state government. The estimated total fee revenue by fiscal year includes the total revenue estimated to be received from individuals, businesses, and government entities (local, state, and federal). CARB would see an estimated fee revenue increase of \$5.1 million dollars from fiscal year 2019-2020 to fiscal year 2023-2024. The increased revenue would not only assist in recovering Program costs but it would provide resources to upgrade to an up-to-date Information Technology (IT) system. This system would streamline administrative procedures in the Program by allowing for more improved data validation for application approvals and denials, providing a payment portal to improve efficiency of the application process, and providing a public facing online certification status check system that would benefit the cargo tank industry. This system would result in savings for the Program as the amount of resources utilized to assist stakeholders with the database would decrease based on the proposed functionalities of the IT system.

Cost or Savings in Federal Funding to the State:

This regulation does not affect any federal funding for State agencies or programs.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The Executive Officer has also made the initial determination that the proposed regulatory action would not have a significant effect on housing costs. Nothing in the record shows that either the revised regulatory language for the Certification of Vapor Recovery Systems on Cargo Tanks Regulation, or a subsequent fee increase, would have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The Executive Officer has made an initial determination that neither the proposed regulatory action nor a likely subsequent fee increase would 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.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):

Effect on Jobs/Businesses:

The Executive Officer has determined that neither the proposed regulatory action nor a likely subsequent fee increase would 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 Economic Impact Analysis in the ISOR.

An economic profile on the industry indicates an annual average sales volume for a small business is \$24.9 million dollars. This suggests that there would be no anticipated impact on the number of businesses or jobs created or eliminated as a result of the proposed amendments.

Benefits of the Proposed Regulation:

The proposed amendments would allow for the periodic adjustment of the certification fee for the CTVRP, depending on economic variables and resource needs of the Program. Inclusion of a fee-calculation methodology based on program costs would allow the certification program to remain revenue-neutral over time. With a formula that provides a consistent method of calculating the Program costs and subsequently calculating the necessary fee to recover those costs, CARB would provide transparency to the stakeholders. It would also preserve the intended emission reductions of the existing regulation. There are no quantifiable benefits to worker safety anticipated as a result of this rulemaking.

A summary of these benefits is provided under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page 3; please refer to “Objectives and Benefits.”

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

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

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subs. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses, given that a likely subsequent increase in the certification fee would have a fiscal impact on all cargo tank fee payers. Because this is a specialized industry that transports gasoline, the number of cargo tanks a company has available to perform this transport is highly representative of its revenue and size. To provide a more accurate definition in the context of this particular industry, CARB based its definition of a small business on cargo tank fleet size rather than the usual definition, which is based on the total number of employees. Given this basis, CARB defines a small business as one that owns five or fewer cargo tanks. Small businesses comprise 56 percent of regulated California businesses based on data currently in the Cargo Tank Certification System database.

Per this definition (and excluding government entities), it was determined that 159 businesses that obtained certification in 2018 were small businesses. Approximately 410 certified cargo tanks belonged to fleets designated as small businesses, making the average fleet size of small businesses 2.6 cargo tanks. Assuming the proposed amendments are adopted and the anticipated Program costs are able to be recovered, the certification fee would have a maximum incremental increase of approximately \$185 per cargo tank for fiscal year 2019-2020. For an average small business with 2.6 cargo

tanks, this would result in an initial annual certification cost increase of approximately \$481 in fiscal year 2019-2020.

Alternatives Statement (Gov. Code, § 11346.5, subd. (a)(13)):

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

CARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory amendments and concluded that they are exempt pursuant to CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may result in significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter VII of the Staff Report.

SPECIAL ACCOMMODATION REQUEST

Consistent with Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la

audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Mr. Michael Guzzetta, Branch Chief, Citation and Registration Branch, Enforcement Division or (designated back-up contact) Samantha Aguila, Air Pollution Specialist, Citation and Hotline Section, at (916) 229-0868.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks.

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 CARB's website listed below, or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, beginning on March 5, 2019.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, (916) 445-9564. 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.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption 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. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

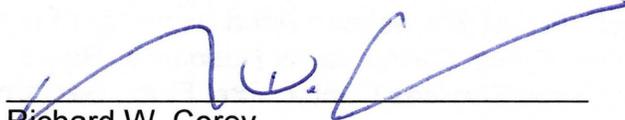
FINAL STATEMENT OF REASONS AVAILABILITY

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 CARB's website listed below.

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2019/ctvrp2019>

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: February 19, 2019

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.