TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO ENHANCED VAPOR RECOVERY REGULATIONS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption the proposed amendments to Certification Procedures, Definitions, and Test Procedures for Vapor Recovery Systems at Gasoline Dispensing Facilities (Enhanced Vapor Recovery Regulations).

DATE: December 10, 2020

TIME: 9:00 A.M.

Please see the public agenda which will be posted ten days before the December 10, 2020, Board Meeting for any appropriate direction regarding a possible remote-only Board Meeting. If the meeting is to be held in person, it will be held at the California Air Resources Board, Byron Sher Auditorium, 1001 I Street, Sacramento, California 95814.

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., December 10, 2020, and may continue at 8:30 a.m., on December 11, 2020. Please consult the agenda for the hearing, which will be available at least ten days before December 10, 2020, to determine the day on which this item will be considered.

Written Comment Period and Submittal of Comments

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on October 23, 2020. Written comments not submitted at the hearing must be submitted on or after October 23, 2020, and received **no later than December 7, 2020**. 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. CARB requests that, when possible, written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Comments submitted in advance of the hearing 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

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral 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, the Board requests but does not require that persons who submit written comments to the Board 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, section 41954. This action is proposed to implement, interpret, and make specific section 41954.

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

Sections Affected: Proposed amendments to California Code of Regulations, title 17, sections 94010, 94011, 94016, and 94017.

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 California Code of Regulations, title 17, §§ 94010, 94011, 94016, and 94017, respectively:

- D-200 – Definitions for Vapor Recovery Procedures [insert amendment date]
- CP-201 – Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities [insert amendment date], including:
    - TP-201.1C – Leak Rate of Drop Tube/Drain Valve Assembly [insert amendment date]
    - TP-201.1D – Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves [insert amendment date]

    - TP-201.2I – Test Procedure for In-Station Diagnostic Systems [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 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.

In addition, the following documents are incorporated by reference in Certification Procedures CP-201, CP-206, and CP-207:

- Society of Automotive Engineers (SAE), 2019. Surface Vehicle Recommended Practice SAE J285: Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines, as revised by SAE April 2019. Copyrighted.
- SAE, 2019. Recommended Practice SAE J1140: Filler Pipes and Openings of Motor Vehicle Fuel Tanks, as revised by SAE October 2019. Copyrighted.

Documents incorporated by reference are attached as separate appendices in the Initial Statement of Reasons (ISOR), except for SAE J285 and SAE J1140, which are copyrighted documents and will be on file as part of the public record.

Background and Effect of the Proposed Regulatory Action:

State law requires CARB to adopt procedures to certify and test vapor recovery systems or components used at gasoline dispensing facilities (GDF). Since the first certification and test procedures were adopted in 1975, CARB has periodically updated these procedures to reflect improvements in vapor recovery technologies, to modify requirements for existing installations to achieve additional emission reductions, and to improve cost-effectiveness. CARB staff are now proposing a suite of regulatory amendments to the certification and test procedures that would improve their cost-effectiveness, preserve emission reductions, and clarify the procedures for better regulatory certainty and enforceability.

Vapor Recovery Program Background

Gasoline vapor emissions are controlled during the transfer of gasoline from storage tanks at terminals, or bulk plants, to tanker trucks (cargo tanks) that deliver fuel to a GDF, from which gasoline is then transferred into vehicles. At a typical GDF, gasoline vapor emissions are controlled during gasoline transfer from the cargo tank to GDF storage tanks (Phase I) and from the storage tank to vehicles (Phase II). Additional

controls include limiting storage tank headspace pressure and the volume of liquid spillage from the nozzle during vehicle refueling.

CARB approved Enhanced Vapor Recovery (EVR) regulations for GDFs equipped with an underground storage tanks (UST) or aboveground storage tank (AST) in March 2000 and June 2007. EVR regulations established 80 new standards and test procedures for vapor recovery systems to further reduce emissions and to increase reliability. Over the last two decades, CARB has amended the regulations numerous times to refine requirements and improve cost effectiveness, practicality, and efficiency of the program.

Issues Leading to and the Effect of the Proposed Regulatory Amendments

The proposed amendments are intended to continue to refine the EVR regulations to address the following issues.

1. ISD Overpressure Alarms

The in-station diagnostic (ISD) system continuously monitors the collection and containment of gasoline vapors within the UST and issues alarms when regulatory thresholds are exceeded. The alarms provide an early indicator of equipment malfunctions so that repairs are made promptly. Once the alarm is triggered, the GDF operator will typically schedule a contractor for troubleshooting and repair service.

In September 2009, CARB staff, in cooperation with the California Air Pollution Control Officers Association (CAPCOA), issued Advisory 405, when CARB staff found some GDFs were experiencing frequent ISD overpressure alarms during the wintertime that were not effective in detecting equipment malfunctions. This advisory was envisioned as a temporary mechanism to provide GDF operators with relief from alarm response costs by self-clearing alarms and to provide CARB staff the necessary time to collect and analyze field data to evaluate potential regulatory solutions.

Investigations conducted over the last decade revealed that in an overwhelming majority of instances, overpressure alarms are mainly attributed to the high volatility and evaporation rate of winter blend gasoline, and changes in newer vehicle fill pipe designs that result in a poor seal between the nozzle and vehicle fill pipe interface.[1] Since overpressure alarms are not effective at detecting repairable equipment malfunctions, they result in response costs for GDF owners without

[1] A poor seal at the fill pipe interface increases air ingestion at the nozzle, which increases the evaporation rate of gasoline within the UST headspace and results in excess pressure driven emissions and ISD overpressure alarms. In October 2018, the Board approved amendments to the certification procedures to standardize EVR and ECO nozzle spout and bellows dimensions to improve compatibility with newer vehicle fill pipes. The amendments were designed to reduce air ingestion at the nozzle and associated ISD overpressure alarms and pressure driven emissions. However, CARB staff expects that the high volatility of winter blend gasoline and site-specific factors such as variation in monthly gasoline throughput and limited operating hours (e.g., shut down at night and on holidays, or reduced weekend hours) can cause some GDFs to continue to have ISD overpressure alarms.

reducing emissions. Further, eliminating overpressure alarms would have no impact on air quality.

The proposed amendments would remove the ISD overpressure alarm criteria from the regulations, which would then require ISD manufacturers to remove the alarm criteria from their software the next time they seek CARB certification. The updated ISD software would be required for new GDFs and existing GDFs undergoing major modifications, and would be voluntary at all other existing GDFs.

2. ISD Report Improvements

The ISD software generates and stores an electronic archive of monthly and daily reports that can be accessed to verify the vapor recovery system is operating within set parameter limits. Several improvements are needed to make the stored pressure information more useful and to ensure that the reports can be correctly and easily identified. The proposed amendments would require the daily reports to identify the month and year, and reported pressure values to have a minimum of two decimal places.

3. Alternative Communication Ports for ISD System Consoles

CP-201 currently requires all ISD system consoles to be equipped with an antiquated RS-232 communication port. ISD manufacturers have reported both difficulty and high costs in procuring these ports. ISD manufacturers requested that CARB staff revise this requirement to allow modern technologies, such as USB, Ethernet, or Bluetooth. CARB staff agrees and proposes amendments that would remove the RS-232 requirement to allow for more flexibility.

4. Nozzle Spillage Standard

Nozzle spillage occurs when liquid gasoline enters the environment before, during, and after vehicle refueling. As the liquid gasoline evaporates, vapor emissions are created. The spillage performance standard for CP-201 and CP-206 is 0.24 pounds emissions per thousand gallons of gasoline dispensed (lbs/kgal) for EVR nozzles, and for CP-207 is 0.12 lbs/kgal for ECO nozzles.

CARB staff have evaluated the performance of the five currently certified nozzles and found they are all performing much better than the existing standards. Therefore, CARB staff recommends lowering the standards in all three certification procedures to 0.05 lbs/kgal. This would preserve emission reductions that are already occurring and help safeguard public health benefits by preventing manufacturers from requesting CARB to certify less efficient nozzles that would lead to emission increases. Since all currently certified nozzles meet the proposed standard, all in-use nozzles can stay in place until end of useful life.

5. Physical Sample Requirement for Vapor Recovery Equipment

CARB certification procedures currently do not require manufacturers to submit physical samples of certified systems and components for CARB to archive. Without archived physical samples of certified components, it has been difficult for CARB to enforce requirements, or hold manufacturers accountable, when undisclosed changes were made. Undisclosed changes made to component materials or dimensional specifications can negatively affect compliance with performance standards. Therefore, CARB staff proposes amendments to CP-201, CP-206, and CP-207 to require equipment manufacturers to provide physical samples of new systems and/or components, once they have successfully demonstrated compliance with the applicable performance standards or specifications.

6. Amend Test Procedures for Remote Fill Phase I System Configurations

Test procedures TP-201.1C and TP-201.1D are used to quantify the leak rate of the fuel delivery pathway within Phase I EVR systems. While conducting the tests, if the specified pressure is not reached within five minutes, the system fails the test. In 2001, when TP-201.1C and TP-201.1D were adopted, Phase I EVR systems were configured with the fuel delivery pathway located directly above the UST or the fuel pathway had an offset (remote fill) no greater than 50 feet. For remote fill configurations with offset lengths greater than 50 feet, the additional volume in the fuel delivery pathway is too great to pressurize within five minutes. Therefore, CARB staff proposes to amend both test procedures by including a table that lists the time to pressurize the system as a function of pathway length.

7. Correct the Phase II EVR Upgrade Date in CP-206

On July 25, 2019, the Board adopted amendments to CP-206, granting existing ASTs in ozone non-attainment areas that have an annual gasoline throughput of 480,000 gallons or less additional time before they are required to upgrade to Phase II EVR. The intent was to designate July 25, 2019, as the applicable cutoff date for existing GDFs. When drafting the regulatory text for CP-206, CARB staff accidently listed an incorrect date of March 13, 2015. This inadvertently created a population of existing ASTs, installed between March 13, 2015, and July 25, 2019, which regardless of annual throughput, would be required to upgrade to Phase II EVR, creating a grey area for Air District enforcement for these ASTs. CARB staff proposes replacing the date, March 13, 2015, in three sections of CP-206 with the date of the Board Hearing, July 25, 2019. This action would alleviate confusion by restoring the intent of the prior rulemaking activity.

8. Various Administrative Changes

The proposed amendments include administrative changes that clarify intent, improve regulatory certainty, and improve cost effectiveness by reducing confusion. These administrative changes do not introduce any new requirements. Further details are available in Chapter II of the ISOR. The proposed administrative amendments would:

1. Replace placeholder language with actual dates for the effective and operative dates for ECO nozzles in CP-207;
2. Clarify language for performance standard versus performance specification in CP-207 by making it consistent with language in CP-201;
3. Amend the title of CP-201 to include "Underground Storage Tanks" to provide clarification;
4. Decrease the length of CP-201, CP-206, and CP-207 by ten pages by incorporating nozzle dimensions by reference to identical dimensions in SAE J285 and SAE J1140 documents; and
5. Replace placeholder language with the actual effective date for Phase II EVR requirements in CP-206.

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

Objectives and Benefits of the Proposed Regulatory Action:

The proposed amendments refine some parts of the EVR regulations to improve cost effectiveness, preserve the current level of air quality benefits, and clarify and improve the certification and test procedures for better regulatory certainty and enforceability. The benefits of the proposed amendments are the result of air quality goals developed by CARB based on explicit statutory authority in the Health and Safety Code § 41954. State law (Health and Safety Code § 41954(a)) directs CARB to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standard.

The following sections provide a general overview of health benefits to Californians, specific benefits provided by each of the proposed amendments, and the process CARB staff completed to make the determination of the proposed amendments.

Protection of Public Health and Safety

Gasoline vapor emissions from GDFs can lead to increased health risk through two primary mechanisms. First, gasoline vapors contain reactive organic gases (ROG) that lead to the formation of ground level ozone, which can cause adverse health effects. Second, gasoline vapors contain benzene, which is a toxic air contaminant and known carcinogen. Reducing ROG emissions benefits the health and welfare of California residents and is an integral part of California's goals of attaining and maintaining federal and State ozone standards and reducing public exposure to benzene emissions.

The proposed amendments to the vapor recovery regulations are designed to fine-tune the regulations to further ensure no increase in existing gasoline vapor emissions occurs.

Benefits from Each Proposed Amendment

1. Replace overpressure alarm criteria in ISD software with informational reports: This proposed amendment would provide several benefits:

- Flexibility. The proposed amendments require new GDFs and existing GDFs that undergo major modifications to install updated ISD software, but provide flexibility for other existing GDFs. Existing GDF owners and operators would be allowed to choose whether to install the updated ISD software based on their site-specific assessments of potential cost savings and business priorities.
- No impact on current emission reduction benefits. Eliminating overpressure alarms would have no effect on Vapor Recovery Program emission reductions for two reasons. First, more than 95 percent of overpressure alarms are not associated with any repairable vapor recovery equipment problem. Second, other ISD alarms, routine inspections, and compliance testing can find the equipment problems that cause excess overpressure emissions.
- Statewide cost savings. Installation of updated ISD software would eliminate overpressure alarm response costs. CARB staff estimates that, in the absence of Advisory 405, GDF business owners would have cost savings of approximately $780 to $17,000 per GDF per year (avoiding 2 to 22 overpressure alarm responses per year) by installing updated software. The total statewide net cost-savings between 2024 and 2030 would be about $31.8 million to $97.9 million for GDF businesses.
- Regulatory solution. Currently, Advisory 405 provides some relief from overpressure alarm response cost and inconvenience by allowing GDF operators to clear ISD overpressure alarms during the winter fuel period but not the summer period. In addition, Advisory 405 is a temporary mechanism, not a regulation, and therefore cannot remain indefinitely. The proposed regulatory amendments provide a comprehensive solution.
- Improved cost effectiveness. Eliminating alarm response costs that do not reduce emissions improves the overall cost-effectiveness of implementing the EVR regulations.
- Reduced complacency. Eliminating ineffective ISD overpressure alarms would reduce accidental clearing of and operator complacency toward responding to the remaining ISD alarms (for example, nozzle vapor collection, processor operation, and vapor leak detection) that effectively indicate repairable vapor recovery equipment problems.

These benefits are achievable without installing new hardware; an ISD system software update is all that is required.

2. Improve ISD reports: The proposed amendments would benefit GDF owners and operators, service contractors, and regulators by ensuring the reports are easily

identified, accurate, useful for understanding site-specific conditions, and enable more effective trouble-shooting to identify equipment problems.

3. Allow alternative communication ports for ISD system consoles: The proposed amendments would allow manufacturers to install modern communication ports in ISD consoles, instead of the currently required antiquated RS-232 port. The proposed amendments would result in net cost-savings for ISD manufacturers during 2021-2030, and would improve the access and quality of downloaded data.

4. Make the nozzle spillage performance standard more stringent: The proposed amendments would preserve emission reductions that are already occurring. This will help safeguard public health benefits by preventing manufacturers from requesting the certification of less efficient nozzles that would lead to emission increases. In addition, GDF owners would not need to replace existing nozzles, since they already comply with the proposed standard.

5. Require physical samples of certified vapor recovery equipment: The proposed amendments benefit CARB and equipment users (GDF owners and operators) by providing an archive of as-certified components available for comparison should undisclosed changes cause problems or complaints in the future.

6. Amend test procedures for remote fill Phase I system configurations: The proposed amendments benefit owners and operators of GDFs with remote fill configurations, service contractors, and Air Districts by preventing false indications of system leaks and improving the test procedures for better regulatory certainty.

7. Correct the Phase II EVR upgrade date for GDFs with ASTs: The incorrect date currently in CP-206 creates confusion for Air District enforcement staff and certain AST owners. The proposed amendment will alleviate that confusion and ensure that AST owners do not perform inadvertent and costly upgrades before the end of useful life of their existing systems.

8. Make administrative changes to improve clarity and consistency: As described earlier, the proposed amendments include several administrative changes, which would result in cost savings. Some of these were requested by industry, while others were recommended by Office of Administrative Law and CARB legal counsel. The primary benefit of the proposed administrative changes is clarifying the certification and test procedures for better regulatory certainty and enforceability.

Development of Proposed Amendments

To make the determination that the proposed regulatory amendments to ISD overpressure alarms are necessary and appropriate, CARB staff took the following collaborative approaches with external stakeholders:

1. Public Workshops
    - Held eleven public workshops statewide between 2012 and 2018 to explain and solicit comments about potential causes of ISD overpressure alarms, study designs, interpretation of results, and potential solutions.
    - Held a public workshop on May 5, 2020 where CARB staff presented the full suite of proposed regulatory amendments to CARB's certification and test procedures and received input from stakeholders. The workshop was attended by nearly 100 participants representing various aspects of the industry.
2. Technical Support Documents
    - Collaborated with industry and CAPCOA Vapor Recovery Subcommittee to conduct a series of investigations and field studies to identify causes of alarms and characterize the magnitude of emissions. These investigations are documented in sixteen technical support documents, which are posted on CARB's Vapor Recovery Program webpage. Supporting data compilations and spreadsheet calculations cited in these documents were made available upon request.
3. Stakeholder Consultations
    - CARB staff consulted with a variety of stakeholders throughout development of the proposed regulatory amendments in an effort to obtain additional insight, build consensus, and minimize areas of disagreement. These stakeholders include representatives of CAPCOA, State agencies that regulate GDFs, equipment manufacturers, GDF owners and operators, and representatives of industry groups, such as the California Fuels and Convenience Alliance (CFCA).[2]

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 EVR certification requirements may have a national and international impact.

[2] CFCA is the industry's California trade association representing the needs of independent wholesale and retail marketers of gasoline, diesel, lubricating oils and other petroleum products; transporters of those products; and retail convenience store operators. The majority of CFCA's members are small and family owned businesses.

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

The determinations of the Board's 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.

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

The determinations of the Board's 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 made the following determinations with regard to costs or savings to any State agency, costs or savings in federal funding to the State, and costs or mandates 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.

Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:

None. Because the regulatory requirements apply equally to all regulated entities and unique requirements are not imposed on local agencies, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution. The proposed regulatory action would not create costs to any school district reimbursable by the state pursuant to Part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

Cost or Savings for State Agencies:

Agencies that operate GDFs are the regulated entities under the proposed amendments and could be impacted by new costs and cost-savings. The proposed amendments also could result in new costs and cost-savings for CARB and other state agencies that participate in the certification process for vapor recovery equipment. Fiscal impacts to these agencies are analyzed for the fiscal year the proposed

regulatory amendments will become effective (Fiscal Year [FY] 2021/22) through December 2030, the regulatory lifetime, in the absence of Advisory 405.

There are about 496 state government-owned GDFs in California that are required to have either some type of vapor recovery system or ECO nozzles and low permeation hoses. The proposed ISD amendments would have no effect on state government-owned GDFs because an Air District survey indicates that no state agencies own or operate GDFs with ISD. Several of the other proposed amendments may indirectly affect state government-owned GDFs due to the potential to incur pass through costs from vapor recovery equipment manufacturers that are directly impacted by the amendments. If equipment manufacturers were able to pass on all costs and savings along with an estimated 60 percent mark-up, this would result in about $1.53 in additional cost to about $14.76 in cost-savings per impacted GDF over the 10-year lifetime of the proposed amendments, depending on the type of vapor recovery system installed. Such potential passed-through costs and cost-savings are considered to be negligible.

The proposed amendments could result in additional certification costs for CARB's Vapor Recovery Program of about $67,000 through 2030. These agency costs are fully recovered from the manufacturers seeking certification because CARB has legal authority to charge fees to recover the costs of certification.[3] As a result, these certification costs would have no net fiscal impact on CARB. The proposed amendments also could result in regulatory lifetime costs of about $200 that would not be recovered from manufacturers, cost-savings of about $2,200, and net cost-savings of about $2,000 for the Vapor Recovery Program. The net cost-savings are expected to be re-allocated to other aspects of the Vapor Recovery Program with no fiscal impact on CARB.

The proposed amendments also could result in additional certification costs of about $200 for the Department of Forestry and Fire Protection's Office of the State Fire Marshall (SFM), and about $500 for the Department of Industrial Relations' Division of Occupational Safety and Health (DOSH), to review updated ISD software and issue approval letters. Because SFM and DOSH have legal authority under State law to charge fees to recover the costs of certification, the review costs would have no net fiscal impact on SFM and DOSH.

Other Non-Discretionary Costs or Savings on Local Agencies

Local agencies and school districts that operate GDFs are the regulated entities under the proposed amendments and could be impacted by new costs and cost-savings. Air Districts and Certified Unified Program Agencies also could be affected because they issue and enforce permits for GDF activities and Air Districts participate in CARB's certification process for vapor recovery equipment. Fiscal impacts to these agencies

[3] Health and Safety Code § 41954(e) states that CARB may charge a reasonable fee for certification of a gasoline vapor control system or a component thereof, not to exceed the actual cost.

are analyzed for the fiscal year the proposed regulatory amendments will become effective (FY2021/22) through December 2030, the regulatory lifetime.

There are about 1,600 local government-owned GDFs in California that are required to have some type of vapor recovery system or ECO nozzles and low permeation hoses. Air District surveys indicate about four of these GDFs have ISD systems. The installation of updated ISD software under the proposed amendments could result in net cost-savings for the local agencies that operate these GDFs. Net cost-savings are expected to be re-allocated to other aspects of the agency programs and would have no fiscal impact for local agencies. Several of the other proposed amendments can indirectly affect local government-owned GDFs due to the potential to incur pass through costs from vapor recovery equipment manufacturers that are directly impacted by the amendments. If equipment manufacturers were able to pass on all costs and savings along with an estimated 60 percent mark-up, this would result in about $1.53 in additional cost to about $14.76 in cost-savings per impacted GDF over the 10-year lifetime of the proposed amendments, depending on the type of vapor recovery system installed. Such potential passed-through costs and cost-savings are considered to be negligible.

Air Districts participate in the certification process by issuing research and development (R&D) permits for CARB certification test sites and by providing review of CARB staff's draft certification documents (e.g., Executive Orders, Exhibits, Certification Summaries, etc.). In addition, some Air Districts require GDF owners to obtain permits to install updated ISD software. The proposed amendments for ISD software requirements could result in increased costs (statewide total) of about $7,200 for issuing R&D permits, about $4,000 for reviewing draft certification documents, and up to about $74,800 for issuing permits for ISD software updates, over regulatory lifetime. The permitting costs are fully recovered from equipment manufacturers and GDF owners because Air Districts have legal authority under State law to recover permitting related costs by imposing fees, and therefore these costs would have no net fiscal impact on Air Districts. However, Air District costs to review certification documents would not be recoverable from manufacturers nor reimbursable by the State because State law does not specify that Air Districts can impose fees or be reimbursed for these certification costs.

California's Certified Unified Program Agencies (CUPA), consisting of 81 certified local government agencies, are responsible for enforcing regulatory standards established by five different state agencies. The proposed amendments for ISD software requirements could result in increased costs of up to about $886,000 (statewide total) through 2030 for CUPAs that require GDF owners to obtain permits to install ISD software updates. CUPAs have legal authority to recover related costs by imposing fees. As a result, these permitting costs are fully recovered from GDF owners and would have no net fiscal impact on CUPAs.

Cost or Savings in Federal Funding to the State:

None. Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings in federal funding to the State.

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 ISOR.

GDFs and vapor recovery equipment manufacturers are the regulated entities under the proposed amendments and would be directly impacted (either positively or negatively) by the amendments. The proposed amendments are estimated to have direct costs of approximately $379,000 to $14.1 million through 2030 for business-owned GDFs and vapor recovery equipment manufacturers, when both required and voluntary actions are considered in the absence of Advisory 405. This estimate does not include cost-savings under the proposed amendments. The proposed amendments would minimize new implementation costs and provide some savings for equipment manufacturers, and could provide substantial cost savings for business-owned GDFs. In total, direct cost-savings from the proposed amendments could range from about $31.9 million to $109.0 million. When compared to the costs, these savings result in net direct cost-savings of about $31.8 million to $97.9 million for GDF businesses.

There are about 2,721 businesses that own GDFs that could be impacted by the proposed amendments, if both required and voluntary actions are considered. The proposed amendments to eliminate overpressure alarm criteria from ISD software directly affect GDFs with USTs required to have ISD systems. Once updated software has been certified by CARB (anticipated by December 2022), the proposed amendments would require owners and operators of existing GDFs with ISD systems to

install the updated ISD software if they have major modifications or replace consoles due to irreparable damage and/or normal wear and tear. The proposed amendments would require owners and operators of new GDFs to install ISD systems with the updated ISD software at the time of construction. These existing and new GDFs also would be affected by the proposed amendments that would allow ISD manufacturers to install modern communication ports instead of RS-232 ports in ISD consoles. In addition, owners of existing GDFs with ISD systems could voluntarily install updated software to eliminate ineffective ISD overpressure alarm response costs.

Several of the other proposed amendments also can indirectly affect business-owned GDFs due to the potential to incur pass through costs from vapor recovery equipment manufacturers that are directly impacted by the amendments. While most of these manufacturers are located outside of California, staff assumed the direct costs imposed on these manufacturers, as well as potential cost-savings, would be fully passed on to GDF owners and operators who purchase their equipment. If manufacturers were to pass on these costs and cost-savings to California businesses (retail and other types of GDFs), these could result in approximately $1.53 in additional cost to approximately $14.76 in cost-savings per impacted GDF through 2030, depending on the type of vapor recovery system installed. These potential passed-through costs and cost-savings are considered to be negligible. These costs or cost-savings do not impose any fiscal impacts because they are not unique to government and affect private and public sectors equally.

The proposed amendments directly affect certification procedures for manufacturers of Phase I and Phase II vapor recovery systems and components, and manufacturers of ECO nozzles and low permeation hoses. There are currently 16 manufacturers that either produce equipment already certified by CARB for sale in California, have submitted applications for certification, or have discussed submitting an application. The proposed amendments are estimated to have direct costs of approximately $325,000 to $3.0 million through 2030 for equipment manufacturers. This estimate does not include cost-savings under the proposed amendments. The proposed amendments would minimize new implementation costs and provide about $35,000 in cost-savings for equipment manufacturers. When compared to the costs, these savings result in net direct costs of about $290,000 to $3.0 million for equipment manufacturers.

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

The creation or elimination of jobs within the State of California:

The proposed amendments are expected to result in overall cost-savings to GDFs while reducing service contractor revenue as an increasing number of GDFs no longer require overpressure alarm responses by the contracted service technicians. This could result in creation or elimination of some jobs at GDFs and service companies. The

proposed amendments may result in creation of a maximum of 26 jobs at GDFs and elimination of maximum of 122 jobs at service contractor businesses by 2030.

The creation of new business or the elimination of existing businesses within the State of California:

No businesses are expected to be created or eliminated in response to the proposed amendments.

The expansion of businesses currently doing business within the State of California:

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

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 7, the proposed amendments will preserve the emission reductions achieved by implementation of emission controls at GDFs. Reducing ROG emissions benefits the health and welfare of California residents and worker safety by reducing ambient ground level ozone and benzene exposure. Reducing ambient ground level ozone also helps to reduce smog, which is a benefit for the state's environment.

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would 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 Impact Analysis in the Initial Statement of Reasons (ISOR).

Benefits of the Proposed Regulation:

The objectives of the proposed regulatory amendments are to improve the Vapor Recovery Program while safeguarding public health benefits by ensuring emission rates do not increase. The proposed amendments to the certification and test procedures improve cost-effectiveness of GDF vapor recovery systems, preserve emission reductions from equipment with superior performance, and clarify and improve the certification and test procedures for better regulatory certainty and enforceability. 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 11346.5(a)(3) discussion on page 7.

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 would necessarily incur in reasonable compliance with the proposed action. Information provided by the Air Districts indicates no individuals, only businesses and government agencies, own GDFs directly affected by the proposed amendments.

The typical business that could be affected by the proposed amendments, not including small businesses, is a business that owns 12 or more retail GDFs. There are about 45 California-based businesses, and 12 businesses headquartered outside of California, that own from 12 to nearly 600 retail GDFs each. The most common types of business are mid-sized independent retail businesses that own an average of about 14 GDFs, and large independent retail businesses that own an average of about 79 GDFs.

The initial and ongoing cost to a typical California business for updated ISD software required under the proposed amendments depends on the number and timing of major modifications at its existing GDFs or construction of new GDFs. A mid-sized independent retail business could have initial costs that range from $23 to $230, depending on how many of its GDFs have a major modification in the same year. A large independent retail business could have initial costs that range from $23 to $1,300. These estimates assume that vapor recovery equipment manufacturers are able to pass on their compliance costs entirely to GDFs.

The installation of updated ISD software, however, will eliminate overpressure alarm response costs. Based on average ISD overpressure alarm frequencies observed by a statewide survey, CARB staff estimates a typical mid-sized business required to install updated ISD software at ten GDFs could have cost-savings of up to about $23,000 per year. CARB staff estimates a large business required to install updated ISD software at 58 GDFs could have cost-savings of about $132,000 per year.

In addition, CARB staff estimates GDF owners could decide to voluntarily install updated ISD software at about 19 percent of retail GDFs not owned by small business between 2023 and 2026 based on site-specific assessment of cost-effectiveness from eliminating ISD overpressure alarm response costs. There could be a total cost per GDF of approximately $3,600 for permit fees, ISD software, installation, and loan interest. Therefore, a mid-sized GDF business could experience initial costs that range from $3,600 to $10,800 while a large GDF business could experience initial costs that range from $3,600 to $54,000.

Based on average ISD overpressure alarm frequencies observed by a statewide survey, CARB staff estimates a typical mid-sized business that voluntarily installs updated ISD software at three GDFs could have cost-savings of about $12,000 per year. CARB staff

estimates a large business that voluntarily installs updated ISD software at 16 GDFs could have cost-savings of about $60,000 per year.

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 affect small businesses.

The typical small business that could be affected by the proposed amendments is a business that owns 1 to 11 retail GDFs. The proposed amendments will potentially affect 2,662 California small businesses that own GDFs, of which approximately 741 businesses are required to install updated ISD software that eliminates ISD overpressure alarms at the time of new GDF construction or major modification of an existing GDF. The updated software would be included with the purchase of the new ISD console that would already be part of the major modification or new construction. Assuming that vapor recovery equipment manufacturers are able to pass on their compliance costs entirely to GDFs, a GDF small business could experience an additional initial cost of about $23 for the updated software for a new GDF or a major modification of an existing GDF, as a result of the proposed amendments. Since a small GDF business can own 11 or less GDFs and most small business owned GDFs likely will not be required to install updated ISD software, the initial costs to a small GDF business can range from zero to $46.

The installation of updated ISD software, however, may result in eliminating overpressure alarm response costs. Based on average ISD overpressure alarm frequencies observed by a statewide survey, CARB staff estimates a small GDF business required to install updated ISD software at two GDFs may experience annual ongoing cost-savings of zero to $7,000.

In addition, CARB staff estimates small business GDF owners could decide to voluntarily install updated ISD software at about 47 percent of their GDFs between 2023 and 2026 based on site-specific assessment of cost-effectiveness from eliminating ISD overpressure alarm response costs. There could be a total cost per GDF of approximately $3,600 for permit fees, ISD software, and installation. Therefore, the initial costs to a small GDF business that voluntarily installs ISD software can range from $3,600 to $18,000 (i.e., $3,600 per GDF x 5 GDFs).

Based on average ISD overpressure alarm frequencies observed by a statewide survey, CARB staff estimates a small GDF business that voluntarily installs updated ISD software at one to five GDFs may experience annual ongoing cost-savings of $4,600 to $23,000.

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

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been

identified and brought to the attention of the Board, 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. CARB staff considered reasonable alternatives to the proposed amendments, as described in Chapter IX of the ISOR.

Environmental Analysis

CARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulation and concluded that this is exempt pursuant to CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may result in significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter VI 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 (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than ten business days before the scheduled Board hearing. 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 (916) 322-5594 o envié un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. 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 Michelle Wood, Air Pollution Specialist, Vapor Recovery Regulatory Development Section, at (916) 445-3641 or (designated back-up contact) Donielle Jackson, Air Pollution Specialist, Vapor Recovery Regulatory Development Section, at (916) 445-9308.

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 Enhanced Vapor Recovery Regulations for Gasoline Dispensing Facilities*.

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, or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on October 20, 2020. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices may have limited public access. Please contact Chris Hopkins, Regulations Coordinator, at chris.hopkins@arb.ca.gov or (916) 445-9564 if you need physical copies of the documents.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, (916) 445-9564. 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

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption 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. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

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/2020/evr2020

CALIFORNIA AIR RESOURCES BOARD

Richard W. Corey
Executive Officer

Date: October 6, 2020

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 (www.ARB.ca.gov).