

State of California
AIR RESOURCES BOARD

EMERGENCY AMENDMENT TO THE REGULATION FOR CERTIFICATION OF
VAPOR RECOVERY SYSTEMS OF DISPENSING FACILITIES

Finding of Emergency

The emergency rulemaking action would amend the regulation for Certification of Vapor Recovery Systems of Dispensing Facilities (title 17, California Code of Regulations, section 94011) and the incorporated Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities (herein after certification procedure or CP-201). Specifically the emergency amendment would amend Table 2-1 of section 2 of CP-201 to delay the operative dates for some vapor recovery performance standards and specifications.

Specific Facts Showing the Need for Immediate Action and Informative Digest:

After notice of proposed rulemaking on October 25, 2002, the Air Resources Board (Board or ARB) on December 12, 2002, approved amendments to the regulations for certification of vapor recovery equipment, including the incorporated Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities, CP-201. CP-201 certifies the vapor recovery equipment that is used in service stations or gasoline dispensing facilities (GDFs). Vapor recovery equipment serves to control emissions of air pollutants during two types of gasoline transfer: Phase I vapor recovery collects vapors when a tanker truck fills the service station underground tank. Phase II vapor recovery collects vapors during vehicle refueling. The vapor recovery collection efficiency during both of these transfers is determined through certification of vapor recovery systems. Control of the emissions from GDFs is necessary to reduce emissions that lead to the formation of ozone and to control emissions of benzene, a constituent of gasoline vapor that has been identified as a toxic air contaminant.

In approving the amendments to CP-201, among other modifications, the Board approved modifications to section 2, specifically the modification of Table 2-1, Effective and Operative Dates for Performance Standards and Specifications. Table 2-1 prescribes an effective and operative date of April 1, 2003, for various standards and specifications. The Board directed the modification of the effective and operative dates based on the status of ARB's evaluation of the certification applications under review at that time. The status showed that no applicant would be able to complete certification to the applicable standards and specification by April 1, 2003. In an earlier emergency rulemaking action, filed with the Office of Administrative Law on March 7, 2003, ARB amended the operative dates from April 1, 2003, to October 1, 2003, as the Board directed in Resolution 02-35.

The ARB noticed the emergency amendment of the operative dates and other proposed 15-day changes in May 2003. Based on the comments received for the proposed modifications, the Board is preparing to further modify the regulations, with a second 15-day notice anticipated to be available in July 2003. Because of the need for a second 15-day notice of availability of modified text, ARB will not be able to file the certification of compliance for the emergency regulations and the regular rulemaking until the modified text is again made available. Immediate action is needed, however, because the earlier filed emergency regulations lapse on July 11, 2003.

Without a second emergency filing, the operative date will revert to April 1, 2003. Because Health & Safety Code section 41954 prohibits the sale and installation of systems not certified to the ARB's standards and specifications, there will be no vapor recovery systems available for sale or installation in California when the emergency regulations lapse on July 11, 2003. While the Board, approved extensions of the applicable effective and operative dates by six months to October 1, 2003, based on the current status of the applicants under review for certification, ARB anticipates that final certification of systems to the ARB's currently adopted standards and specifications not will be completed until the spring of 2004.

In order to assure that the operative dates do not revert to April 1, 2003, and to provide certainty for the regulated public and sufficient time for certification, rather than readopt the operative dates of October 1, 2003, ARB would adopt further delayed operative dates. April 1, 2004 is selected as the date for further delay because the date would align the operative dates for the standards and specifications that were to have been met in April 1, 2003, with the operative dates for other standards and specifications, specifically nozzle standards and specifications, set to become operative on April 1, 2004.

For the above reasons, the emergency amendment of the certification procedure is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Comparable Federal Regulations: There are no comparable federal regulations that certify gasoline recovery systems for service stations; however, changes to ARB vapor recovery regulations have a national impact. ARB certification is required by most other states which mandate Phase I or Phase II vapor recovery at service stations.

Local Mandate Statement and Statement of Costs/Savings to State and Local Agencies: The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), 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 Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

Statutory Authority and Reference: This regulatory action is taken under the authority granted to the ARB in sections 39600, 39601, 39607, and 41954 of the Health and Safety Code. This action is taken to implement, interpret, or make specific sections 39515, 39516, 39605, 39607, 40001, 41511, 41954, 41956.1, 41959, 41960, and 41960.2 of the Health and Safety Code.

CALIFORNIA AIR RESOURCES BOARD

CATHERINE WITHERSPOON
EXECUTIVE OFFICER

Date: July 1, 2003