State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIHOSE DISPENSER REQUIREMENTS IN THE REGULATION FOR CERTIFICATION OF VAPOR RECOVERY SYSTEMS OF DISPENSING FACILITIES (GASOLINE SERVICE STATIONS)

Public Hearing Dates: July 22, 2004
Agenda Item No.: 04-7-5

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), entitled "Initial Statement of Reasons for Proposed Rule Making, Public Hearing to Consider Proposed Amendments to the Unihose Dispenser Requirements in the Regulation for Certification of Vapor Recovery Systems of Dispensing Facilities (Gasoline Service Stations)", released June 4, 2004, is incorporated by reference herein. The Final Statement of Reasons updates the Staff Report by summarizing the public comments received and presenting the Board's responses to the comments.

On July 22, 2004, the Air Resources Board (the "Board" or the "ARB") conducted a public hearing to consider the amendment of the certification procedure for vapor recovery systems at gasoline dispensing facility. The amendment was limited to one section of the certification procedure that defines requirements for unihose dispensers.

At the July 22, 2004, public hearing, the Board adopted Resolution 04-21 the amendment of the regulation that incorporates by reference the revised certification procedure. The revised regulation is title 17, California Code of Regulations (CCR), sections 94010. The incorporated amended certification procedure is Method CP-201, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities.

Fiscal Impacts. The ARB has determined that some gasoline station operators may save $2,000 to $65,000 by not having to convert existing dispensers to the unihose configuration while complying with the vapor recovery requirements. The ARB is not aware of any costs that a representative private person or business would necessarily incur in reasonable compliance with the adopted action. Gasoline dispensing facilities operated by state and local agencies, such as the Department of General Services, California Highway Patrol or Caltrans may realize similar cost savings.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that this 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, except as discussed above, or other nondiscretionary savings to state or local agencies.

The Executive Officer has determined that this regulatory action will 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.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that this regulatory action will affect small businesses that own or operate gasoline service stations.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements in the regulations and incorporated documents that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The Board has further determined that no alternative considered by the agency would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

II. Summary of Comments and Agency Response

List of Comments Received (written comments unless otherwise noted)

STAKEHOLDER	AUTHOR
Automotive Trade Organizations of California, Inc. (AUTO-CA)	Will L. Woods
California Air Pollution Control Officer's Assoc. (CAPCOA)	Larry Greene (oral and written)
California Independent Oil Marketers Association (CIOMA)	Jay McKeeman (oral & written)
Healy Systems, Inc. (Healy)	James Healy (written) Mark Kravis (oral)
Western States Petroleum Association (WSPA)	Steven Arita (oral & written)

1. Comment by AUTO-CA

AUTO-CA supports the staff's proposal to remove the unihose conversion requirement, as the amendment will reduce costs for conversion to balance systems. AUTO-CA also requests at least a one year delay in the April 1, 2005 deadline for stations to upgrade systems to be compatible with fueling vehicles equipped with onboard refueling vapor recovery (ORVR). AUTO-CA states that the one-year delay in the ORVR compatibility deadline will allow cost-effective upgrades to station vapor recovery systems.

Response

Staff appreciates this commenter's support of the proposed amendments, but the rest of this comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. The request to extend the ORVR compatibility deadline is outside the scope of staff's proposal. The notice for the unihose amendment dated May 25, 2004 is limited to proposed modifications to section 4.11 of CP-201, "Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities". Section 4.11 provides the requirements for unihose gasoline dispensers.

Staff agrees that a delay in the ORVR compatibility requirement is needed. A proposal to extend the ORVR compatibility deadline by one year was made available for public comment on October 1, 2004 and is scheduled to be considered at the November 18, 2004 meeting of the ARB.

2. Comment by CAPCOA

CAPCOA supports the unihose amendment. CAPCOA also requests extension of the ORVR compatibility deadline of up to one year. CAPCOA requests that a compliance schedule be included as part of the ORVR deadline extension to allow orderly permitting and installation of new vapor recovery systems.

Response

See response to Comment #1, which is incorporated by reference here. ARB staff agree that a stepwise compliance schedule is desirable and will work with CAPCOA and industry to define terms to ensure all stations are in compliance by the ORVR deadline.

3. Comment by CIOMA

CIOMA supports the unihose amendments under the condition that ARB adopts a one year extension to the ORVR compatibility deadline. CIOMA points out that their members are independent gasoline marketers who have been waiting for certification of a vapor recovery system meeting all of the Enhanced Vapor Recovery (EVR) requirements before making service station upgrades. CIOMA supports the CAPCOA compliance schedule for ORVR compatibility.

Response

See response to Comment #1, which is incorporated by reference here.

4. Comment by Healy

Healy claims that gasoline marketers have continued to install vapor recovery systems in the last three years that were not ORVR compatible when the installers knew the systems would be obsolete within four years. Healy states that gasoline marketers should not be rewarded for their gamble that the systems installed could be economically converted in time to meet EVR deadlines. Healy points out that EVR standards can be met by the Healy system currently in the certification process. Healy is concerned that the EVR Phase II system effective dates would be extended an additional six to twelve months beyond October 1, 2004.

Response

This comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. Staff disagrees with this comment. New gasoline stations, and stations undergoing major modifications, have been required to install ORVR compatible systems and unihose dispensers beginning April 1, 2003. Staff will continue to work with Healy to expedite certification of the EVR Phase II system, however, the EVR Phase II deadlines has already been changed to January 1, 2005 as an EVR Phase II system is not yet commercially available.

5. Comment by Healy

Vapor recovery equipment manufacturers develop products in response to ARB's regulations. In February 2000, staff proposed that Phase II systems be compatible with ORVR systems by April 1, 2001. This was revised to April 1, 2003. Between 2001 and 2003, many stations installed vapor recovery systems that were not compatible with ORVR standards. The Bay Area Air Quality Management District (BAAQMD) set an earlier date and, as a result, the BAAQMD has 2/3 of the stations ORVR compatible, where the rest of the state is about 50% ORVR compatible. Healy estimates that 3000 stations are not ORVR compatible. Healy states that these remaining stations can be made ORVR compatible about four months, thus meeting the existing ORVR deadline.

Response

This comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. Staff disagrees with this comment. This comment does not relate to staff's proposal to modify the unihose amendment. Modifications to the ORVR compatibility deadline will be addressed in a future rulemaking

6. Comment by Healy

Healy objects to the vapor recovery equipment costs that were presented in the staff report. Healy says that the cost numbers appear one-sided, and compare list prices against discounted prices. Healy states that staff has agreed to work more closely with Healy in the future to obtain additional cost information.

Response

Staff disagrees with this comment, except as discussed below. The cost information in the staff report is taken from a Western States Petroleum Association analysis provided to ARB staff as part of the January 2004 letter (Reference 2 of the staff report). Healy's concern is that the some of the costs associated with the balance system were not included in the staff's analysis. Even if the costs for balance systems were increased, there would still be considerable cost savings associated with staff's proposal, as the amendment's primary cost effect is to avoid purchase of new dispensers, which are estimated at $10,000 each. Staff agrees to solicit cost information from Healy and other stakeholders for future rulemakings.

7. Comment by WSPA

WSPA supports staff's recommendation to adjust the effective and operative dates for EVR Phase II and ISD systems. WSPA requests that the final compliance dates also be adjusted to maintain the four-year period for installation. WSPA remains concerned that there will not be a sufficient number of EVR-certified systems available to ensure that its members will have a selection of EVR certified equipment from which to choose from and install only once.

Response
See response to Comment #1, which is incorporated by reference here. Staff has modified the effective, operative and final compliance dates for the Phase II and ISD modules to maintain a four-year period. It is expected that several EVR Phase II systems will be certified within the next two years.

8. Comment by WSPA
WSPA strongly supports the unihose amendments and states that the amendments will significantly improve the cost-effectiveness of converting vapor recovery systems to be ORVR compatible. WSPA also requests a minimum one year extension to the ORVR compatibility deadline. The one year delay will allow stations to retrofit once to meet full EVR systems requirements as a full EVR system is not yet certified and is expected to be available in fall of 2004. WSPA accepts the CAPCOA compliance schedule, though it will be challenging to meet the proposed CAPCOA milestones.

Response
See response to Comment #1, which is incorporated by reference here.

9. Comment by WSPA
WSPA notes that page 4 of the staff report states: "Since 1998, ARB has certified several Phase II vapor recovery system as being ORVR compatible. WSPA requests that the staff identifies the certification date for the ORVR compatible systems listed on page 4 of the staff report.

Response: Staff disagrees with this comment. This statement was actually on page 5 of the staff report. Table II-1 has been revised as shown below to include the certification date for each ORVR compatible system.

Table II-1
Currently Certified ORVR Compatible Phase II Vapor Recovery Systems

Phase II System	ARB Executive Order & Approval Letters	Date Certified to be ORVR Compatible
Healy	G-70-186, G-70-191	G-70-186 dated October 26, 1998 G-70-191 dated August 8, 1999
Balance	G-70-52, Letter 03-04	Letter 03-04 dated March 3, 2003
Hirt	G-70-177-AA, Letter 03-06	Letter 03-06 dated March 28, 2003

10. Comment by WSPA
WSPA disagrees with staff's statement (Part V, section B of the staff report) that ORVR incompatibility emission estimates are expected to increase. WSPA believes the ORVR excess emissions are less than ARB estimates. WSPA would

like a statement that ARB and WSPA are developing a joint testing protocol to collect additional emission data to resolve this disagreement.

Response
Staff disagrees with this comment. Staff's expectation that the ORVR excess emission estimates will increase is based on pressure data collected recently at operating assist sites. Staff acknowledges that WSPA disagrees and revise the statement in the staff report as shown below in strike and add format:

Staff, in cooperation with WSPA, is presently re-evaluating these emissions estimates.

11. Comment by WSPA
WSPA comments that Tables V-6 and V-7 obscure the fact that cost-effectiveness associated with converting vapor recovery systems is very different for Wayne systems than for Gilbarco systems. WSPA requests that the cost-effectiveness difference be included as reflected in the WSPA and CIOMA January 30, 2004 letter (Reference 2 of staff report).

Response
Staff disagrees with this comment. Tables V-6 and V-7 in the staff report demonstrate the overall cost-effectiveness difference between the existing regulation and the proposed amended regulation. The cost-effectiveness is calculated similar to the original EVR cost analysis, which is based on average annualized costs and total annual emissions for all affected stations. It is inappropriate and unnecessary to calculate the cost-effectiveness by vapor recovery system type for this purpose. Staff points out that WSPA's analysis is included as Reference 2 of the staff report.

12. Comment by WSPA
WSPA requests that the request for an extension of the ORVR compatibility deadline be heard at the ARB's September 2004 board meeting.

Response
This comment is not specifically directed at the proposed amendments. Without waiving this objection, staff responds as follows. This comment does not pertain to the unihose dispenser amendments. There is not sufficient time for staff to hold a workshop and prepare a hearing notice and staff report for September 2004 board meeting. Staff agreed to hold a workshop in August and prepare the staff proposal for consideration at the November 18, 2004 board meeting. The hearing notice and staff report for the ORVR extension proposal were issued October 1, 2004.