Updated Informative Digest

Proposed Amendments to Vapor Recovery Certification Procedures

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, as last amended on July 12, 2023.
- CP- 204 – Certification Procedure for Vapor Recovery Systems of Cargo Tanks, as last amended on July 12, 2023.
- CP-206 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks, as last amended on July 12, 2023.
- CP-207 – Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities, as last amended on July 12, 2023.

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

Background and Effect of the Proposed Regulatory Action:

To protect air quality and public health, the California Air Resources Board (CARB or Board) 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:

First 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[1] 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 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

[1] 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.

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.

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 45 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 and U.S. EPA to solicit feedback. In addition, CARB staff presented the proposed amendments at the Subcommittee's July 12, 2022, meeting. 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.

Description of Regulatory Action

On March 21, 2023, CARB released the Notice of Public Hearing (45-Day Notice) and Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), titled "Proposed Amendments for Vapor Recovery Certification Procedures," for public review.[2] The Staff Report contains a description of the rationale for the proposed amendments. Additionally, on March 21, 2023, all references relied upon and identified in the Staff Report were made available to the public. CARB received written comments from four commenters during the 45-Day Notice comment period which opened on March 24, 2023, and ended on May 8, 2023, none of which were related to the subject matter of the proposed amendments.

During the 45-Day Notice comment period, CARB staff did not receive a request for an Executive Officer Hearing. CARB staff informed the Executive Officer of the proposed amendments and that no written comments pertaining to the subject matter of the rulemaking were received from the public, and that no changes were necessary for the proposed amendments. Subsequent to the 45-Day Notice public comment period, the Executive Officer approved the adoption of the proposed regulation.

No modifications were made to the proposed language as a result of the 45-day public comment period, therefore a supplemental 15-day comment period was not necessary.

Comparable Federal Regulations:

There are no federal regulations or programs directly comparable to California's Enhanced Vapor Recovery (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

[2] This rulemaking is within the Executive Officer's authority to adopt under the presumed delegation of power provided in section 39516 of the Health and Safety Code and because it proposes corrective, clarifying or ministerial changes, which are actions that were not expressly reserved by the Board for its own action.

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.