

# **Title 17. California Air Resources Board**

## **Notice of Public Comment Period on Proposed Amendments to Vapor Recovery Certification Procedures**

The Executive Officer of the California Air Resources Board (CARB or Board) is proposing to amend the vapor recovery certification procedures under the authority granted in California Health and Safety Code, sections 41954 and 41962. The vapor recovery certification procedures are incorporated by reference in California Code of Regulations (CCR), Title 17, Sections 94011, 94014, 94016, and 94017.

Written comments on the proposed regulatory amendments must be received by May 8, 2023, in order to be considered by the Executive Officer. A public hearing is not currently scheduled; however, you may request the Executive Officer to conduct a public hearing. The process for requesting a public hearing is explained in the Written Comment Period and Submittal of Comments section of this notice, below. If a request for a public hearing is received by April 24 2023, the public hearing will be conducted by the Executive Officer or his delegate pursuant to the authority set forth in Health and Safety Code Sections 39515 and 39516. The time, date, and place of the hearing will be provided in a separate notice.

### **Written Comment Period and Submittal of Comments**

In accordance with the Administrative Procedure Act, interested members of the public may provide comments in writing by postal mail or by electronic submittal. A public hearing is currently not scheduled. The public comment period for this regulatory action will begin on March 24, 2023. To be considered by the Executive Officer, written comments must be submitted by May 8, 2023. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. Comments submitted must be addressed to one of the following:

Postal mail: Clerks' Office, California Air Resources Board  
1001 I Street, Sacramento, California 95814

[Electronic submittal](https://www.arb.ca.gov/lispub/comm/bclist.php): <https://www.arb.ca.gov/lispub/comm/bclist.php>

Any interested person may request a public hearing pursuant to section 11346.8 of the California Government Code, no later than 15 days before the close of the written comment period. A public hearing will be scheduled if any interested person, or their duly authorized representative, requests such a hearing in writing by April 24, 2023. The request for a hearing may be submitted in the same manner as written comments.

Please note that under the California Public Records Act (Gov. Code, § 7920.000 et seq.), your written comments, attachments, and associated contact information (e.g., your address,

phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, CARB requests but does not require that persons who submit written comments to the Executive Officer reference the title of the proposal in their comments to facilitate review.

## **Authority and Reference**

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 41954 and 41962. This action is proposed to implement, interpret, and make specific sections 41954 and 41962.

## **Informative Digest of Proposed Action and Policy Statement Overview (Gov. Code, § 11346.5, subd. (a)(3))**

### **Sections Affected:**

Proposed amendments to sections 94011, 94014, 94016, and 94017, of Article 1, Subchapter 8, Chapter 1, Division 3, Title 17, California Code of Regulations.

### **Documents Incorporated by Reference (Cal. Code Regs., tit. 1, § 20, subd. (c)(3)):**

The following documents would be incorporated in the regulation by reference in sections 94011, 94014, 94016, and 94017, respectively, of Article 1, Subchapter 8, Chapter 1, Division 3, Title 17, California Code of Regulations:

- CP-201 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks [insert amendment date]
- CP- 204 – Certification Procedure for Vapor Recovery Systems of Cargo Tanks [insert amendment date]
- CP-206 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks [insert amendment date]
- CP-207 – Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities [insert amendment date]

The above listed documents are also being amended by this regulation and thus the amendment date would be the date that the regulation is adopted by CARB.

### **Background and Effect of the Proposed Regulatory Action:**

To protect air quality and public health, CARB has adopted regulations to control the transfer and storage of gasoline vapor emissions at each step of gasoline marketing operations, from bulk plants and terminals, cargo tanks, and gasoline dispensing facilities (GDF). 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.

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 modify requirements for existing installations to achieve additional emission reductions, 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 amend them only through a formal rulemaking process.

CARB staff are now proposing two sets of regulatory amendments to the certification procedures, as described below:

Fist set of amendments: these changes would remove imprecise language that does not provide clear instruction for CARB's Executive Officer to approve or reject alternative test procedures from the four certification procedures. These amendments are intended to remove ambiguity caused by imprecise language that describes how test procedures other than those specified in the certification procedures (alternative test procedures) are approved or rejected.

As currently written, the certification procedures provide CARB's Executive Officer with two options to approve or reject alternative test procedures:

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

CARB staff has determined that the language in option two is outdated and ambiguous, creating the potential for uncertainty when CARB's Executive Officer approves alternative test procedures. In other words, this imprecise language does not provide clear instruction or guidance for the Executive Officer to approve alternative test procedures outside of the framework provided by U.S. EPA Method 301, which could create regulatory uncertainty and the potential for uneven application of the section. This option also could potentially be

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<sup>1</sup> U.S. EPA Reference Method 301 – Field Validation of Pollutant Measurement Methods from Various Waste Media 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.

interpreted to allow the Executive Officer to approve an alternative test procedure that could undermine the stringency of performance standards. Removing this language would improve regulatory certainty.

Over the last two decades, there have not been any instances where CARB's Executive Officer has used the discretion allowed by option two to establish an equivalent test procedure based on methods other than those provided by U.S. EPA 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. Because 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 is unnecessary for the implementation of the vapor recovery regulations and that there is no need to provide any replacement option.

Second set of amendments: these changes would correct various small errors in text and grammar and make other non-substantive and formatting edits to make the text of the certification procedures easier to understand for the public, and more accessible to everyone, including people with certain visual or reading disabilities, and assistive technology users. The four certification procedures have been amended multiple times since they were first adopted. During these amendments, small grammatical errors were inadvertently introduced, for example: missing hyphens, commas, periods; incorrect page numbering in the Table of Contents; and incorrect agency header graphics. Although these errors are minor, they could lead to confusion for readers. Meaning and intent would not be changed by the proposed corrections.

Additionally, staff is making non-substantive formatting edits throughout the four certification procedures to change the font styles and sizes, implement the use of Microsoft Word "styles" to provide consistent paragraph indentation and spacing, remove excess text emphasis (e.g., do 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 promote consistency among the certification procedures and improve access for anyone using text reading programs. These global edits would not change regulatory text nor its meaning.

In summary, 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 does not expect the proposed amendments to impose any costs or have any direct or indirect economic impact on businesses, individuals, or government agencies located in California.

CARB may also consider other changes to the sections affected, as listed on page 2 of this notice, or other sections within the scope of this notice, during the course of this rulemaking process.

## **Objectives and Benefits of the Proposed Regulatory Action:**

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
- Correct small grammatical and typological errors and update the format of the certification procedures to make certification procedures easier to understand for everyone, and more accessible for people with certain visual or reading disabilities.

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 impact on costs or existing gasoline vapor emission reductions.

The proposed amendments include several administrative changes, both substantive and non-substantive. The substantive change is the proposed amendment to remove ambiguous and imprecise language from all four certification procedures related to the Executive Officer's authority to approve or reject alternative test procedures will provide regulatory certainty and uniformity. The non-substantive proposed amendments consist of edits to improve the clarity and readability of the certification procedures. Neither text, intent, nor meaning would be changed with these proposed amendments. As the proposed amendments are administrative in nature, they do not change any current performance standards, implementation schedules, or test procedures, and therefore have no impact on GDF vapor recovery, GDF gasoline vapor emissions, air quality, or the environment.

During the development of the proposed amendments, CARB staff reached out to external stakeholders for their collaborative input. CARB staff sent draft language of the certification procedures to the California Air Pollution Control Officers Association Vapor Recovery Subcommittee, as well as presented information at joint meetings with CARB, and to U.S. EPA to solicit feedback. CARB staff also held a public workshop on October 12, 2022, where staff presented the proposed regulatory amendments. The workshop had 38 participants representing various aspects of the regulated community.

## **Comparable Federal Regulations:**

There are no federal regulations or programs directly comparable to California's EVR program for GDFs, nor are there federal regulations establishing the requirements for ECO nozzles and low permeation hoses at GDFs that exclusively refuel vehicles with onboard refueling vapor recovery systems. California's existing EVR regulations already exceed federal requirements. Other states and countries often require the installation of vapor recovery systems certified by CARB. Thus, changes to CARB certification requirements for GDFs may have a national and international impact.

Currently there are federal standards comparable to California's cargo tank vapor recovery program standards, which can be found in the Code of Federal Regulations, Title 40, Part 63,

Subpart R section 63.425(e) – National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). Because of the severe and unique air pollution issues facing California, CARB’s gasoline vapor control standards are more stringent than comparable federal standards.

**An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):**

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

**Disclosure Regarding the Proposed Regulation**

**Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):**

The determinations of the Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

**Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):**

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):**

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

## **Results of the Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):**

A detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter VIII of the Initial Statement of Reasons (ISOR or Staff Report). The proposed amendments to not impose a cost on any individual, business, or government entity.

### **Non-Major Regulation: Statement of the Results of the Economic Impact Assessment (EIA):**

- (A) The creation or elimination of jobs within the State of California.

The proposed amendments are expected to have no impact on the creation or elimination of jobs within the State of California.

- (B) The creation of new business or the elimination of existing businesses within the State of California.

No new businesses are expected to be created, nor existing businesses eliminated in response to the proposed amendments.

- (C) The expansion of businesses currently doing business within the State of California.

The proposed amendments are expected to have no impact on the expansion of businesses currently doing business within the State of California.

- (D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

As described in the Objectives and Benefits section on page 5, 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 amendments have no impact on current performance standards, implementation schedules, or test procedures, and therefore have no impact on GDF vapor recovery, current GDF gasoline vapor emissions reductions, air quality, or the environment.

#### Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impacts Analysis in Chapter VIII of the ISOR.

### Benefits of the Proposed Regulation:

The objective of the proposed regulatory action is to refine the Vapor Recovery Program to provide better regulatory clarity and certainty with no impact on costs or existing gasoline vapor emission reductions.

A summary of these benefits is provided, please refer to “Objectives and Benefits”, under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion on page 5.

### **Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):**

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):**

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses, because the proposed amendments are administrative in nature and would not change any of the current performance standards, implementation schedules, or test procedures. Therefore, CARB staff does not expect the proposed amendments to impose any costs nor have any impacts on small businesses.

### **Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):**

Before taking final action on the proposed regulatory action, the Executive Officer must determine that no reasonable alternative considered by the Executive Officer, or that has otherwise been identified and brought to the attention of the Executive Officer, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. As explained in the accompanying ISOR, the proposed regulations are the most effective and least burdensome means of achieving the purposes of the proposal.

### **State Implementation Plan Revision**

CARB plans to submit the proposed regulatory action, if it is adopted by CARB, to the United States Environmental Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by the U.S. EPA pursuant to the CAA.



## Environmental Analysis

CARB, as the lead agency for the proposed amendments, has concluded that this action is exempt from CEQA, as described in CEQA Guidelines §15061, because the action is both an Action Taken by Regulatory Agencies for Protection of the Environment (as described in CEQA Guidelines §15308 for “class 8” exemptions); and it is also exempt as described in CEQA Guidelines §15061, subdivision (b)(3) (“common sense” exemption) because it can be seen with certainty that there is no possibility that the proposed action may result in a significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter VII of the ISOR.

## Special Accommodation Request

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks’ Office at [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) or (916) 322-5594 as soon as possible, but no later than ten business days before the Executive Officer hearing, if one is requested. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) o (916) 322-5594 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo, si lo solicitan. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

## Agency Contact Persons

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Donielle Jackson, Air Pollution Specialist, Vapor Recovery Regulatory Development Section, at (916) 720-2544 or (designated back-up contact) Louis Dinkler, Air Resources Supervisor, Vapor Recovery Regulatory Development Section, at (279) 208-7872.

## Availability of Documents

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: *Proposed Amendments to the Vapor Recovery Certification Procedures*.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, on March 21, 2023. Please contact Chris Hopkins, Regulations Coordinator, at Chris.Hopkins@arb.ca.gov or (279) 208-7347 if you need physical copies of the documents. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices have limited public access. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, (279) 208-7347. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

## Hearing Procedures

A public hearing will be conducted by the Executive Officer in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340), if a public hearing is requested. For details on how to request a hearing, please refer to the "Written Comment Period and Submittal of Comments" section of this document.

Following the close of the comment period, the Executive Officer may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Executive Officer may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for additional written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text, if applicable, from CARB's Public Information Office, Visitor and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

## Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available, and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

## Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2023/vapor-recovery-2023>

California Air Resources Board



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Steven S. Cliff, Ph.D.,  
Executive Officer

Date: March 7, 2023

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see [CARB's website](http://www.arb.ca.gov) (www.arb.ca.gov).*