

Executive Order R-23-002

Relating to Proposed Amendments to Vapor Recovery Certification Procedures

Whereas, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of powers and duties granted to and imposed by the Board by law;

Whereas, CARB is designated as the state agency responsible for preparing the State Implementation Plan (SIP) as required by the federal Clean Air Act (the Act; 42 U.S.C. § 7401 et seq.);

Whereas, Health and Safety Code section 39516 provides that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that the Board specifically has reserved the same for the Board's own action;

Whereas, the Board adopted Resolutions 78-10 and 05-40 reserving certain powers, duties, purposes, functions and jurisdictions unto itself;

Whereas, the adoption of regulations amending vapor recovery certification procedures to remove outdated language and improve clarity is not one of the enumerated duties exclusively reserved unto the Board, therefore this regulatory proposal may proceed via Executive Officer action;

Whereas, the Board in Resolution 78-10 further stated that the Executive Officer "may undertake action pertaining to matters otherwise reserved hereby to the Board for the purpose of making corrective, clarifying or ministerial changes";

Whereas, the Proposed Amendments to Vapor Recovery Certification Procedures seek to remove outdated and imprecise language that does not provide clear instruction for CARB's Executive Officer to approve or reject alternative test procedures from four certification procedures and incorporate other administrative changes that are within the Executive Officer's power to adopt;

Whereas, CARB plans to submit the proposed regulatory action to the United States Environmental Protection Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act;

Whereas, the Board has not reserved the power to adopt and submit SIP revisions to itself;

Whereas, CARB has determined that the proposed amendments meet the requirements of the Act and are necessary for inclusion in the SIP;

Whereas, federal law set forth in §110(l) of the Clean Air Act and title 40, Code of Federal Regulations (CFR), §51.102 requires that one or more public hearings, or opportunity for the public to request a public hearing, preceded by at least 30 days' notice and opportunity for review, must occur prior to the adoption and submittal to U.S. EPA of any SIP revision;

Whereas, the proposed amendments were developed in an open public process, in consultation with affected parties, through a public workshop, and other outreach efforts, and these efforts are expected to continue;

Whereas, CARB has conducted public outreach via a pre-regulatory workshop, followed by the publication of a 45-Day Notice and public comment period including instructions to the public on how to request a public hearing, and no relevant comments were received, and a public hearing was not requested;

Whereas, on March 24, 2023, CARB made available for 45-day public comment the Proposed Amendments to Vapor Recovery Certification Procedures, as set forth in Appendix A through E to the Initial Statement of Reasons released to the public on March 21, 2023;

Whereas, a public hearing pursuant to the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) was not requested by anyone and therefore a public hearing was not conducted for this rulemaking;

Whereas, four written comments were received during the initial 45-day comment period, and those comments were considered by the Executive Officer, determined that the comments did not pertain to this proposed rulemaking, and no additional substantial modifications were made to the regulatory language that required a supplemental 15-day comment period;

Whereas, staff prepared the Final Statement of Reasons including staff's responses to the comments received;

Whereas, the environmental analysis prepared under CARB's regulatory program certified under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)) in the Staff Report concluded that the amendments are exempt from CEQA under California Code of regulations, title 14, section 15061(b)(3) ("common sense" exemption) and section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows with certainty that the amendments will not result in any significant adverse impact on the environment, as described in Chapter VI of the ISOR;

Whereas, no reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation; and

Whereas, the proposed amendments are consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, income, or national origin;

Now, therefore, the Executive Officer hereby adopts amendments to sections 94011, 94014, 94016, and 94017, title 17 California Code of Regulations, as set forth in Appendix A, and the documents incorporated by reference by these regulations, and Appendices B through E of the ISOR released to the public on March 24, 2023;

It is further ordered that Sections 94011, 94014, 94016, and 94017, Title 17 California Code of Regulations, CP-201, Certification Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks; CP-204, Certification Procedures for Vapor Recovery Systems on Cargo Tanks; CP-206, Certification Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks; and CP-207, Certification Procedures for Enhanced Conventional (ECO) Nozzles and Low Permeation Hoses at Gasoline Dispensing Facilities, are amended as set forth in Attachments 1 through 5 to this Order;

It is further ordered that the adopted regulatory text may be further revised with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such;

It is further ordered that CARB hereby adopts the amendments as a revision to the California SIP.

It is further ordered that CARB submit to U.S. EPA the amendments and requests that U.S. EPA approve the submittal as a revision to the California SIP.

I certify, pursuant to 40 CFR §51.102(f), that the Proposed Amendments to Vapor Recovery Certification Procedures rulemaking was adopted after notice and opportunity for the public to request a hearing as required by 40 CFR §51.102(a) and §51.102(d).

Executed this 12th day of July, 2023 at Sacramento, California.



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

Attachments