

State of California
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

PUBLIC HEARING TO CONSIDER THE ADOPTION OF AMENDMENTS TO
VAPOR RECOVERY CERTIFICATION AND TEST PROCEDURES FOR
UNDERGROUND AND ABOVEGROUND STORAGE TANKS INCLUDING
GASOLINE DISPENSING FACILITY HOSE REGULATION

Public Hearing Date: September 22, 2011
First Public Availability Dates: February 10 – February 27, 2012
Second Public Availability Dates: October 26 – November 13, 2012
Agenda Item No.: 11-7-4

I. Background

On July 31, 2012, the California Air Resources Board (ARB) submitted the Final Statement of Reasons (FSOR) and a Final Regulation Order containing proposed new regulations (title 17 Cal. Code Regs. sec. 94010, 94011, 94016, 94150, 94168, and selected Certification and Test Procedures referenced therein) amending the Enhanced Vapor Recovery (EVR) Program to the Office of Administrative Law (OAL) for review and approval.

On September 17, 2012, OAL disapproved the proposed regulations because they did not comply with the California Administrative Procedures Act (APA) required standards for clarity as defined in Government Code section 11349.1.

II. Failure to Comply with the APA.

In its Decision of Disapproval of Regulatory Action, OAL noted that the term “*effective date*” as used in section 2.4.5 of CP-201 and CP-206 of the proposed regulation could be reasonably interpreted to have more than one meaning. As such, it did not comply with the clarity standard specified in Government Code section 11349.1(a)(1), which prohibits regulations that can reasonably be interpreted to have more than one meaning. OAL also noted that there is an internal inconsistency between “*effective date*” as used in the proposed amendments to section 2.4.5 of CP-201 and CP-206 and the definition of the term “*effective date*” currently found in the Definitions for Vapor Recovery Procedures – D-200. OAL stated that the rationale of the initial statement of reasons for supporting the addition of section 2.4.5 in CP-201 and CP-206 is clear, but the language of section 2.4.5 fails to express what the intended purpose is.

III. Resolution of the Problem Identified by OAL

In its Decision of Disapproval of Regulatory Action, OAL offers the following suggestions on how the clarity problem could be resolved:

“The Board will need to re-write section 2.4.5 to meet the clarity standard or, alternatively, amend the existing definition of “effective date” in D-200 and dispense with the addition of section 2.4.5 in CP-201 and CP-206.”

Following OAL’s suggestion, ARB staff opted to amend the existing definition of “effective date” in D-200 and delete the proposed amendments to section 2.4.5 of CP-201 and CP-206. The newly proposed definition of “effective date” in D-200 now reads:

Effective date

For vapor recovery performance standards or performance specifications originally adopted by ARB prior to January 1, 2012, “effective date,” as used in Health and Safety Code sections 41954(g)(2) and 41956.1(a), shall be the date listed in the applicable certification procedure.

For vapor recovery performance standards or performance specifications adopted by ARB on or after January 1, 2012, “effective date,” as used in Health and Safety Code sections 41954(g)(2) and 41956.1(a), means the date the first system or component is certified by ARB to meet the new or revised performance standard or performance specification adopted by ARB pursuant to the Administrative Procedure Act.

The effective date “starts the clock” for the period of continuing use of installed vapor recovery systems/equipment under Health and Safety Code section 41956.1. The period may be up to four years after which the component and/or system may no longer be used.

By amending this definition and removing the previously proposed amendments from section 2.4.5 of CP-201 and CP-206, the original intent of the proposal as described in the Initial Statement of Reasons is met and the APA clarity standard is satisfied.

IV. Amendments without Regulatory Effect

Sections 94011 and 94016 have been amended to include a reference to UL 330 (7th ed) - *Underwriters Laboratories’ Standard for Hose and Hose Assemblies for Dispensing Flammable Liquids*. This UL Standard was referenced in CP-201 and CP-206 and made available for public viewing and comment with the original regulatory proposal, but was not explicitly incorporated by reference in the Title 17 regulation.

IV. Comments Received During the Second 15-Day Comment Period

1. Comment by Michael Friedman, EZ flo Nozzle and Equipment Company

Comment: ARB indicated in a letter dated April 28, 2011, that the requirements for EVR equipment manufacturers' warranties would be changed to include nozzle parts such as the spout, boot, and face seal. No such change was included in this proposed amendment.

Response: The changes to EVR manufacturers' warranties that the commenter references are allowed under the existing regulatory language and do not require any amendment to CP-201. Over the past year, ARB staff has worked extensively with all currently approved EVR manufacturers to revise their warranty language so that it will satisfy all applicable requirements of CP-201. Revised warranty language will be included in future EVR Executive Orders.

2. Comment by Ed Stewart, Sanitation Districts of Los Angeles County

Comment: The commenter was looking for documents from the two earlier rulemaking comment periods so that he could fully understand the proposed amendments.

Response: ARB staff directed the commenter to the website where all of the earlier documents associated with this rulemaking could be accessed.

V. Compliance with title 1, §20, California Code of Regulations and Government Code Section 11346.5(b)

The adopted standard, UL 330 (7th ed) Underwriters Laboratories Inc.'s Standard for Safety Hose and Hose Assemblies for Dispensing Flammable Liquids, December 16, 2009, was made available during the regulatory action and will continue to be available for public inspection from the Air Resources Board's Legal Office at 1001 I Street, 23rd floor, Sacramento, California 95814. Additionally, because the standard is over 36 pages, and copyrighted, ARB has determined that it is therefore not subject to publication in the California Code of Regulations (CCR), and that it would be cumbersome, unduly expensive, and otherwise impractical to publish the document in the CCR.