

State of California
AIR RESOURCES BOARD

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

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO CERTIFICATION
PROCEDURES FOR VAPOR RECOVERY SYSTEMS FOR ABOVEGROUND STORAGE
TANKS AT GASOLINE DISPENSING FACILITIES**

Public Hearing Date: July 25, 2019
Agenda Item No.: 19-7-1

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LIST OF ACRONYMS AND ABBREVIATIONS

AST	aboveground storage tank
Board	California Air Resources Board
CAPCOA	California Air Pollution Control Officer's Association
CARB	California Air Resources Board
CP	certification procedure
EVR	enhanced vapor recovery
FSOR	Final Statement of Reasons
GDF	gasoline dispensing facility
ISOR	Initial Statement of Reasons (also called "Staff Report")

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), Public Hearing to Consider Proposed Amendments to Certification Procedures for Vapor Recovery Systems for Aboveground Storage Tanks at Gasoline Dispensing Facilities”, released June 7, 2019, is incorporated by reference herein. The Staff Report contained a description of the rationale for the proposed amendments. On June 7, 2019, all references relied upon and identified in the Staff Report were made available to the public. All documents associated with this rulemaking were made available to the public and are available on the California Air Resources Board’s (CARB or the Board) [website](https://ww2.arb.ca.gov/rulemaking/2019/ast2019): <https://ww2.arb.ca.gov/rulemaking/2019/ast2019>. No modifications or changes were made after the release of the Staff Report.

In this rulemaking, California Air Resources Board (CARB or Board) is adopting amendments to regulations for aboveground storage tanks (AST) at gasoline dispensing facilities (GDF). This rulemaking is in response to a request in 2015, from the California Air Pollution Officers Association (CAPCOA) and the Board to examine the cost effectiveness of Phase II Enhanced Vapor Recovery (EVR) requirements for the upgrade to Phase II EVR controls for existing ASTs at GDFs. The proposed amendments allow for smaller AST GDFs, that have lower annual gasoline throughputs and therefore lower gasoline vapor emissions, to maintain their current pre-EVR Phase II systems until the end of useful life¹ of the system. The proposed amendments would set an annual gasoline throughput threshold of 480,000 gallons or less, which would allow for those AST GDFs at or below the threshold to delay their required upgrade. The AST GDFs with an annual gasoline throughput greater than 480,000 gallons would still be required to install a Phase II EVR system by the current upgrade deadline.

The proposed amendments safeguard public health benefits by ensuring the emission rates envisioned for the Phase II EVR standards will be met while improving their cost effectiveness. In 2015, the Board adopted amendments to the Phase I EVR standards to include an annual gasoline throughput threshold and to improve cost effectiveness. The proposed amendments would improve consistency between the Phase I and Phase II EVR requirements and provide more time for owners of smaller AST GDFs to meet the Phase II EVR requirements. This would provide financial relief for owners of smaller GDFs while retaining emission reductions in areas where they are most needed.

¹ CARB defines “useful life” as the period of time during which a vapor recovery system or component can be used as intended, conforms to manufacturer’s specifications, and complies with all applicable CARB regulations, standards, and specifications (per CARB’s D-200: Definitions for Vapor Recovery Procedures). Available information indicates the useful life of pre-EVR Phase II systems is about five years.

A. Action Taken in This Rulemaking

On July 25, 2019, following a 45-day comment period, CARB held a public hearing to consider the proposed regulation “Public Hearing to Consider Proposed Amendments to Certification Procedures for Vapor Recovery Systems for Aboveground Storage Tanks at Gasoline Dispensing Facilities” described in the Staff Report and associated Notice of Public Hearing (45-Day Notice). The regulation requirements are set forth in California Code of Regulations, title 17, §§ 94010 and 94016.

No written comments were received during the 45-day comment period. One oral comment and no written comments were presented by any individuals or organizations. At the conclusion of the hearing, the Board adopted Resolution 19-18, which approved the regulation for adoption.

Resolution 19-18 directed the Executive Officer to determine if additional conforming modifications to the regulations were appropriate. If so, the Executive Officer was directed to make the modified regulations (with the modifications clearly identified) and any additional documents or information relied upon available for a supplemental 15-day public comment period. The Executive Officer was directed to consider any comments on the modifications received during any supplemental 15-day public comment period. The Executive Officer was then authorized to: either (1) adopt the modified regulation as it was made available for public comment, with any appropriate additional modifications; or (2) make all additional modifications available for public comment for a period of at least 15 days and present the regulations to the Board for further consideration, if warranted.

After the July 25, 2019, public hearing, CARB staff proposed no modifications to the originally proposed regulation. This Final Statement of Reasons (FSOR) updates the Staff Report and contains a summary of the comments received during the formal rulemaking process by CARB on the proposed amendments or the process by which they were adopted, and CARB’s responses to those comments.

B. Mandates and Fiscal Impacts to Local Governments and School Districts

The Board has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

C. Consideration of Alternatives

Staff is required to consider alternatives to the proposed amendments for AST Phase II EVR requirements. 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 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. In addition, the Board has not identified any reasonable alternatives that would lessen any adverse impact on small business.

As described in the Staff Report, the purpose of the proposed amendments is to:

- Improve consistency between Phase I and Phase II EVR regulation (Phase I EVR requirements were amended by the Board in 2015);
- Improve the cost effectiveness of Phase II EVR implementation for existing installations; and
- Retain emission reductions for those ASTs with higher annual gasoline throughputs.

The rulemaking for the proposed amendments is needed to clarify AST EVR requirements by the addition of new terms and definitions, and to prevent unnecessary upgrades to costly Phase II EVR equipment for those AST facilities where annual gasoline throughput is low. As noted in the Staff Report, smaller annual gasoline throughputs results in smaller emissions of gasoline vapor. Staff determined that it is not cost effective to continue to require the upgrade to Phase II EVR systems at all AST facilities, regardless of annual gasoline throughput, and has recommended an annual gasoline throughput threshold of 480,000 gallons.

As discussed in Chapter IX of the Staff Report, CARB evaluated the following alternatives to the proposed amendments:

- Make no change to the existing AST regulations for Phase II EVR;
- Incorporate an annual gasoline throughput threshold of 150,000 gallons;
- Propose alternative definitions for the terms “remote dispensing” and “non-remote dispensing;” and
- Exempt all AST facilities from the Phase II EVR upgrade requirement.

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 to the original proposal were made prior to or during the July 25, 2019, public hearing, nor did staff need to release a Notice of Public Availability of Modified Text and Availability of Additional Documents and Information. The amended regulations, which the Board adopted, are identical to those initially proposed by the staff and made available in the Staff Report released on June 7, 2019.

B. Non-Substantial Modifications

Subsequent to the public hearing, staff identified non-substantive changes to the proposed regulatory amendments to D-200, Definitions for Vapor Recovery Procedures, and CP-206, Certification Procedure for Vapor Recovery Systems at Gasoline

Dispensing Facilities Using Aboveground Storage Tanks. These documents are incorporated in the regulation by reference in California Code of Regulations, title 17, §§ 94010 and 94016, respectively.

- D-200, “compliance tests” – changed an “an” to an “a” for improved grammar.
- D-200, “non-remote dispensing” – revised the “Non” in “Non-remote” to the lowercase “non” for consistency of formatting with other definitions.
- D-200 – in Footnote 1, removed underline from the “C” in CARB since this edit was previously made as part of the “Proposed Amendments to Enhanced Vapor Recovery Regulations to Standardize Gas Station Nozzle Spout Dimensions to Help Address Storage Tank Overpressure (Nozzle Dimensions Regulation)” which was approved on July 29, 2019, and effective October 1, 2019.
- D-200, “protected aboveground storage tank” – added “Safety for” to the title of UL-2085 for improved accuracy and consistency with how Underwriters Laboratories Inc. refers to the document. Also, added the date of UL-2085 and language stating that it is incorporated by reference within D-200. This document was noticed (in the 45-day Notice) as being incorporated in D-200 with the September 29, 2010, date but the actual language incorporating it with the date was erroneously omitted from the earlier proposed amendments to D-200.
- D-200, “remote dispensing” – revised the first letter at the beginning of the definition to lowercase (“A” revised to “a”) for consistency of formatting with other definitions.
- CP-206, in Section 3 of the Table of Contents, struck the previous page numbers for subsections 3.2, 3.3, and 3.4 (page numbers 9, 9, and 10, respectively) that had erroneously not been struck in earlier versions.
- CP-206, in the List of Tables of the Table of Contents, updated the title of Table 2-2 for consistency with the amended title of the table as written on page six of the certification procedure. Title was revised to read as follows: “...Allowed Pursuant to Sections 2.4.4, 2.4.5, and 2.4.6”
- CP-206, subsection 2.4.4 – added “installed and operated” language regarding the March 13, 2015, date for Phase II tanks for consistency with other provisions within CP-206 that already had the “installed and operated” language regarding the March 13, 2015, date for Phase II tanks. Added a “the” to “until *the* end of useful life” for improved grammar. Removed commas before and after the two mentions of “or facility” for improved grammar.

Portions of the text in D-200 (Appendix B of the Staff Report) and CP-206 (Appendix C of the Staff Report) contained text identified in ‘dotted underline’ and ‘dotted underline strikeout.’ Amendments to these regulations were approved by the Board on October 25, 2018, as part of the Nozzle Dimensions Regulation.” At the time that CARB staff released the Staff Report on June 7, 2019, the Nozzle Dimensions Regulation had not yet been approved by the Office of Administrative Law. The dotted underline and dotted underline strikeout text was presented in the Staff Report for context and completeness only and was not subject to comment in the proposal.

The Nozzle Dimensions Regulation was approved by the Office of Administrative Law and filed with the Secretary of State on July 29, 2019. The regulation will have an effective date of October 1, 2019. With the approval of the Nozzle Dimension Regulation, it is no longer necessary to represent the text in dotted underline and dotted underline strikeout and it will be removed from the appendices included in this FSOR.

The above described modifications constitute non-substantial changes to the regulatory text because they more accurately reflect the final version of the proposed amendments and do not alter the requirements or conditions of the proposed rulemaking action.

III. DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated in the regulation by reference in California Code of Regulations, title 17, §§ 94010 and 94016, respectively:

- D-200 – Definitions for Vapor Recovery Procedures, adopted April 12, 1996, as last amended on July 25, 2019.
- CP-206 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks, adopted May 2, 2008, as last amended on July 25, 2019.

The above listed documents are also being amended by this regulation and thus the amendment is the date that the regulation was approved by the California Air Resources Board (CARB or Board).

The proposed amendments to the D-200 definitions incorporated by reference in the regulation adopted by the Board during the July 25, 2019, hearing cite the following document:

- Underwriters Laboratories (UL). UL-2085 Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids. Edition 2, Revision 3; September 29, 2010.

This document was necessary to define a term common to AST EVR and was incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish it in the California Code of Regulations. In addition, the document is copyrighted, and cannot be reprinted or distributed without violating the licensing agreements. The document is lengthy and highly technical test methods and engineering documents that would add unnecessary additional volume to the regulation. 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 reporting facilities, most of whom are already familiar with these methods and documents. Also, the incorporated documents were made available by CARB upon request during the rulemaking action and will continue to be available in the future. The document may be purchased directly from the publisher.

IV. SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Board received no written comments during the 45-Day Notice comment period in response to the July 25, 2019, public hearing notice. No written comments and only one oral comment in support of the proposed amendments was presented at the Board Hearing. Listed below is the individual that provided comments during the public hearing.

The following individual provided oral testimony at the public hearing:

Commenter	Affiliation
Erik White	California Air Pollution Officers Association (CAPCOA)

A. Support for Amendments

Comment: Good morning Madam Chairman, and members of the Board. My name is Erik White and I am the Air Pollution Control Officer for Placer County. I am also the CAPCOA President, and it is in that capacity that I am here today. I am pleased to offer CAPCOA's support for the staff proposal and to recognize staff's efforts to work with CAPCOA to develop these important changes to the Aboveground Storage Tank requirements for Phase II Enhanced Vapor Recovery.

Phase-in of EVR standards for ASTs began in 2009 and is still ongoing. However, the issue is that while the EVR standards were designed to force the development of emission control technologies that meet regulatory requirements, only one Phase II EVR system has been certified by CARB for use at gasoline dispensing facilities equipped with ASTs; and this system is only compatible with a small subset of GDFs. Additionally, the estimated cost to upgrade to Phase II EVR is much higher than was estimated at the time the EVR regulation was originally adopted. This has presented a challenge to air districts and GDF AST operators in terms of applying Phase II EVR to their tanks where significant variation in annual throughput exists.

In response to this, in May 2017 CAPCOA reestablished an AST working group with CARB to provide input on the rulemaking and cost effectiveness for AST Phase II EVR requirements. Through this process, CAPCOA provided data (tank information, impacted tank numbers, upgrade costs and throughput data) to help CARB establish a cost-effective throughput threshold. CAPCOA believes the proposed amendments improve cost effectiveness for Phase II EVR implementation, improve consistency between the cost effectiveness of the Phase II EVR requirements and Phase I EVR regulations and retain emission reductions for ASTs with higher annual gasoline throughputs. The proposed amendments also provide financial benefits in net cost-savings for businesses and government agencies that are required to upgrade, while not resulting in emission increases from existing AST GDFs above current levels.

In conclusion, CAPCOA has reviewed the data and the proposed amendments and is in support of the amendments as proposed. They will result in a more cost-effective implementation of the AST EVR regulations and better promote regulatory consistency between the Phase II EVR requirements and the Phase I EVR regulations.

Thank you. [Erik White (2019)]

Agency Response: CARB made no changes based on the received comments. CARB appreciates the support and efforts of CAPCOA and the air pollution control/air quality management districts.

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 CARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process. Here, CARB 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.