

California Air Resources Board

# **Proposed Amendments to Vapor Recovery Certification Procedures**

## **Staff Report: Initial Statement of Reasons**

***Date of Release: March 21, 2023***

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the California Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

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## ACRONYMS

Air Districts	Air Pollution Control Districts and Air Quality Management Districts
AST	aboveground storage tank
ATCM	Air Toxic Control Measure
Board	California Air Resources Board
CAPCOA	California Air Pollution Control Officer's Association
CARB	California Air Resources Board
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CP	certification procedure
EA	environmental analysis
ECO nozzle	enhanced conventional nozzle
EVR	enhanced vapor recovery
GDF	gasoline dispensing facility
ISD	in-station diagnostic systems
ISOR	Initial Statement of Reasons (this report)
NAAQS	National Ambient Air Quality Standards
ROG	reactive organic gas
TP	test procedure
TPD	tons per day
U.S. EPA	United States Environmental Protection Agency
UST	underground storage tank
VOC	volatile organic compounds

## Executive Summary

State law requires the California Air Resources Board (CARB) to develop performance standards and adopt procedures to certify (certification procedures) vapor recovery systems for use with cargo tanks and at gasoline dispensing facilities. State law also requires CARB to adopt test procedures to determine compliance with performance standards established in the certification procedures. CARB's Vapor Recovery Program is comprised of 7 certification procedures and 38 test procedures.

Test procedures other than those specified in CARB certification procedures (alternative test procedures) can be used only if approval is obtained from CARB's Executive Officer.

Certification and test procedures are incorporated by reference into regulations and can only be amended through a formal rulemaking process.

To improve clarity, CARB staff is seeking to remove existing ambiguous language that does not provide clear instruction for CARB's Executive Officer to approve or reject alternative test procedures as described in the following sections of four certification procedures:

- Section 14.4 of CP-201: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks;
- Section 5.4 of CP-204: Certification Procedure for Vapor Recovery Systems of Cargo Tanks;
- Section 15.4 of CP-206: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks; and
- Section 8.4. of CP-207: Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities.

In addition, CARB staff is seeking to make numerous non-substantive edits to document formatting (use of upper case and bold text emphasis, new font, font size, and the use of "styles") to make the regulatory documents easier to understand for everyone and more accessible to people with certain visual or reading disabilities.

Recommendation: Staff recommends adoption of amendments to the California Code of Regulations (Appendix A) that incorporate by reference the amendments to the certification procedures (Appendices B through H).

# I. Introduction and Background

State law (Health and Safety Code § 41954 et seq.) requires the California Air Resources Board (CARB or Board) to develop performance standards and adopt procedures to certify (certification procedures) vapor recovery systems for use with cargo tanks and at gasoline dispensing facilities (GDF). State law also requires CARB to adopt test procedures to determine compliance with performance standards established in the certification procedures. Currently there are 7 certification procedures and 38 test procedures within the vapor recovery program. The certification procedures contain the performance standards and specifications that must be met by equipment manufacturers to obtain CARB certification in the form of an Executive Order. CARB adopted the first certification and test procedures for vapor recovery systems installed at GDFs on December 9, 1975. Since then, CARB has periodically updated the certification procedures to reflect improvements in vapor recovery technologies, to achieve additional emission reductions by modifying requirements for existing installations, to improve cost-effectiveness, and to improve clarity for better regulatory certainty and enforceability. Because certification procedures are incorporated by reference in the California Code of Regulations, CARB can only amend them through a formal rulemaking process. Test procedures other than those specified in CARB certification procedures (alternative test procedures) can be used only if approval is obtained from CARB's Executive Officer.

CARB Vapor Recovery Program staff are now proposing regulatory amendments to the certification procedures that would:

- Remove imprecise language that does not provide clear instruction for CARB's Executive Officer to approve or reject alternative test procedures as described in the following sections of four certification procedures:
  - Section 14.4 of CP-201 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks (CP-201);
  - Section 5.4 of CP-204 – Certification Procedure for Vapor Recovery Systems of Cargo Tanks (CP-204);
  - Section 15.4 of CP-206 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks (CP-206); and
  - Section 8.4. of CP-207 – Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities (CP-207).
- Correct various small grammatical errors and make other non-substantive and formatting edits to make the text of the certification procedures easier to understand for everyone, and more accessible for people with certain visual or reading disabilities.

The first set of proposed amendments are intended to remove ambiguity caused by imprecise language. The proposed amendments to CP-201, CP-204, CP-206, and CP-207 would remove current language found within the section in each certification procedure that addresses alternative test procedures. The section for alternative test procedures lays out how test procedures other than those specified in the certification procedure are approved. Test procedures other than those specified in the CARB certification procedures can be used only if prior written approval is obtained from CARB's Executive Officer. CARB staff has determined that removing specific language from each section would remove imprecise language that does not provide the clear instruction to CARB's Executive Officer in approving or rejecting alternative test procedures, which could create regulatory uncertainty.

The second set of proposed amendments would update the formatting of CP-201, CP-204, CP-206, and CP-207 documents so they are easier for the public to read and understand, and more accessible for everyone including people with visual impairments and assistive technology users. In addition, the proposed amendments include administrative changes to correct minor errors in text and grammar. As with the global formatting changes for improved accessibility, meaning and intent would not be changed by the proposed corrections.

The proposed amendments are administrative in nature, refining the certification procedures without impacting the regulated community or gasoline vapor emissions. The proposed amendments would not change any of the current performance standards, implementation schedules, or test procedures. Therefore, CARB staff has determined that the proposed amendments do not impose any costs or have any direct or indirect economic impact on businesses, individuals, or government agencies located in California.

This chapter provides an overview of the California Vapor Recovery Program and its history, describes CARB's legal authority to amend the vapor recovery regulations, and describes the proposed regulatory amendments and their applicability. The remainder of this staff report provides the rationale for the proposed regulatory amendments, summarizes the regulatory development process, and describes the potential environmental and economic impacts of the proposed amendments and their alternative.

## **A. Vapor Recovery Program Overview**

Approximately 15 billion gallons of gasoline are consumed annually in California. As liquid gasoline moves through the marketing network it is transferred from the refinery via pipeline to bulk terminal storage tanks, to cargo tanks that transport gasoline to the GDF storage tanks, at which gasoline is transferred into to the motor vehicle fuel tank. With each transfer there is a potential to emit gasoline vapors. The reactive organic gases (ROG) contained in gasoline vapors contribute to air pollution. In the presence of sunlight, ROGs combine with the oxides of nitrogen, another air pollutant that comes primarily from fuel combustion, to form ground level ozone. Ozone is a strong irritant that damages human lung tissue and plant leaves and is a criteria air

pollutant that leads to smog formation. Gasoline vapors also contain benzene, which is a toxic air contaminant.

In California, gasoline vapor emissions are controlled during each step of the transfer process described above. Cargo tanks are tested annually to ensure that they do not exceed an allowable leak rate. At the GDFs, gasoline transfers and vapor recovery occur in two ways. Phase I vapor recovery collects vapors during bulk fuel distribution, when a cargo tank fills the service station storage tank. The gasoline vapor displaced from filling these storage tanks is transferred to the cargo tank trucks. The gasoline vapor inside the cargo tank truck is recovered at the terminal when a new load of gasoline fills the truck. Phase II vapor recovery collects vapors during vehicle refueling by the gasoline consumer. The vapor recovery collection efficiency during both of these transfers is determined through certification of vapor recovery systems.

CARB and the air pollution control/air quality management districts (Air Districts) share responsibility for implementation of California's vapor recovery program. CARB staff certifies vapor recovery systems and develops test procedures to determine in-use compliance. State law in the Health and Safety Code section 41954 requires that throughout California only CARB-certified systems be offered for sale, sold, and installed. Air district staff inspects and tests the certified vapor recovery systems upon installation during the permit process and conducts regular inspections to check that systems are operating as certified. Per State law, Air Districts are required to adopt regulations that are equal to or more stringent than CARB's Airborne Toxic Control Method (ATCM) and are responsible for determining acceptable health risk for benzene at GDFs. All Air Districts adopted such rules by the early 1990s.

GDFs include retail service stations as well as nonretail fueling facilities owned by businesses, government agencies, and non-profit organizations. The vapor recovery requirements affect a variety of stakeholders. These include the vapor recovery equipment manufacturers, cargo tank operators, GDF owners and gasoline marketers who purchase this equipment, contractors who install, maintain, and test vapor recovery systems, Air Districts that enforce vapor recovery rules, and the public at large who refuel vehicles or live near a GDF. California's vapor recovery and certification requirements also have implications for many other states and countries that have rules requiring or allowing the use of CARB-certified systems at their GDFs.

The Vapor Recovery Program has been very successful at reducing emissions over the last 40 years. Vapor recovery rules, as they have been added and amended have reduced emissions by more than 90 percent even as gasoline consumption was increasing. For example, the implementation of vapor recovery requirements for USTs reduced emissions from approximately 260.4 tons per day (TPD) in 1975, to 19.5 TPD in 2010. The entire vapor recovery program controls approximately 358 TPD of emissions at GDFs [CARB, 2016].

## B. Vapor Recovery Rulemaking History

CARB first adopted vapor recovery regulations for gasoline storage tanks at GDFs in 1975 to prevent the formation of ozone. In 1985, the Board identified benzene, a constituent of gasoline, as a toxic air contaminant. This resulted in the Board adopting the Benzene ATCM, which requires the installation of Phase I and II vapor recovery systems for retail GDFs to reduce public exposure to benzene regardless of ozone attainment status [CARB, 1988].

Since then, the regulations have gone through multiple amendments, including newly adopted certification and test procedures, to further improve statewide implementation of the Vapor Recovery Program.

In an important step for increased emission reductions, CARB approved Enhanced Vapor Recovery (EVR) regulations for GDFs equipped with underground storage tanks (USTs) in March 2000 and for GDFs equipped with aboveground storage tanks (ASTs) in June 2007. CARB enacted the EVR regulations to achieve additional emission reductions and to increase equipment reliability.

CARB has made continual improvements to the EVR regulations to refine requirements and improve practicality and efficiency of the program. EVR regulation amendments completed between 2001 and 2020 improved test procedures for gasoline vapor recovery system certifications, modified applicability requirements for GDFs, modified performance standards and implementation dates to reflect evolving technology, clarified dimension requirements for nozzles and vehicle fill pipes, and improved cost effectiveness for system upgrade requirements.

In April 2013, CARB adopted new performance standards and specifications for enhanced conventional (ECO) nozzles and low permeation conventional hoses. These new standards and specifications are applicable to non-retail GDFs where Phase II vapor recovery systems are not required by Air District regulations because such GDFs refuel predominantly vehicles equipped with on board refueling vapor recovery (ORVR) systems. Although ECO nozzles have no vapor recovery pathway, they share many similarities with EVR nozzles, such as spout dimensions, insertion interlocks, and features to control liquid releases such as spillage.

In December 2020, CARB approved the most recent amendments to the vapor recovery certification and test procedures applicable to GDFs. This suite of regulatory amendments was necessary to preserve better than anticipated emission reductions achieved by EVR nozzle performance, provide flexibility for the installation of remote fill Phase I configurations, provide GDF operator relief from costly and ineffective diagnostic alarms, and to provide better regulatory certainty and enforceability with no increase in existing gasoline vapor emissions. The amendments included eliminating certain in-station diagnostic (ISD) systems overpressure alarm criteria, allowing modern options for ISD communication ports, making nozzle spillage standards more stringent, revising Phase I drop tube compliance test procedures, and



a wide range of administrative changes to clarify and improve certification and test procedures.

The first regulations establishing performance standards for controlling emission from cargo tanks used to transfer gasoline from loading terminals and bulk plants to GDFs were adopted by CARB in 1977. The initial regulations establish procedures for certifying vapor recovery equipment installed on cargo tanks. The cargo tank regulations have been amended several times since then, refining the certification program, testing procedures, and to reconcile CARB requirements with industry practices. Cargo tanks are tested annually by independent testing contractors and the test results are submitted to CARB for review. Gasoline transfer cannot occur into cargo tanks without proof that the cargo tanks are certified by CARB. The cargo tank certification procedure was last amended on December 3, 2019, to improve the fee structure associated with cargo tank program costs.

CARB staff is now recommending additional administrative amendments that will further refine the Vapor Recovery Program without impacting the regulated community or gasoline vapor emissions.

## **C. Legal Authority**

### **1. State Law**

The proposed amendments are a revision of CARB's vapor recovery regulations to remove ambiguous language within the alternative test procedure section of four certification procedures. The goal of this amendment is to provide regulatory certainty and consistency amongst all four documents.

State law directs CARB to adopt procedures and performance standards for controlling gasoline vapor emissions from gasoline marketing operations, including transfer and storage operations, to achieve and maintain ambient air quality standards. This section also authorizes CARB, in cooperation with Air Districts, to certify gasoline vapor recovery systems that meet the performance standards and specifications. Health and Safety Code section 39607, subdivision (d) requires CARB to adopt test procedures to determine compliance with CARB's and Air Districts' non-vehicular standards. Health and Safety Code section 41954 also requires Air Districts to use CARB test procedures for determining compliance with performance standards and specifications established by CARB.

Section 41962 of the Health and Safety Code requires CARB to adopt procedures and performance standards for cargo tanks that are used to transport gasoline. The law requires that the standards be reasonable and necessary to maintain applicable ambient air quality standards. The law also requires CARB to establish requirements that each cargo tank be tested and certified annually to ensure that the vapor recovery system is operating properly.

To comply with State law, the Board adopted the certification and test procedures for GDFs with USTs and ASTs, bulk plants, terminals, and cargo tanks found in California

Code of Regulations, sections 94010 to 94017. The regulations reference procedures for certifying gasoline vapor recovery systems and test procedures for verifying compliance with performance standards and specifications. These certification and test procedures serve to control gasoline vapor emissions from gasoline marketing operations, including transport and storage.

## **2. Federal Requirements**

There are no federal regulations that certify the use of gasoline vapor recovery systems for GDFs; however, the U.S. Environmental Protection Agency (U.S. EPA) has promulgated federal regulations to control the release of gasoline vapors at certain GDFs in certain areas outside of California. Accordingly, some GDFs are required to install and maintain vapor recovery systems. The intent of the federal regulations is to reduce emissions associated with the storage and transfer of gasoline during marketing operations, which is consistent with the intent of California's EVR program. Although not explicitly required by federal regulations, some other states and countries require the installation of vapor recovery systems that are certified by CARB. Thus, changes to CARB EVR certification requirements may have a national and international effect on the reduction of gasoline vapors.

For cargo tanks, federal standards comparable to California's vapor recovery standards can be found in the Code of Federal Regulations, Title 40, Part 63, Subpart R - 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 standards are more stringent than comparable federal standards.

## **D. Applicability of Proposed Regulatory Amendments**

The proposed regulatory amendments consist of amendments to vapor recovery certification procedures applicable to vapor recovery equipment used on cargo tanks and at GDFs in the State of California. California's gasoline Vapor Recovery Program is of interest to a variety of stakeholders including GDF owners, vapor recovery equipment manufacturers, installers, testers, cargo tank operators, maintenance contractors, Air Districts, and entities generally concerned with air quality and its impact on public health.

The proposal consists of amendments to California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Sections 94011, 94014, 94016 and 94017. These amendments would be incorporated in the following documents (Appendixes B through E), which are referenced in aforementioned Title 17 sections, respectively:

- CARB Certification Procedure 201, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities using Underground Storage Tanks (CP-201),

- CARB Certification Procedure 204, Certification Procedure for Vapor Recovery Systems of Cargo Tanks (CP-204)
- CARB Certification Procedure 206, Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities using Aboveground Storage Tanks (CP-206), and
- CARB Certification Procedure 207, Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities (CP-207).

## 1. Substantive Revision to the Certification Procedures

The proposed substantive amendments to Section 14.4 of CP-201, Section 5.4 of CP-204, Section 15.4 of CP-206, and Section 8.4 of CP-207 would remove current language found within the section in each certification procedure that addresses alternative test procedures. The section for alternative test procedures lays out how test procedures other than those specified in the certification procedure are approved. Test procedures other than those specified in the CARB certification procedures can be used only if prior written approval is obtained from CARB's Executive Officer. Current regulations allow the Executive Officer to either:

1. Follow criteria in U.S. EPA Reference Method 301<sup>1</sup> to establish an equivalent test procedure; or
2. For situations where U.S. EPA Reference Method 301 is not directly applicable, to exercise discretion to "establish equivalence based on the concepts of comparison with the established method and statistical analysis of bias and variance."

The purpose of the alternative test procedures is to allow for flexibility in certification testing in situations where the approved test procedures are deemed inadequate. Option two grants the Executive Officer discretion to establish an equivalent test procedure without prescribing a process for acceptance or rejection. CARB staff has determined that the language in option two is ambiguous, creating the potential for uncertainty when CARB's Executive Officer approves alternative test procedure as the imprecise language does not provide clear instruction in approving alternative test procedures.

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<sup>1</sup> U.S. EPA Reference Method 301 – Field Validation of Pollutant Measurement Methods from Various Waste Media [Title 40, CFR, Part 63, Appendix A] provides a set of procedures for determining and documenting the quality (i.e., systemic error (bias) and random error (precision)) of the measured concentrations from an effected source and is applicable to various waste media. The CARB vapor recovery program utilizes U.S. EPA Method 301 in determining the equivalence of alternative test procedures to the test procedures listed in the certification procedures.

Additionally, over the last two decades of vapor recovery program implementation, there have been only three<sup>2</sup> instances where CARB's Executive Officers have used option one. There have not been any instances where CARB's Executive Officers have used their discretion allowed by option two to establish an alternative test procedure. As option two has never been utilized for any of the vapor recovery certification procedures, and given the ambiguity it introduces, CARB staff finds its continued inclusion to be unnecessary for the implementation of the vapor recovery regulations.

The proposed amendments will remove this language from the appropriate section in each of the four certification procedures.

## **2. Non-substantive Revisions to the Certification Procedures**

The proposed non-substantive amendments to revise the CP-201, CP-204, CP-206, and CP-207 document formatting so they are easier for the public to read and understand, and accessible to everyone, including people with visual impairments and assistive technology users. These amendments include global changes throughout the four certification procedures to change the font to approved font styles and sizes, implement the use of Microsoft Word "styles" to provide consistent paragraph indentation and spacing, remove excess text emphasis (i.e., no not use upper case, and use only underline, bold, or italics, rather than multiple forms at once), remove extra spaces after periods, and remove extra hard returns between paragraphs. These global edits would not change text nor its meaning. In addition, the proposed amendments include administrative changes to correct minor errors in text and grammar. As with the global formatting changes, meaning and intent will not be changed by these amendments.

## **II. The Problem that the Proposal is Intended to Address**

This chapter provides a description of the problems that the proposed amendments to the certification procedures for vapor recovery systems at GDFs and on cargo tanks are intended to address, along with descriptions of how the proposed amendments resolve the problems. Chapter III provides detailed descriptions of the underlying purpose and rationale for each specific proposed amendment and Appendices B through E provide the full text of the proposed regulatory amendments.

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<sup>2</sup> The three instances of CARB's Executive Officer approving an alternative test procedure include the Triangle Tri Tester gaining approval as an alternative for [Exhibit 5 Vapor-to-Liquid Volume Ratio of CARB Executive Order VR-202](#), [Exhibit 9/10 ISD Vapor Flow Meter Operability Test of CARB Executive Order VR-202](#) and for [Test Procedure TP-201.5 Air-to-Liquid Volume](#).

## **A. Executive Officer Authority to Establish Alternative Test Procedures**

As described in prior sections of this staff report, State law requires CARB to develop performance standards and adopt procedures to certify (certification procedures) vapor recovery systems for use with cargo tanks and at GDFs. State law also requires CARB to adopt test procedures to determine compliance with performance standards established in the certification procedures. CARB's vapor recovery program is comprised of 7 certification procedures and 38 test procedures.

Test procedures other than those specified in CARB certification procedures (alternative test procedures) can be used only if approval is obtained from CARB's Executive Officer.

CARB certification procedures CP-201, CP-204, CP-206, and CP-207 [CARB, 2021a; CARB, 2019c; CARB, 2021b; and CARB, 2021c] contain similar language in sections related to alternative test procedures that allows for the Executive Officer to establish alternative test procedures beyond what is stated in the certification procedures.

As currently written, CARB's Executive Officer can exercise one of two options when evaluating test procedures other than those specified in the certification procedure:

1. Follow criteria in U.S. EPA Reference Method 301 to establish an equivalent test procedure; or
2. For situations where U.S. EPA Reference Method 301 is not directly applicable, to exercise discretion to "establish equivalence based on the concepts of comparison with the established methods and statistical analysis of bias and variance."

These two options are described in Section 14.4 of CP-201, Section 5.4 of CP-204, Section 15.4 of CP-206, and Section 8.4 of CP-207.

The purpose of the alternative test procedure sections in the certification procedures is to allow for flexibility in certification testing in situations where the approved test procedures are deemed inadequate. CARB adopted the first option in 2001 and the second option in 2006. Option two grants the Executive Officer discretion to establish an equivalent test procedure outside of the certification procedure and U.S. EPA Reference Method 301.

### **1. The Problem**

CARB is amending the regulations to ensure they meet state and federal requirements so that emissions continue to be reduced as expected. CARB staff has determined that the language in option two is ambiguous, creating the potential for misinterpretation. The imprecise language of option two does not provide clear instruction or guidance for the Executive Officer to approve or reject alternative test procedures outside of U.S. EPA Reference Method 301. This could create regulatory

uncertainty and the potential for uneven application of the section. Option two could potentially be interpreted to allow the Executive Officer to approve an alternative test procedure that could undermine the stringency of the performance standards. Removing option two would better maintain uniformity amongst the certification procedures further improving regulatory certainty.

Furthermore, over the last two decades, there have only been three instances where CARB's Executive Officers have established equivalent test procedures based on the criteria provided by the widely accepted U.S. EPA Reference Method 301, as allowed by option one. There have not been any instances where CARB's Executive Officers have used their discretion to establish an equivalent test procedure based on methods other than those provided by U.S. EPA Reference Method 301. In addition, CARB staff does not anticipate any future need to utilize option two because of the maturity of the vapor recovery regulations and equipment market. There is now a robust number and variety of test procedures (38 total).

The number of first-time certifications has decreased during the last two decades, with 77 percent taking place from 2001 through 2011, and 23 percent taking place from 2012 through 2022. For amendment certifications of systems or components that have a design or material change, peaking with nearly 50 percent of amendments occurring from 2008 through 2015, and then dropping to 37 percent from 2016 through 2022. Renewal certifications, where there is no design or material changes, and the certifications are solely renewed or extended for an additional time period as they are, 74 percent occurred from 2012 through 2022. This trend of decreasing new certifications and amendments, and increasing renewals is expected to continue [CARB, 2022a]. Based on the number of new and modified certification applications submitted during the past 10 years and on informal discussions with manufacturers, CARB staff predicts that manufacturers will submit only 13 new and modified GDF vapor recovery systems and components for certification testing during the next 10 years [CARB, 2020a].

As the Executive Officer discretion allowed by option two has never been utilized for any of the vapor recovery certification procedures and is not expected to be needed in the future, and given the ambiguity it introduces, CARB staff finds that its continued inclusion to be unnecessary for the implementation of the vapor recovery regulations and that there is no need to provide any replacement option.

## **2. The Proposed Solution**

CARB staff proposes to amend the corresponding sections of the four certification procedures to remove the following language:

*"For situations where Method 301 is not directly applicable, the Executive Officer shall establish equivalence based on concepts of comparison with the established method and statistical analysis of bias and variance."*

As stated in section II.A.1 of this report, CARB staff has determined that the above language is ambiguous and therefore does not provide CARB's Executive Officer clear

instruction in approving or rejecting alternative test procedures beyond those provided by in the certification procedures and determined by following equivalence framework provided by U.S. EPA Method 301. This creates the potential for uncertainty when CARB's Executive Officer approves alternative test procedures, which could create regulatory uncertainty and the potential for uneven application of the section. Removing option two would better maintain uniformity amongst the certification procedures in the future, further improving regulatory certainty.

CARB staff investigated and determined that option two is unnecessary, as there have not been any instances where CARB's Executive Officers have used the discretion allowed by option two to establish an equivalent test procedure based on methods other than those provided by U.S. EPA Reference Method 301. The proposal to amend the four certification procedures to remove the imprecise, unnecessary option two will increase regulatory certainty as well as maintain uniformity among the sections related to alternative test procedures between the certification procedures.

## **B. Administrative and Formatting Amendments**

Within CP-201, CP-204, CP-206, and CP-207, there are several small grammatical errors that were inadvertently introduced during prior amendments to the certification procedures. Additionally, the formatting of the four certification procedures has not been updated to ensure that these public documents are easy to read and understand, and accessible to everyone, including people with visual impairments and assistive technology users.

### **1. The Problem**

The four certification procedures have been amended multiple times over the years that the vapor recovery program has been in place. During these amendments, small grammatical errors have inadvertently been introduced. These inadvertent errors are explained in detail in Chapter III, but include missing hyphens, commas, periods, incorrect page numbering in the Table of Contents, incorrect agency header graphics, and more. These errors are minor and do not change the meaning or intent, but could lead to confusion for readers, and CARB wishes to improve the clarity of these documents.<sup>3</sup>

Additionally, the formatting of the four certification procedures is not up to date to ensure that the documents are easy to read and understand, and accessible to people with visual impairments and assistive technology users. Improving document accessibility includes the use approved font styles and sizes, the use of Microsoft Word "styles" to provide consistent paragraph indentation and spacing, maintaining minimal text emphasis (e.g., do not use upper case, and use only underline, bold, or italics,

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<sup>3</sup> California Administrative Law (Title 1, CCR, § 16(a)(4)) requires that California regulations be free of grammatical errors.

rather than multiple forms at once), one space after periods, and one hard return between paragraphs. The current formatting of the four certification procedures does not follow these requirements and could increase the difficulty of members of the public to read and access the documents, leading to confusion and the opportunity for misunderstanding.

## **2. The Proposed Solution**

CARB staff proposes to amend the four certification procedures to correct the grammatical errors, which are detailed further in Chapter III below. CARB staff's proposal does not introduce any new requirements, nor does change text meaning or intent, but does increase clarity for readers, reducing potential confusion.

Additionally, CARB staff proposes to amend the four certification procedures to update document formatting to improve accessibility for documents that are made available to the public online. These documents must be accessible to everyone, including people with visual impairments and assistive technology users. The proposed amendments include changing the font to approved font styles and sizes, updating the documents to implement the use of Microsoft Word "styles" to provide consistent paragraph indentation and spacing, removing excess spaces after periods, removing extra hard returns between paragraphs, and removing excess text emphasis (i.e., not using upper case, and only using bold, underline, or italics, rather than multiple forms at once), which are explained in detail in Chapter III below. These proposed global edits would promote consistency among the certification procedures and improve access for anyone using text reading programs.

As with the minor grammatical corrections, the proposed formatting changes do not change meaning and intent of text. The proposed amendments constitute non-substantive changes to the vapor recovery regulations because they would not materially alter the requirements or conditions of the certification and test procedures.

## **III. The Specific Purpose and Rationale of Each Adoption, Amendment, or Repeal**

This chapter provides the specific purpose of each proposed amendment and the rationale for CARB staff's determination of why the proposed amendments are reasonably necessary to carry out the purpose of the provisions of the law they are implementing and to address the problems described in Chapter II. Appendices A through E provide the full text of the proposed regulatory amendments.

### **A. California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8, Article 1**

This section provides the summary and rationale for proposed amendments to sections 94011, 94014, 94016, and 94017, which incorporate by reference CARB's



vapor recovery certification procedures. Appendix A provides the full proposed regulatory language of these sections.

## **1. § 94011. Certification of Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks**

Summary and Purpose of § 94011 Amendments. Section 94011 incorporates by reference CARB's CP-201, *Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks*. The proposed amendments would add "California" to the beginning of "Air Resources Board," for consistency with recent CARB document style practices, and change the last amended date for CP-201 to the adoption date of proposed amendment.

Rationale for § 94011 Amendments. The change of the agency title to "California Air Resources Board" reflects recent change to, and preferred use of, the agency's full name in public documents for consistency and clarity. The change of the date is necessary to incorporate by reference the amended section 14.4 of CP-201 that pertains to alternative test procedures and various non-substantive administrative changes.

## **2. § 94014. Certification of Vapor Recovery Systems for Cargo Tanks**

Summary and Purpose of § 94014 Amendments. Section 94014 incorporates by reference CARB's CP-204, *Certification Procedure for Vapor Recovery Systems of Cargo Tanks*. The proposed amendments would add "California" to the beginning of "Air Resources Board," for consistency with recent CARB document style practices, and change the last amended date for CP-204 to the proposed amendment date (likely 2023).

Rationale for § 94014 Amendments. The change of the agency title to "California Air Resources Board" reflects recent change to, and preferred use of, the agency's full name in public documents for consistency and clarity. The change to the date is necessary to incorporate by reference the amended section 5.4 of CP-204 that pertains to alternative test procedures and various non-substantive administrative changes.

## **3. § 94016. Certification of Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks**

Summary and Purpose of § 94016 Amendments. Section 94016 incorporates by reference CARB's CP-206, *Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks*. The proposed amendments would add "California" to the beginning of "Air Resources Board," for consistency with recent CARB document style practices, and change the last amended date for CP-206 to the adoption date of the proposed amendment

Rationale for § 94016 Amendments. The change of the agency title to “California Air Resources Board” reflects recent change to, and preferred use of, the agency’s full name in public documents for consistency and clarity. The change to the date is necessary to incorporate by reference the amended section 15.4 of CP-206 that pertains to alternative test procedures and various non-substantive administrative changes.

#### **4. § 94017. Certification of Enhanced Conventional Nozzles and Low Permeations Hoses at Gasoline Dispensing Facilities**

Summary and Purpose of § 94017 Amendments. Section 94017 incorporates by reference CARB’s CP-207, *Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities*. The proposed amendments would add “California” to the beginning of “Air Resources Board,” for consistency with recent CARB document style practices, and change the last amended date for CP-207 to the proposed amendment date (likely 2023).

Rationale for § 94017 Amendments. The change of the agency title to “California Air Resources Board” reflects recent change to, and preferred use of, the agency’s full name in public documents for consistency and clarity. The change to the date is necessary to incorporate by reference the amended section 8.4 of CP-207 that pertains to alternative test procedures and various non-substantive administrative changes.

### **B. CARB Certification Procedure CP-201- Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks**

This section provides a summary, purpose, and rationale for each proposed amendment to CP-201. Appendix B of this Staff Report provides the full proposed regulatory language of CP-201, shown with changes clearly indicated (e.g., in strikeout and underline format).

#### **1. Global Amendments throughout CP-201**

The following proposed global changes provide updated and clarifying text, as described in detail in Sections I.D.2 and II.B of this staff report, that does not alter the intent or meaning of current vapor recovery requirements in CP-201.

##### *Capitalization Change*

Summary and Purpose. The proposed amendments change the formatting of text in all capital letters to mixed case to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. In section header titles (Sections 1 through 20), in the tables of contents, and throughout the

entire document, text that utilized all capital letters for text emphasis would be replaced with bold, mix case text. Neither text intent, nor its meaning, would be changed.

Rationale. Mixed case words and sentences are easier to read and consistent with current accessibility guidelines. Bold text in section, subsection, and table titles are necessary for text emphasis for ease of reading and navigating the document.

#### *Styles, Text Font, and Spacing*

Summary and Purpose. The proposed amendments change the formatting of the document to ensure that proper styles formatting, Avenir LT Std 55 Roman font, and proper spacing between sentences and paragraphs are utilized throughout the document to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. Neither text intent, nor its meaning, would be changed.

Rationale. Utilizing styles formatting, Avenir LT Std 55 Roman font, a single space between sentences, and one hard return between paragraphs ensures that documents made available to the public are easier to read and consistent with current accessibility guidelines.

#### *Footer*

Summary and Purpose. The proposed amendments edit the footer throughout the entirety of CP-201 to replace the date, "July 12, 2021," with the next amended date of the certification procedure "[Insert Amended Date]". This change updates the date to reflect the adoption date of the latest amendments.

Rationale. The proposed amendment updates the amended date of the certification procedure, improving accuracy.

## **2. Tables of Contents and Throughout the Entire Certification Procedure**

#### *Section and Table Titles in the Table of Contents and List of Tables, and Throughout Entire Certification Procedure*

Summary and Purpose for Section Titles Amendment. The section header titles (Sections 1 through 20) and table titles (Tables 2-1 through 17-1) listed in the Table of Contents and List of Tables and their corresponding locations throughout the entire certification procedure are intended to help stakeholders navigate the document. Staff proposes a non-substantive administrative change that would remove the "all caps" text and replace it with "mixed case" text, without any modification to the actual language.

Rationale for the Section Titles Amendment. The proposed changes to the section and table titles in the Table of Contents and List of Tables, and throughout the entire certification procedure are non-substantive and administrative and are intended to

improve readability and understanding of public documents, including accessibly for people with visual impairments and assistive technology users. The proposed amendments do not modify existing text intent or meaning.

*Page Numbers in the Table of Contents, List of Tables, and List of Figures*

Summary and Purpose for Page Numbers Amendment. The page numbers listed in the Table of Contents, List of Tables, and List of Figures are intended to help stakeholders find desired content and navigate the document. Staff proposes a non-substantive administrative change that would update the page numbers listed to indicate the actual page number where the content can be found.

Rationale for the Page Numbers Amendment. The proposed changes to page numbers in the Table of Contents, List of Tables, and List of Figures are non-substantive and administrative and are intended to aid the public in finding desired content within the document. The proposed amendments do not modify existing text intent or meaning.

### **3. § 3. Phase I Performance Standards and Specifications**

*§ 3.2 Static Pressure Performance, Equation 3-1*

Summary and Purpose for the Amendment. Section 3 describes the performance standards and specifications for Phase I vapor recovery. Section 3.2 focuses on static pressure performance. Equation 3-1 is provided with brackets around the title. Staff proposes a non-substantive change that would remove the brackets from the title as they are unnecessary for reading clarity.

Rationale for the Amendment. The proposed change to remove the brackets from “Equation 3-1” is non-substantive and administrative and intended to improve the clarity of the title, to prevent confusion for readers. This change is necessary to correct nonstandard grammar in the previously adopted text.

### **4. § 4. Phase II Performance Standards and Specifications Applicable to All Phase II Vapor Recovery Systems**

*§ 4.2 Static Pressure Performance, Equation 4-1 and Equation 4-2*

Summary and Purpose for the Amendment. Section 4 describes the performance standards and specifications for Phase II vapor recovery. Section 4.2 focuses on static pressure performance. Equations 4-1 and 4-2 are provided with brackets around the titles. Staff proposes a non-substantive change that would remove the brackets from the titles as they are unnecessary for reading clarity.

Rationale for the Amendment. The proposed change to remove the brackets from “Equation 4-1” and “Equation 4-2” is non-substantive and administrative and intended to improve the clarity of the titles, to prevent confusion for readers.

#### *§ 4.6 Underground Storage Tank Pressure Criteria, § 4.6.5*

Summary and Purpose for the Amendment. Section 4 describes the performance standards and specifications for Phase II vapor recovery. Section 4.6 focuses on underground storage tank pressure criteria. Section 4.6.5 discusses how the daily average pressures are calculated. A hyphen was inadvertently omitted from “30 day”. Staff proposes to add the hyphen so that it reads as “30-day”, which is a non-substantive change for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to add a hyphen to “30-day” is non-substantive and administrative and intended to improve the clarity of the text to prevent confusion for readers. California Administrative Law (Title 1, CCR §16(a)(4)) requires that California regulations be free of grammatical errors, providing better regulatory certainty.

### **5. § 8. Phase II Performance Standards and Specifications Applicable to Systems Utilizing a Destructive or Non-Destructive Processor**

#### *§ 8.4 Typical Load on the Processor*

Summary and Purpose for the Amendment. Section 8 describes the performance standards and specifications for Phase II systems utilizing either a destructive or non-destructive processor. Section 8.4 focuses on the typical load on the processor. In the sentence is an unnecessary comma after the word “process” that staff proposes to delete for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to delete the comma is non-substantive and administrative and intended to improve the clarity and grammatical correctness to prevent confusion for readers. This change is necessary to correct nonstandard grammar in the previously adopted text.

#### *§ 8.5 Processor Operation Time*

Summary and Purpose for the Amendment. Section 8 describes the performance standards and specifications for Phase II systems utilizing either a destructive or non-destructive processor. Section 8.5 focuses on typical processor operation time. In the sentence there is an unnecessary comma after the word “process” that staff proposes to delete for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to delete the comma is non-substantive and administrative and intended to improve the clarity and grammatical correctness to prevent confusion for readers. This change is necessary to correct nonstandard grammar in the previously adopted text.

## 6. § 9. In-Station Diagnostic Systems

### *§ 9.2.4 (c) Ullage Pressure Vapor Containment Monitoring, Malfunction Criteria – Pressure Integrity*

Summary and Purpose for the Amendment. Section 9 describes the requirements for ISD systems. Section 9.2 focuses on monitoring requirements. Section 9.2.4 (c) provides the ullage pressure vapor containment monitoring malfunction criteria specific to pressure integrity. In the last sentence there is an unnecessary comma after the word “dispensing” that staff proposes to delete for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to delete the comma is non-substantive and administrative and intended to improve the clarity and grammatical correctness to prevent confusion for the reader. This change is necessary to correct nonstandard grammar in the previously adopted text.

### *§ 9.2.5 (b) Vapor Processing Monitoring, Malfunction Criteria*

Summary and Purpose for the Amendment. Section 9 describes the requirements for ISD systems. Section 9.2 focuses on monitoring requirements. Section 9.2.5 (b) provides the malfunction criteria for vapor processing monitoring. In the last sentence there is an unnecessary comma after the word “dispensing” that staff proposes to delete for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to delete the comma is non-substantive and administrative and intended to improve the clarity and grammatical correctness to prevent confusion for the reader. This change is necessary to correct nonstandard grammar in the previously adopted text.

### *§ 9.4 Tampering Protection*

Summary and Purpose for the Amendment. Section 9 describes the requirements for ISD systems. Section 9.4 focuses on protecting against tampering. In the second sentence is an unnecessary space between the two words “can not.” Common spelling and grammar convention is to use the word “cannot.” Staff proposes to delete the space for correct spelling and grammar.

Rationale for the Amendment. The proposed change to replace “can not” with “cannot” is non-substantive and administrative and intended to improve clarity, grammatical correctness to prevent confusion for the reader. This change is necessary to correct nonstandard grammar in the previously adopted text.

### *§ 9.7 Challenge Mode Testing*

Summary and Purpose for the Amendment. Section 9 describes the requirements for ISD systems. Section 9.7 focuses on challenge mode testing to verify the ISD system is functioning correctly. In the second sentence is an unnecessary comma after the word “dispensing” that staff proposes to delete for reading clarity and accuracy.

Rationale for the Amendment. The proposed change to delete the comma is non-substantive and administrative and intended to improve the clarity and grammatical correctness to prevent confusion for the reader. This change is necessary to correct nonstandard grammar in the previously adopted text.

## **7. § 14. Alternative Test Procedures and Inspection Procedures**

### *§ 14.4 Testing of Alternative Test Procedures*

Summary and Purpose for the Amendment. Section 14 describes the process by which test procedures other than those specified in this certification procedure, CP-201, are approved and that they shall be used only with approval from the Executive Officer. Section 14.4 describes the two options the Executive Officer can use to determine the acceptability of the alternative test procedure. In this section, is the sentence:

*For situations where Method 301 is not directly applicable, the Executive Officer shall establish equivalence based on the concepts of comparison with the established method and statistical analysis of bias and variance.*

This sentence directs the Executive Officer to establish an equivalent test procedure outside of those approved in CP-201 and the framework established by U.S. EPA Method 301. Staff proposes to delete the sentence granting the Executive Officer the authority to establish an equivalent alternative test procedure outside of the framework of U.S. EPA Method 301, as the language is ambiguous and does not provide clear instruction to CARB's Executive Officer. Furthermore, as described in Sections I.D.1 and II.A of this staff report, the above language creates uncertainty and is unnecessary for the continued successful implementation of the vapor recovery program.

Rationale for the Amendment. The proposed amendment deletes the above sentence from Section 14.4, removing the CARB Executive Officer's authority to establish an equivalent alternative test procedure outside of and the framework of U.S. EPA Method 301. The amendment would delete ambiguous, imprecise language, and unnecessary language that does not provide the CARB Executive Officer clear instruction to approve or reject an alternative test procedure, increasing regulatory certainty and enforceability. Additionally, staff is proposing to remove this option from all four certification procedures for uniformity.

## **8. § 20. Requirements for, and Certification of, Low Permeation Hoses**

### *§ 20.3. Identification of Certified Hose*

Summary and Purpose for the Amendment. Section 20 describes the requirements and certification of low permeation hoses. Section 20.3 is a one-sentence section that identifies the marking and identification requirements for low permeation hoses. A period was inadvertently omitted from the sentence. Staff proposes a non-substantive change that would add the period to the end of the sentence, for correct grammar.

Rationale for the Amendment. The proposed change to add the period to the end of the sentence is non-substantive and administrative and intended to correct a grammar mistake, improving text accuracy to prevent confusion for readers. This change is necessary to correct nonstandard grammar in the previously adopted text.

## **C. CARB Certification Procedure CP-204 – Certification Procedure for Vapor Recovery Systems of Cargo Tanks**

This section provides a summary, purpose, and rationale for each proposed amendment to CP-204. Appendix C of this Staff Report provides the full proposed regulatory language of CP-204, shown with changes clearly indicated (e.g., in strikeout and underline format).

### **1. Global Amendments throughout CP-204**

The following proposed global changes provide updated and clarifying text, as described in detail in Sections I.D.2 and II.B of this staff report, that does not alter current vapor recovery requirements in CP-204.

#### *Capitalization and Bold Text Change*

Summary and Purpose. The proposed amendments to change the formatting of text in all capital letters to mixed case to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. In section header titles, for Sections 1 through 5 throughout the entire document, text that utilized all capital letters for text emphasis would be replaced with bold, mix case text. Additionally, subsection titles, table titles, and equation titles would be changed to bold for emphasis and to differentiate from informational text. Neither text intent, nor its meaning, would be changed.

Rationale. Mixed case words and sentences are easier to read and consistent with current accessibility guidelines. Bold text in section, subsection, table, and equation titles are necessary for text emphasis for ease of reading and navigating the document.

#### *Agency Acronym Change*

Summary and Purpose. The proposed amendments change “ARB” and “the ARB” to “CARB,” and add “California” before “Air Resources Board,” for consistency with recent CARB document style practices designed to improve regulatory certainty.

Rationale. This change reflects the California Air Resources Board’s recent change to, and preferred use of, the acronym “CARB” versus the prior acronym, “ARB,” and the entire agency title, “California Air Resources Board.”

#### *Styles, Text Font, and Spacing*

Summary and Purpose. The proposed amendments change the formatting of the document to ensure that proper styles formatting, Avenir LT Std 55 Roman font, and



proper spacing between sentences and paragraphs are utilized throughout the document to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. Neither text intent, nor its meaning, would be changed.

Rationale. Utilizing styles formatting, Avenir LT Std 55 Roman font, a single space between sentences, and one hard return between paragraphs ensures that documents made available to the public are easier to read and consistent with current accessibility guidelines.

#### *Footer*

Summary and Purpose. The proposed amendments edit the footer throughout the entirety of CP-204 to add a missing hyphen to “CP 204” and replace the date, “December 3, 2019,” with the next amended date of the certification procedure “[Insert Amended Date]”. The proposed amendments correct an inadvertently omitted hyphen and update the amended date to reflect the adoption date of the latest amendments.

Rationale. The proposed amendments correct a grammatical error and update the amended date of the certification procedure, improving text clarity and accuracy.

## **2. Title Page - Header**

Summary and Purpose. The proposed amendments replace the existing “Air Resources Board” header with the current, approved “California Air Resources Board” header.

Rationale. Changing the graphic header is a non-substantive change to update the identifying header into current CARB style and standards for documents released to the public.

## **3. Table of Contents and List of Tables**

Summary and Purpose. The proposed amendments add a newly created Table of Contents and List of Tables to CP-204 to ease the navigation of the document for pre-existing content.

Rationale. Including a Table of Contents and List of Tables eases the navigation of the document and brings the format of the document in line with the other vapor recovery certification procedures.

## **4. § 5. Alternative Test Procedures**

### *§ 5.4. Testing of Alternative Test Procedures*

Summary and Purpose. Section 5 describes the process by which test procedures other than those specified in this certification procedure, CP-204, are approved and that they shall be used only with approval from the Executive Officer. Section 5.4

describes the two options the Executive Officer can use to determine the acceptability of the alternative test procedures. In this section, is the sentence:

*For situations where Method 301 is not directly applicable, the Executive Officer shall establish equivalence based on concepts of comparison with the established method and statistical analysis of bias and variance.*

Similarly, staff proposes to delete part of the last sentence that reads "...or the equivalent method established by the Executive Officer..." The above sentence and following partial sentence direct the Executive Officer to establish an equivalent test procedure outside of those approved in CP-204 and the framework established by U.S. EPA Method 301. Staff proposes to delete the sentence granting the Executive Officer the authority to establish an equivalent alternative test procedure outside of the framework of U.S. EPA Method 301, as the language is ambiguous and does not provide clear instruction to CARB's Executive Officer. Furthermore, as described in Sections I.D.1 and II.A of this staff report, the above language creates uncertainty and is unnecessary for the continued successful implementation of the vapor recovery program.

Rationale. The proposed amendment deletes the above sentence and partial sentence from Section 5.4, removing the CARB Executive Officer's authority to establish an equivalent alternative test procedure outside of and the framework of U.S. EPA Method 301. The amendment would delete ambiguous, imprecise language, and unnecessary language that does not provide the CARB Executive Officer clear instruction to approve or reject an alternative test procedure, increasing regulatory certainty and enforceability. Additionally, staff is proposing to remove this option from all four certification procedures for uniformity.

## **D. CARB Certification Procedure CP-206 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks**

This section provides a summary, purpose, and rationale for each proposed amendment to CP-206. Appendix D of this Staff Report provides the full proposed regulatory language of CP-206, shown with changes clearly indicated (e.g., in strikeout and underline format).

### **1. Global Amendments throughout CP-206**

The following proposed global changes provide updated and clarifying text, as described in detail in Sections I.D.2 and II.B of this staff report, that does not alter current vapor recovery requirements in CP-206.

#### *Capitalization Change*

Summary and Purpose. The proposed amendments change the formatting of text in all capital letters to mixed case to aid in making the document accessible to everyone,

including people with visual impairments and assistive technology users. In section header titles (Sections 1 through 21), in the tables of contents, and throughout the entire document, text that utilized all capital letters for text emphasis would be replaced with bold, mix case text. Neither text intent, nor its meaning, would be changed.

Rationale. Mixed case words and sentences are easier to read and consistent with current accessibility guidelines. Bold text in section, subsection, and table titles are necessary for text emphasis for ease of reading and navigating the document.

#### *Styles, Text Font, and Spacing*

Summary and Purpose. The proposed amendments change the formatting of the document to ensure that proper styles formatting, Avenir LT Std 55 Roman font, and proper spacing between sentences and paragraphs are utilized throughout the document to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. Neither text intent, nor its meaning, would be changed.

Rationale. Utilizing styles formatting, Avenir LT Std 55 Roman font, a single space between sentences, and one hard return between paragraphs ensures that documents made available to the public are easier to read and consistent with current accessibility guidelines.

#### *Footer*

Summary and Purpose. The proposed amendments edit the footer throughout the entirety of CP-206 to replace the date, "July 12, 2021," with the next amended date of the certification procedure "[Insert Amended Date]". This change updates the date to reflect the adoption date of the latest amendments.

Rationale. The proposed amendment updates the amended date of the certification procedure, improving accuracy.

#### *Test Procedure Title*

Summary and Purpose for the Amendment. Test procedures are called out in sections 4.1.1 and 14.5.2 and a hyphen was inadvertently omitted from one of their titles. Staff proposes non-substantive changes that would add the hyphen to "TP 206.4" in sections 4.1.1 and 14.5.2, so that it reads as "TP-206.4," which is the correct method to refer to the test procedure.

Rationale for the Amendment. The proposed changes to add a hyphen to the test procedure title for TP-206.4 are non-substantive and administrative and intended to correctly refer to the test procedure to prevent confusion for readers.

## **2. Tables of Contents and Throughout the Entire Certification Procedure**

### *Section and Table Titles in the Table of Contents and List of Tables, and Throughout Entire Certification Procedure*

Summary and Purpose for Section Titles Amendment. The section header titles (Sections 1 through 21) and table titles (Tables 1-1 through 18-1) listed in the Table of Contents and List of Tables and their corresponding locations throughout the entire certification procedure are intended to help stakeholders navigate the document. Staff proposes a non-substantive administrative change that would remove the “all caps” text and replace it with “mixed case” text, without any modification to the actual language.

Rationale for the Section Titles Amendment. The proposed changes to the section and table titles in the Table of Contents and List of Tables, and throughout the entire certification procedure are non-substantive and administrative and are intended to improve readability and understanding of public documents, including accessibly for people with visual impairments and assistive technology users. The proposed amendments do not modify existing text intent or meaning.

### *Page Numbers in the Table of Contents, List of Tables, and List of Figures*

Summary and Purpose for Page Numbers Amendment. The page numbers listed in the Table of Contents, List of Tables, and List of Figures are intended to help stakeholders find desired content and navigate the document. Staff proposes a non-substantive administrative change that would update the page numbers listed to indicate the actual page number where the content can be found.

Rationale for the Page Numbers Amendment. The proposed changes to page numbers in the Table of Contents, List of Tables, and List of Figures are non-substantive and administrative and are intended to aid the public in finding desired content within the document. The proposed amendments do not modify existing text intent or meaning.

## **3. § 5. Phase II Performance Standards and Specifications Applicable to AST Phase II Vapor Recovery Systems**

### *§ 5.2 Static Pressure Performance*

Summary and Purpose for the Amendment. Section 5 describes the performance standards and specifications for Phase II vapor recovery for GDFs with ASTs. Section 5.2 describes how the static pressure performance of the Phase II system is determined. In this section, an equation was inadvertently misidentified. Staff proposes a non-substantive change that would correct the name of the equation from “Equation 4-2” to “Equation 4-1,” which is the correct label for the equation.

Rationale for the Amendment. The proposed correctly identify “Equation 4-1” is non-substantive and administrative and intended to correctly refer to the test equation, improving text accuracy to prevent confusion for readers.

#### **4. § 15. Alternative Test Procedures and Inspection Procedures**

##### *§ 15.4 Testing of Alternative Test Procedures*

Summary and Purpose for the Amendment. Section 15 describes the process by which test procedures other than those specified in this certification procedure, CP-206, are approved and that they shall be used only with approval from the Executive Officer. Section 15.4 describes the two options the Executive Officer can use to determine the acceptability of the alternative test procedure. In this section, is the sentence:

*For situations where Method 301 is not directly applicable, the Executive Officer shall establish equivalence based on the concepts of comparison with the established method and statistical analysis of bias and variance.*

This sentence directs the Executive Officer to establish an equivalent test procedure outside of those approved in CP-206 and the framework established by U.S. EPA Method 301. Staff proposes to delete the sentence granting the Executive Officer the authority to establish an equivalent alternative test procedure outside of the framework of U.S. EPA Method 301, as the language is ambiguous and does not provide clear instruction to CARB’s Executive Officer. Furthermore, as described in Sections I.D.1 and II.A of this staff report, the above language creates uncertainty and is unnecessary for the continued successful implementation of the vapor recovery program.

Rationale for the Amendment. The proposed amendment deletes the above sentence from Section 15.4, removing the CARB Executive Officer’s authority to establish an equivalent alternative test procedure outside of and the framework of U.S. EPA Method 301. The amendment would delete ambiguous, imprecise language, and unnecessary language that does not provide the CARB Executive Officer clear instruction to approve or reject an alternative test procedure, increasing regulatory certainty and enforceability. Additionally, staff is proposing to remove this option from all four certification procedures for uniformity.

#### **5. § 21. Requirements for, and Certification of, Low Permeation Hoses**

##### *§ 21.3 Identification of Certified Hose*

Summary and Purpose for the Amendment. Section 21 describes the requirements and certification of low permeation hoses. Section 21.3 focuses on the identification of the certified hoses. A period was inadvertently omitted from the sentence in this section. Staff proposes a non-substantive change that would add the period to the end of the sentence, for correct grammar.

Rationale for the Amendment. The proposed change to add the period to the end of the sentence is non-substantive and administrative and intended to correct a grammar mistake, improving text accuracy to prevent confusion for readers.

## **E. CARB Certification Procedure CP-207 – Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities**

This section provides a summary, purpose, and rationale for each proposed amendment to CP-207. Appendix E of this Staff Report provides the full proposed regulatory language of CP-207, shown with changes clearly indicated (e.g., in strikeout and underline format).

### **1. Global Amendments throughout CP-207**

The following proposed global changes provide updated and clarifying text, as described in detail in Sections I.D.2 and II.B of this staff report, that does not alter current vapor recovery requirements in CP-207.

#### *Capitalization Change*

Summary and Purpose. The proposed amendments change the formatting of text in all capital letters to mixed case to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. In section header titles (Sections 1 through 14), in the tables of contents, and throughout the entire document, text that utilized all capital letters for text emphasis would be replaced with bold, mix case text. Neither text intent, nor its meaning, would be changed.

Rationale. Mixed case words and sentences are easier to read and consistent with current accessibility guidelines. Bold text in section, subsection, and table titles are necessary for text emphasis for ease of reading and navigating the document.

#### *Styles, Text Font, and Spacing*

Summary and Purpose. The proposed amendments change the formatting of the document to ensure that proper styles formatting, Avenir LT Std 55 Roman font, and proper spacing between sentences and paragraphs are utilized throughout the document to aid in making the document accessible to everyone, including people with visual impairments and assistive technology users. Neither text intent, nor its meaning, would be changed.

Rationale. Utilizing styles formatting, Avenir LT Std 55 Roman font, a single space between sentences, and one hard return between paragraphs ensures that documents made available to the public are easier to read and consistent with current accessibility guidelines.

## Footer

Summary and Purpose. The proposed amendments edit the footer throughout the entirety of CP-207 to replace the date, "July 12, 2021," with the next amended date of the certification procedure "[Insert Amended Date]". This update would reflect the adoption date of the latest amendments.

Rationale. The proposed amendment updates the amended date of the certification procedure, improving accuracy.

## 2. Tables of Contents and Throughout the Entire the Certification Procedure

### *Section and Table Titles in the Table of Contents and List of Tables, and Throughout Entire Certification Procedure*

Summary and Purpose for Section Titles Amendment. The section header titles (Sections 1 through 14) and table titles and labels listed in the Table of Contents and List of Tables and their corresponding locations throughout the entire certification procedure are intended to help stakeholders navigate the document. Staff proposes a non-substantive administrative change that would remove the "all caps" text and replace it with "mixed case" text, without any modification to the actual language.

Rationale for the Section Titles Amendment. The proposed changes to the section and table titles in the Table of Contents and List of Tables, and throughout the entire certification procedure are non-substantive and administrative and are intended to improve readability and understanding of public documents, including accessibly for people with visual impairments and assistive technology users. The proposed amendments do not modify existing text intent or meaning.

### *Page Numbers in the Table of Contents and List of Tables*

Summary and Purpose for Page Numbers Amendment. The page numbers listed in the Table of Contents and List of Tables are intended to help stakeholders find desired content and navigate the document. Staff proposes a non-substantive administrative change that would update the page numbers listed to indicate the actual page number where the content can be found.

Rationale for the Page Numbers Amendment. The proposed changes to page numbers in the Table of Contents and List of Tables are non-substantive and administrative and are intended to aid the public in finding desired content within the document. The proposed amendments do not modify existing text intent or meaning.

## 3. § 8. Alternative Test Procedures and Inspection Procedures

### *§ 8.4 Testing of Alternative Test Procedures*

Summary and Purpose for the Amendment. Section 8 describes the process by which test procedures other than those specified in this certification procedure, CP-207, are

approved and that they shall be used only with approval from the Executive Officer. Section 8.4 describes the two options the Executive Officer can use to determine the acceptability of the alternative test procedure. In this section, is the sentence:

*For situations where Method 301 is not directly applicable, the Executive Officer shall establish equivalence based on the concepts of comparison with the established method and statistical analysis of bias and variance.*

This sentence directs the Executive Officer to establish an equivalent test procedure outside of those approved in CP-207 and the framework established by U.S. EPA Method 301. Staff proposes to delete the sentence granting the Executive Officer the authority to establish an equivalent alternative test procedure outside of the framework of U.S. EPA Method 301, as the language is ambiguous and does not provide clear instruction to CARB's Executive Officer. Furthermore, as described in Sections I.D.1 and II.A of this staff report, the above language creates uncertainty and is unnecessary for the continued successful implementation of the vapor recovery program.

Rationale for the Amendment. The proposed amendment deletes the above sentence from Section 8.4, removing the CARB Executive Officer's authority to establish an equivalent alternative test procedure outside of and the framework of U.S. EPA Method 301. The amendment would delete ambiguous, imprecise language, and unnecessary language that does not provide the CARB Executive Officer clear instruction to approve or reject an alternative test procedure, increasing regulatory certainty and enforceability. Additionally, staff is proposing to remove this option from all four certification procedures for uniformity.

#### **IV. Benefits Anticipated from the Regulatory Action, Including the Benefits or Goals Provided in the Authorizing Statute**

The proposed amendments are an administrative revision of CARB's vapor recovery regulations to:

- Remove imprecise and unnecessary existing language that does not provide clear instruction for CARB's Executive Officer in approving or rejecting alternative test procedures; and
- Correcting various small grammatical errors and update the format of the certification procedures to improve readability and understanding of the documents, including making the documents more accessible for people with visual impairments and assistive technology users.

The Vapor Recovery Program has been very successful at reducing emissions over the last 40 years. The proposed regulatory amendments would continue to refine the Vapor Recovery Program to provide better regulatory clarity and certainty with no increase in costs nor existing gasoline vapor emissions.



As described in Chapters II and III, the proposed amendments include several administrative changes, both substantive and non-substantive. The first set of proposed amendments remove ambiguous and imprecise language from all four certification procedures related to the Executive Officer's authority to approve or reject alternative test procedures is recommended to provide regulatory certainty and uniformity. The non-substantive proposed amendments first address updated accessibility changes to the formatting of documents made available to the public. Neither text intent nor meaning would be changed with these proposed amendments. The second set of non-substantive proposed amendments solely address editorial and grammatical errors that were inadvertently introduced in prior revisions of the certification procedures. The benefit of the proposed administrative changes is clarifying the certification procedures for better readability and to comply with California Administrative Law (Title 1, CCR §16(a)(4)) that requires that California regulations be free of grammatical errors.

## **V. Air Quality**

State law requires CARB to adopt procedures and performance standards for controlling gasoline vapor emissions from gasoline marketing operations, including transfer and storage operations, to achieve and maintain ambient air quality standards. The proposed amendments are not anticipated to have direct air quality impacts due to the nature of the proposed changes. The proposed amendments would preserve the emission reductions accomplished under the existing vapor recovery regulations by improving clarity and consistency among the certification procedures.

As described in Chapter II, the proposal to remove from the four certification procedures unnecessary language that is ambiguous and offers imprecise guidance to CARB's Executive Officer when approving or rejecting alternative test procedures. This proposed amendment, along with the proposed amendment to update document formatting for improved accessibility and other editorial and grammatical fixes are administrative in nature, refining the certification procedures without impacting GDF gasoline vapor emissions and air quality.

## **VI. Environmental Analysis**

### **A. Introduction**

This chapter provides the basis for CARB's determination that the proposed amendments to the vapor recovery regulations are exempt from the requirements of CEQA. A brief explanation of this determination is provided in section C below. CARB's regulatory program, which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of the State's ambient air quality, has been certified by the California Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA) (Cal. Code Regs., tit. 14 § 15251, subd. (d)). Public agencies with certified regulatory programs are exempt from certain CEQA

requirements, including but not limited to, preparing environmental impact reports, negative declarations, and initial studies. CARB, as a lead agency, prepares a substitute environmental document (referred to as an “Environmental Analysis” or “EA”) as part of the Staff Report prepared for a proposed action to comply with CEQA (Cal. Code Regs., tit. 17 §§ 60000-60008). If the proposed amendments are finalized, a Notice of Exemption will be filed with the Office of the Secretary for the Natural Resources Agency.

## **B. Analysis of Proposed Amendments**

CARB has determined that the proposed amendments are exempt from CEQA under the general rule or “common sense” exemption (Cal. Code Regs., tit. 14 § 15061, subd. (b)(3)). CEQA Guidelines state “the activity is covered by the common sense exemption that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” The proposed amendments are also categorically exempt from CEQA under the “Class 8” exemption (Cal. Code Regs., tit. 14 § 15308) because they are actions taken by a regulatory agency for the protection of the environment.

CARB staff is proposing regulatory amendments that are administrative in nature and that refine the vapor recovery regulations without impacting GDF gasoline vapor emissions or air quality.

As a first set of proposed amendments, CARB staff propose to remove unnecessary language that is ambiguous and offers imprecise guidance to CARB’s Executive Officer’s while approving or rejecting alternative test procedures beyond the framework of U.S. EPA Method 301. Over the last two decades of vapor recovery program implementation, this option has never been used to approve an alternative test method. To clarify the intent of the certification procedures, increase regulatory certainty and enforceability, and promote uniformity, CARB staff recommends removing the language from all four certification procedures. While a substantive change, this proposed amendment is administrative and does not change any of the current performance standards, implementation schedules, or test procedures, and therefore has no impact on GDF vapor recovery, GDF gasoline vapor emissions, air quality, or the environment.

The second set of proposed regulatory amendments are administrative and non-substantive. They include reformatting the four certification procedures to improve accessibility to make all CARB documents accessible to everyone, including people with visual impairments and assistive technology users. These changes include updating the font to approved styles and sizes, implementing the use of Microsoft Word “styles” for consistent paragraph indentation and spacing, removing extra spaces after sentences and hard returns after paragraphs, and removing text emphasis (e.g., not using uppercase, and only using underline, bold or italics, rather than multiple forms at once). These proposed edits do not change regulatory text intent

nor its meaning. Additionally, CARB staff is proposing amendments that are purely editorial and grammatical, such as adding commas, hyphens, periods, and similar text that was inadvertently omitted from previous versions of the documents. These administrative amendments would have no impact on GDF vapor recovery nor the environment.

CARB staff assessed the potential for significant impacts using the resource areas from the CEQA Guidelines Environmental Checklist as a framework (Cal. Code Regs. tit. 17 § 60005 subd. (b)). Compliance with the proposed amendments would not involve or result in any adverse physical changes to the existing environment, such as new development, modifications to existing buildings or facilities, or new land use designations. None of the proposed amendments would increase emissions and therefore would not involve or result in any adverse impacts to air quality and all of the proposed amendments support the goal of vapor recovery regulations to attain and maintain air quality standards.

Therefore, it can be seen with certainty that there is no possibility that these proposed amendments may result in a significant adverse impact on the environment. Further, the proposed actions are designed to protect the environment and CARB found no substantial evidence indicating the proposal could adversely affect air quality or any other environmental resource area, or that any of the exceptions to the exemption applies (Cal. Code Regs. tit. 14 § 15300.2). These activities are exempt from CEQA.

## **VII. Environmental Justice**

State law defines environmental justice as the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (Gov. Code, § 65040.12, subd. (e)(1)). Environmental justice includes, but is not limited to, all of the following: (A) The availability of a healthy environment for all people. (B) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (C) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (D) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions (Gov. Code, § 65040.12, subd. (e)(2)). The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into CARB's programs consistent with the directives of State law. These policies apply to all communities in California, but are intended to address the disproportionate environmental exposure burden borne by low-income communities and communities of color. Environmental justice is one of CARB's core values and fundamental to achieving its mission.

The proposed amendments would have no impact on GDF vapor recovery or emissions and would therefore preserve the ROG and benzene emission reductions accomplished under the existing vapor recovery regulations, maintaining the current targeted emission reductions. Reducing ROG emissions is an integral part of California reaching its goal of attaining and maintaining federal and State ozone standards. Reducing benzene emissions is critical for reducing exposure to people who live and work near GDFs, who tend to belong to lower-income communities. The proposed amendments are consistent with CARB's environmental justice policy of reducing exposure to air pollutants and reducing adverse health impacts from toxic air contaminants in all California communities.

## **VIII. Economic Impacts Assessment**

This chapter provides an economic impact assessment for the proposed regulatory amendments. CARB staff does not expect the proposed regulation to impose any costs or have any economic impact on businesses or individuals located in California. The proposed amendments would not result in the creation or elimination of any jobs. Although there is no economic impact from the proposed regulations, the revision of these vapor recovery certification procedures would provide better regulatory certainty pertaining to the approval or rejection of alternative test procedures and to those accessing the documents online. The proposed amendments would reduce uncertainty in the evaluation of alternative test procedures and would update the format of the certification procedures to improve accessibility of documents made available to the public. Form 399, which summarizes the economic and fiscal impacts of the proposed amendments, has been completed and is included in the rulemaking record. Appendix G provides additional information supporting the economic analysis and Form 399.

### **A. Legal Requirements**

Government Code sections 11346.2, 11346.3, and 11346.5 require state agencies to assess the potential adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative regulation. In addition to providing estimates of the dollar amounts of costs and savings associated with complying with the regulatory proposal, the assessment must assess whether and to what extent the regulatory proposal would affect:

- The creation or elimination of jobs within the state;
- The creation of new businesses or the elimination of existing businesses within the state;
- The expansion of businesses currently doing business within the state; and
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

State agencies are also required to estimate the costs and savings to any state or local agency and school districts in accordance with instructions adopted by the Department of Finance. This estimate is to include any nondiscretionary costs or savings to local agencies and the costs or savings in federal funding to the state.

Health and Safety Code section 57005 requires CARB to perform an economic impact analysis of submitted alternatives to a proposed regulation before adopting any major rule. A major rule is defined as a rule that will have a potential cost to California business enterprises in an amount exceeding ten million dollars in any single year. The proposed regulatory amendments do not exceed this threshold. Therefore, this proposal is not a major regulation as defined by Health and Safety Code section 57005. Attendees of the October 12, 2022, public workshop did not propose any alternatives to those that CARB staff identified. Chapter IX provides a description of alternatives and Chapter XI provides a description of the public workshop.

## **B. The creation or elimination of jobs within the State of California.**

Section 11346.3 of the Government Code requires State agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative rule. The assessment shall include a consideration of the impact of the proposed regulation on California jobs, business expansion, elimination or creation, and the ability of California business to compete.

Given the administrative nature of the amendments, there are no costs or savings associated with this proposal, and staff has determined that there are no significant economic impacts to businesses or individuals within California. The proposed amendments have no impact on current performance standards, implementation schedules, or test procedures. The proposal will not result in the creation or elimination of any jobs within or outside of California.

## **C. The creation of new business or the elimination of existing businesses within the State of California.**

Section 11346.3 of the Government Code requires State agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative rule. The assessment shall include a consideration of the impact of the proposed regulation on California jobs, business expansion, elimination or creation, and the ability of California business to compete.

Given the administrative nature of the amendments, there are no costs or savings associated with this proposal, and staff has determined that there are no significant economic impacts to businesses or individuals within California. The proposed amendments have no impact on performance standards, implementation schedules, or

test procedures. The proposal will not result in the creation or elimination of any businesses within or outside of California.

#### **D. The expansion of businesses currently doing business within the State of California.**

Section 11346.3 of the Government Code requires State agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative rule. The assessment shall include a consideration of the impact of the proposed regulation on California jobs, business expansion, elimination or creation, and the ability of California business to compete.

Given the administrative nature of the amendments, there are no costs or savings associated with this proposal, and staff has determined that there are no significant economic impacts to businesses or individuals within California. The proposed amendments have no impact on performance standards, implementation schedules, or test procedures. The proposal will not result in the creation or elimination of any businesses within or outside of California.

#### **E. Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete**

Section 11346.3 of the Government Code requires State agencies to assess the potential for adverse economic impacts on California business enterprises and individuals when proposing to adopt or amend any administrative rule. The assessment shall include a consideration of the impact of the proposed regulation on California jobs, business expansion, elimination or creation, and the ability of California business to compete.

Given the administrative nature of the amendments, there are no costs or savings associated with this proposal, and staff has determined that there are no significant economic impacts to businesses or individuals within California. The proposed amendments have no impact on performance standards, implementation schedules, or test procedures. The proposal will not result in any adverse economic impact that directly affects business, including the ability to compete within or outside of California.

#### **F. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.**

The Vapor Recovery Program has been very successful at reducing emissions over the last 40 years. While the proposed amendments are expected to have no impact on the health and welfare of California residents, worker safety, and the state's environment, the proposed regulatory amendments would continue to refine the Vapor Recovery Program to improve regulatory certainty and clarity with no increase in gasoline vapor

emissions and no costs. The proposed amendments are administrative in nature, refining the certification procedures without impacting the regulated community or gasoline vapor emissions. The proposed amendments would not change any of the current performance standards, implementation schedules, or test procedures.

## **IX. Evaluation of Regulatory Alternatives**

Government Code section 11346.2, subdivision (b)(4) requires CARB to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This chapter describes alternatives evaluated and provides reasons why these alternatives were not included in the proposal. As explained below, no alternative proposed was found to be less burdensome and equally effective in achieving the purposes of the regulation in a manner than ensures full compliance with the authorizing law. CARB staff has not identified any reasonable alternatives that would lessen any adverse impact on small business, nor were any alternatives proposed by attendees of the October 12, 2022, Public Workshop, or earlier meetings. CARB staff notified attendees of the Workshop that they had until November 1, 2022, to submit comments for consideration in this staff report. See Chapter XI for a description of the public workshop and other stakeholder meetings.

Government Code section 11346.2, subdivision (b)(4) requires CARB to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides reasons why these alternatives were not included in the proposal. As explained below, no alternative proposed was found to be less burdensome and equally effective in achieving the purposes of the regulation in a manner than ensures full compliance with the authorizing law. The Board has not identified any reasonable alternatives that would lessen any adverse impact on small business.

### **A. No Action Alternative**

As described in prior chapters, the proposed amendments are administrative in nature and both substantive and non-substantive. The substantive proposed amendments would remove existing ambiguous language from the four vapor recovery certification procedures that provides imprecise guidance to CARB's Executive Officer to approve or reject alternative test procedures outside of the framework provided by U.S. EPA Method 301. Removing this language would improve clarity of intent, reduce the possibility of confusion in application, increases regulatory certainty, and maintains unity among the certification procedures. The non-substantive proposed amendments include updates to the documents to reflect improved accessibility of public documents (i.e., font and formatting) that do not change text intent nor meaning. Additionally, further non-substantive proposed amendments are editorial and for grammatical purposes, correcting typos inadvertently created in previous amendments.

The 'No Action' alternative to the proposed amendments would be for none of the above listed changes to be made. For the substantive change, this would mean leaving in language that gives imprecise guidance to CARB's Executive Officer. As CARB staff has never utilized the option for the CARB Executive Officer to approve alternative test procedures outside of the framework of U.S. EPA Test Method 301, the end result would have no impact on the functionality of the vapor recovery program. However, continued inclusion of this ambiguous language could lead to uneven program implementation in the future. As the option has never been utilized, leaving the language in the certification procedures would have no impact on costs or emission reduction goals.

Additionally, the "No Action" alternative for the non-substantive changes would include not correcting grammatical errors or updating document formatting for improved accessibility. This provides no benefit to the public and would continue to make document readability and accessibility an issue to address in future rulemakings.

CARB staff rejected the "No Action" alternative because not amending the vapor recovery regulations to provide better regulatory certainty and enforceability is not effective in achieving the purpose of the vapor recovery regulations.

## **B. Small Business Alternative**

Government Code section 11346.2(b)(4)(B) requires a description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives. As the proposed amendments do not have any impact on small business, the Board has not identified any reasonable alternatives that would lessen any adverse impact on small business.

## **C. Performance Standards in Place of Prescriptive Standards**

Government Code section 11346.2(b)(4)(A) requires that when CARB proposes a regulation that would mandate the use of specific technologies or equipment, or prescribe specific actions or procedures, it must consider performance standards as an alternative. In addition, Government Code section 11346.2(b)(1) requires that when a proposed regulation would mandate the use of specific technologies or equipment, CARB include in a statement of the reasons why the agency believes these mandates or prescriptive standards are required. The proposed amendments do not mandate the use of specific technologies or prescribe specific procedures.

## **D. Health and Safety Code section 57005 Major Regulation Alternatives**

The proposed regulation will not result in a total economic impact on state businesses of more than \$10 million in one or more years of implementation. Therefore, this proposal is not a major regulation as defined by Health and Safety Code section 57005.



## **X. Justification for Adoption of Regulations Different from Federal Regulations Contained in the Code of Federal Regulations**

California Health and Safety Code section 41954 requires CARB to adopt procedures and performance standards for controlling gasoline vapors from gasoline marketing operations, including transfer and storage operations to achieve and maintain ambient air quality standards. Government Code section 11346.2, subdivision (b)(6) requires CARB to (a) describe its efforts to avoid unnecessary duplication and conflicts with federal regulations contained in the Code of Federal Regulations that address the same issues and (b) justify the adoption of any regulations that differ from existing federal regulations. There are no specific federal regulations or programs comparable to California's EVR Program. California's existing EVR and cargo tank regulations already exceed federal requirements; as described in Chapter I and II of this document.

Although not explicitly required by federal regulations, some other states and countries require the installation of vapor recovery systems that are certified by CARB. Thus, changes to CARB EVR certifications may have a national and international impact.

## **XI. Public Process for Development of the Proposed Action (Pre-Regulatory Information)**

Consistent with Government Code sections 11346, subdivision (b), and section 11346.45, subdivision (a), and with the Board's long-standing practice, CARB staff held a public workshop and had other meetings with interested parties during the development of the proposed regulation. These informal pre-rulemaking discussions provided staff with useful information that was considered during development of the regulation that is now being proposed for formal public comment.

Draft amended regulatory text was presented to the California Air Pollution Control Officer's Association (CAPCOA) Vapor Recovery Subcommittee and the U.S. EPA for their review and comment. Additionally, draft amended regulatory text was made available for interested parties on a CARB Vapor Recovery Program webpage dedicated to preliminary rulemaking activity at:

<https://ww2.arb.ca.gov/resources/documents/preliminary-rulemaking-activity-0>

Access to the workshop and preliminary webpage was announced and provided via a "GovDelivery Bulletin" to the vapor recovery program email subscriber list.

On October 12, 2022, CARB staff held a public workshop to present the proposed regulatory amendments. Appendix H provides the notice for the workshop, which was released approximately three weeks (September 22, 2022) before the workshop. The October 2022 workshop was available through remote access, with the public able to participate online via Zoom. CARB staff presented a brief history of the problems to

be solved by each proposal, a description of the draft regulatory amendments, and informed participants that there would be no potential economic or environmental impact for the regulated community. Participants were able to submit comments and questions by email ([vapor@arb.ca.gov](mailto:vapor@arb.ca.gov)) or live during the workshop so that staff could respond and answer their questions at the conclusion of the staff presentation. The Zoom registration process logged 35 participants and 3 participants attended in person. Workshop participants included representatives of Air Districts; state and local agencies; equipment manufacturers; service contractors and consultants; environmental consultants; and industry representatives. Participants were requested to provide informal comments on staff proposals by November 1, 2022. No comments and no concerns were expressed during or after the public workshop.

During the release of the Staff Report and for public review during the 45-Day Public Comment period, staff will offer an Executive Officer<sup>4</sup> Hearing for the proposed amendments, only if one is requested by the public (Gov. Code § 11346.8).

## **XII. References**

The following documents are the technical, theoretical, or empirical studies, reports, or similar documents relied upon in proposing these regulatory amendments, identified as required by Government Code, section 11346.2, subdivision (b)(3).

1. CARB. 1988. Benzene Airborne Toxic Control Measure for Retail Service Stations. California Air Resources Board Final Regulation Order adopted May 13, 1988, with California Air Resources Board Resolution 87-62 and Executive Order G-415.
2. CARB. 2015. Initial Statement of Reasons for Rulemaking – Amendments to Certification Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities: Aboveground Storage Tanks and Enhanced Conventional Nozzles. Report prepared by staff of the Monitoring and Laboratory Division (MLD), California Air Resources Board (CARB). March 3, 2015.
3. CARB. 2016. Compilation of 1975-2015 California Gasoline Consumption and ROG Emissions. Excel spreadsheet prepared by staff of the Monitoring and Laboratory Division and Air Quality Planning and Science Division, CARB. March 23, 2016.
4. CARB. 2019a. Staff Report: Initial Statement of Reasons - Amendments to the Regulation for the Certification of Vapor Recovery Systems for Cargo Tanks. Report prepared by staff of the Enforcement Division, CARB. March 5, 2019.

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<sup>4</sup> Section 39516 of the Health and Safety Code presumes any power, duty, purpose, function or jurisdiction is delegated to the Executive Officer, unless the Air Resources Board affirmatively votes to reserve the same for its own action. This action falls within the presumed delegated powers of the Executive Officer.

5. CARB. 2019b. Initial Statement of Reasons: Proposed Amendments to Certification Procedures for Vapor Recovery Systems for Aboveground Storage Tanks at Gasoline Dispensing Facilities. Report prepared by staff of the MLD, CARB. June 4, 2019.
6. CARB. 2019c. Vapor Recovery Certification Procedure CP-204: Certification Procedure for Vapor Recovery Systems of Cargo Tanks. CARB. December 3, 2019.
7. CARB. 2020a. Estimated statewide counts of gasoline dispensing facilities with different types of vapor recovery systems. Microsoft Excel worksheets prepared by staff of the Vapor Recovery and Fuel Transfer Branch, MLD, CARB. April 2020.
8. CARB. 2020b. Estimation of the number of businesses that own retail gasoline dispensing facilities in California based on California Environmental Reporting System (CERS) underground storage tank (UST) ownership records. Microsoft Excel worksheets compiled by staff of the Vapor Recovery and Fuel Transfer Branch, MLD, CARB. August 1, 2020.
9. CARB. 2020c. Initial Statement of Reasons – Proposed Amendments to Enhanced Vapor Recovery Regulations for Gasoline Dispensing Facilities. File includes main report and Appendix L Estimated Costs for Proposed Amendments and Alternatives. Report prepared by staff of the MLD, CARB. October 20, 2020.
10. CARB. 2020d. Compilation of survey responses from Air Districts: District-specific GDF and permitting information. Microsoft Excel worksheets compiled by staff of the Vapor Recovery and Fuel Transfer Branch, MLD, CARB. February 2020.
11. CARB. 2021a. Vapor Recovery Certification Procedure CP-201: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks. CARB. July 12, 2021.
12. CARB. 2021b. Vapor Recovery Certification Procedure CP-206: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks. CARB. July 12, 2021.
13. CARB. 2021c. Vapor Recovery Certification Procedure CP-207: Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities. CARB. July 12, 2021.
14. CARB. 2022a. Vapor Recovery Executive Order Counts. Microsoft Excel worksheets prepared by staff of the Vapor Recovery and Fuel Transfer Branch, MLD, CARB. October 2022.

15. CARB. 2022b. Estimation of the number of businesses that own retail gasoline dispensing facilities with aboveground storage tanks (AST) in California based on California Environmental Reporting System AST ownership records downloaded in September 2018. Microsoft Excel worksheets compiled by staff of the Vapor Recovery and Fuel Transfer Branch, MLD, CARB. CARB estimation review completed October 24, 2022.
16. CERS. 2018a. Microsoft Excel spreadsheets generated by California Environmental Reporting System (CERS) database queries for "affiliations" to obtain facility and UST ownership information, and for all facilities in CERS for which the UST reporting requirement = "Applicable" (~13,870 facilities) to obtain NAICS and SIC codes. Downloaded from the CalEPA Regulated Site Portal website in September 2018.
17. CERS. 2018b. Microsoft Excel spreadsheets generated by California Environmental Reporting System (CERS) database queries for "affiliations" to obtain facility and aboveground storage tank (AST) ownership information, and for all facilities in CERS for which the AST reporting requirement = "Applicable" (~16,512 facilities) to obtain NAICS and SIC codes. Downloaded from the CalEPA Regulated Site Portal website in September 2018.
18. Title 40, Code of Federal Regulations, Part 63, Appendix A – Test Methods, Method 301 – Field Validation of Pollutant Measurement Methods from Various Waste Media. Downloaded December 8, 2022, from U.S. EPA website: <https://www.govinfo.gov/content/pkg/CFR-2021-title40-vol16/pdf/CFR-2021-title40-vol16-chapl-subchapC.pdf>.
19. USCB. 2020. Quarterly Census of Employment and Wages - 2018 and 2019 - All California Counties: NAICS 447110 'Gasoline Stations with Convenience Stores' and NAICS 447190 'Other Gasoline Stations.' U.S. Census Bureau (USCB), Bureau of Labor Statistics. Accessed on August 11, 2020. Downloaded from: [www.data.bls.gov/cew/](http://www.data.bls.gov/cew/).

### **XIII. Appendices**

Appendices are available in separate Adobe Acrobat files.

- A. Proposed Regulation Order to Adopt Amended Certification Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities and Cargo Tanks
- B. Proposed Amendments to CP-201: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks
- C. Proposed Amendments to CP-204: Certification Procedure for Vapor Recovery Systems for Cargo Tanks
- D. Proposed Amendments to CP-206: Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks
- E. Proposed Amendments to CP-207: Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities
- F. Regulatory Authority: Vapor Recovery Health and Safety Code Statutes
- G. Economic Impacts Assessment
- H. Notice for the October 12, 2022, Public Workshop