

California Air Resources Board

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

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

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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## I. General

The Staff Report: Initial Statement of Reasons for Rulemaking (staff report), entitled Proposed Amendments to Vapor Recovery Certification Procedures, released March 21, 2023, is incorporated by reference herein. The staff report contained a description of the rationale for the proposed amendments. On March 21, 2023, all references relied upon and identified in the staff report were made available to the public.

In this rulemaking, the California Air Resources Board (CARB) Executive Officer is adopting amendments to the vapor recovery regulations that update the certification procedures to remove imprecise language that does not provide clear instruction for CARB's Executive Officer to approve or reject alternative test procedures. Additionally, the proposed amendments make non-substantive grammatical and formatting edits to improve understanding for everyone and make the documents more accessible for people with certain visual or reading disabilities.

The proposed amendments are administrative, refining the certification procedures without impacting the regulated community or current gasoline vapor emission emissions. The proposed amendments would not change any of the current performance standards, implementation schedules, or test procedures.

The 45-Day public comment period began on March 24, 2023, and ended on May 8, 2023. Due to the nature of the proposed amendments being administrative and having no impacts on costs or existing emission reductions, the proposed amendments were presented to the CARB Executive Officer to consider for approval. The Executive Officer has presumed statutory authority to fulfill all functions of the Board that the Board did not specifically reserve for its own action; this proposal is not a type of action specifically reserved by the Board unto itself, therefore the Executive Officer may act to adopt this rulemaking and a Board hearing is not required.<sup>1</sup> A public hearing would only be conducted by the Executive Officer if one was requested by any interested member of the public. Any interested person was required to request a public hearing by April 24, 2023, no later than 15 days before the close of the written comment period. There were no requests for a public hearing received at any time, therefore a public hearing was not conducted.

Four written comments were received during the 45-day public comment period. Subsequent to the 45-day public comment period, the Executive Officer adopted the regulation as described in the staff report "Proposed Amendments to Vapor Recovery Certification Procedures" and associated Notice of Public Hearing (45-Day Notice). The regulation requirements are set forth in California Code of Regulations, title 17, §§ 94011, 94014, 94016, and 94017.

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<sup>1</sup> "Any power, duty, purpose, function, or jurisdiction which the state board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the state board, by affirmative vote recorded in the minutes of the state board, specifically has reserved the same for the state board's own action." (Health & Saf. Code, § 39516).

The Executive Officer determines if additional conforming modifications to the regulations are appropriate. If so, the Executive Officer makes the modified regulations (with the modifications clearly identified) and any additional documents or information relied upon available for a supplemental 15-day public comment period. In this rulemaking proposal, after the 45-day comment period closed, there were no conforming modifications needed and therefore a 15-day public comment period was unnecessary.

This Final Statement of Reasons (FSOR) updates the staff report by identifying and providing the rationale for the modifications made to the originally proposed regulatory text. In this rulemaking proposal, there were no modifications made to the originally proposed text. The FSOR also contains a summary of comments received during the formal rulemaking process by CARB on the proposed amendments or the process by which they were adopted, and CARB's responses to those comments. Four comments were received that did not directly pertain to this proposed rulemaking, as discussed in Section IV.

### **A. Mandates and Fiscal Impacts to Local Governments and School Districts**

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

### **B. Consideration of Alternatives**

Government Code section 11346.2 subsection (b)(4)(A) requires that CARB consider reasonable alternatives that "include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation." Additionally, Government Code section 11346.2 subsection (b)(4)(B) requires a description of reasonable alternatives to the regulations that would lessen any adverse impact on small business. For the reasons set forth in the staff report and in this FSOR, the Executive Officer determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons or small businesses, or would be more cost-effective to affected private persons or small businesses, and equally effective in implementing the statutory policy or other provisions of law than the action taken by CARB.

As described in the staff report, the purpose of the proposed amendments is to:

1. 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; and
2. 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.

As discussed in Chapter IX of the staff report, CARB determined that there are no reasonable alternatives to the proposed amendments.

## **II. Modifications Made to the Original Proposal**

### **A. Modifications Approved by the Executive Officer and Provided for in the 15-Day Comment Period**

There were no modifications to the original proposal and therefore a 15-day comment period was not necessary.

### **B. Non-Substantial Modifications**

Subsequent to the 15-day public comment period mentioned above, staff did not identify any additional non-substantive changes to the regulation.

## **III. Documents Incorporated by Reference**

The vapor recovery regulations set forth in California Code of Regulations, title 17, sections 94011, 94014, 94016, and 94017, incorporate by reference the following documents:

- CP-201 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Underground Storage Tanks, amended July 12, 2023, incorporated by reference in 17 CCR, section 94011.
- CP-204 – Certification Procedure for Vapor Recovery Systems on Cargo Tanks, amended July 12, 2023, incorporated by reference in 17 CCR, section 94014.
- CP-206 - Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks, amended July 12, 2023, incorporated by reference in 17 CCR, section 94016.
- CP-207 – Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses at Gasoline Dispensing Facilities, amended July 12, 2023, incorporated by reference in 17 CCR, section 94017.

The above listed documents are being amended by the regulation adopted by the Executive Officer and thus the amendment date is the date that the regulation was approved by the Executive Officer.

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations. In addition, some of the documents are copyrighted, and cannot be reprinted or distributed without violating licensing agreements. The documents are lengthy and highly technical and would add unnecessary additional volume to the regulation. Distribution to all recipients of the California Code of Regulations is not needed because the interested audience for these documents is limited to the technical staff at a portion of reporting facilities, most of whom are already familiar with these procedures. Also, the incorporated documents were made available by CARB upon request during the rulemaking action and will continue to be available in the future. The documents are also available from college and public libraries, or may be purchased directly from the publishers.

## IV. Summary of Comments and Agency Response

Written comments were received during the 45-day comment period in response to the public hearing notice. There were no requests for an Executive Officer Hearing during the 45-day comment period, and therefore no hearing was held. Listed below are the organizations and individuals that provided comments during the 45-day comment period:

**Table 1. Written Comments Received During the 45-Day Comment Period**

<b>Commenter; Date</b>	<b>Affiliation</b>
Sutcliffe, Grenville; 03/27/2023	Husky Corporation
Overby, Gary; 05/04/2023	None listed
Johansen, Cinda; 05/04/2023	Personal
Kelcey, Kathleen; 05/04/2023	Humanity

### A. Comments Received during the 45-Day Comment Period

(1) Grenville Sutcliffe, Husky Corporation:

**Comment:** Since the Air Resources Board is currently requesting public comment on proposed amendments to the vapor recovery certification procedures, Husky would like to take this opportunity to propose an idea for an additional future amendment to enhance the reliability of all certified vapor recovery systems which would ultimately benefit the public and all those who provide and maintain vapor recovery system equipment. The idea is to require manufactures to be ISO 9001:2015 certified just like the automotive industry who recently expanded to IATF 16949:20116 from ISO/TS 16949:2009 for their Quality Management System. You may ask how does this improve equipment reliability. Allow me to explain.

A simple analogy to explain ISO 9001 would be the value an Underwriters Laboratory (UL) Listing adds to a consumer product. When a product passes a set of industry accepted safety standard tests, UL "Lists" the product allowing it to carry their mark of approval. Likewise, when a manufacturing company passes an external audit of the ISO 9001:2015 Standard for a Quality Management System, they become an ISO "Certified" company. A Quality Management System includes such things as procedures for manufacturing process control to ensure the listed product is manufacture red consistently. The more a product is manufactured consistently, the less likely a product would be subject to recalls and warranty claims which creates frustration for all who provide and maintain vapor recovery equipment.

Requiring vapor recovery equipment to be made by ISO certified manufacturers would take some time to implement. However, with a well development phase in plan, California vapor recovery equipment could soon experience the same reliability as vehicles bought at a dealership.

We look forward to your thoughts for and against this idea to better serve customers in California and all those who rely on CARB certifications. If you have any questions, please feel free to contact me.

**Agency Response:** No changes made. The comment suggests that CARB amend the vapor recovery certification procedures to require vapor recovery equipment manufacturers undergo ISO 9001:2015 certification and external audit to ensure the quality of their manufacturing processes. This commenter's request is not directly related to the amendments specified in the March 24, 2023, 45-Day Notice. Therefore, it is beyond the scope of the March 24, 2023, 45-Day Notice, and CARB made no changes based on the comment.

(2) Overby, Gary:

**Comment:** As we've learned over the recent past, methane in particular, is 20-40 times more potent in terms of atmospheric heating than CO2. I would also say that capturing methane, rather than burning, or allowing it to escape makes great sense. Also, as the industry has recently admitted, it was well aware of the relationship to climate change. This fact is a tacit admission of responsibility. I believe it is time to stop all future leases to any processor that is unwilling to accept responsibility, and help remediate past mistakes.

**Agency Response:** No changes made. The comment is not related to the subject of the Proposed Amendments to Vapor Recovery Certification Procedures, but instead appears to refer to the Proposed Amendments to the Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities, which was released to the public for comment on April 25, 2023, and is scheduled for a public hearing on June 22, 2023. The comment will be forwarded to the appropriate staff for consideration.

(3) Johansen, Cinda:

**Comment:** If anything we need to keep tightening the regulations so all can be assured their air and water are clean and safe for our health. I would really love for my two grandchildren to be healthy in their future and nothing is allowed to encourage slackers who don't care about a healthy future. I don't think our air and water can be too clean and safe, there must be no doubts.

**Agency Response:** No changes made. The comment is not specifically related to the subject of the Proposed Amendments to Vapor Recovery Certification Procedures, but instead appears to refer to the Proposed Amendments to the Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities, which was released to the public for comment on April 25, 2023, and is scheduled for a public hearing on June 22, 2023. The comment will be forwarded to the appropriate staff for consideration.

Additionally, the vapor recovery certification procedure amendments have no impact on the regulated community nor to current gasoline vapor emission emissions. The proposed amendments would not change any of the current performance standards, implementation schedules, or test procedures.

(4) Kelcey, Kathleen:

**Comment:** What has been done to help the victims of the Porter Ranch [sic], Los Angeles. Ca gas leak? The only things I've heard is that it has gone on for a long time, residents were injured and denied just compensation for those injuries, and nothing has been resolved. This issue shows how little is being done to protect people in Ca from infrastructure issues. Oil and gas industry is uninterested. I hope you will put teeth into any new regs and enforce those regs.

**Agency Response:** No changes made. The comment is not related to the subject of the Proposed Amendments to Vapor Recovery Certification Procedures, but instead appears to refer to the Proposed Amendments to the Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities, which was released to the public for comment on April 25, 2023, and is scheduled for a public hearing on June 22, 2023. The comment will be forwarded to the appropriate staff for consideration.

## V. Comment: Peer Review

Health and Safety Code section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including CARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process.

CARB determined that this rulemaking does not contain a scientific basis or scientific portion subject to peer review, and thus no peer review as set forth in Health and Safety Code section 57004 was needed or performed.

The regulation at issue is administrative, refining the vapor recovery regulations to remove unnecessary and outdated language from the four certification procedures while updating formatting and making minor grammatical edits. The rulemaking does not establish “a regulatory level, standard, or other requirement for the protection of public health or the environment,” such as an ambient air quality standard or toxic exposure level. As such, it does not have a “scientific basis” or “scientific portions” that form the foundations of a regulatory standard or level.