

State of California  
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text  
and Availability of Additional Documents and Information**

**PROPOSED AMENDMENTS TO THE REGULATION FOR THE CERTIFICATION OF  
VAPOR RECOVERY SYSTEMS FOR CARGO TANKS**

Public Hearing Date: April 25, 2019  
Public Availability Date: October 24, 2019  
Deadline for Public Comment: November 8, 2019

At its April 25, 2019, public hearing, the California Air Resources Board (CARB or Board) approved for adoption the proposed section 94014, Title 17, California Code of Regulations which established language that would allow CARB to evaluate Cargo Tank Vapor Recovery Program (CTVRP) costs and subsequently revise the certification fees as necessary to recover costs going forward.

The Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications.

Upon further consideration of the proposed formula-based certification fee calculation methodology, CARB determined that a numeric fee, with periodic adjustments in accordance with the California Consumer Price Index, would provide more certainty to stakeholders. The proposed modified regulatory language will be made available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8.

The resolution and all other regulatory documents for this rulemaking are available online at the following CARB website:

<https://ww2.arb.ca.gov/rulemaking/2019/ctvrp2019>

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. Deletions and additions proposed during the first 15-day changes are shown in ~~double-strikethrough~~ and double underline format, respectively. New deletions and additions to the proposed language that are made public with this

notice are shown in ~~bold double strikethrough~~ and bold double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, the changes detailed in Attachment A, or any documents added to the record, such as Attachment B for the Updated Certification Fee Calculation Method.

### Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. In subsection 94014(b), an initial certification fee is established that will serve as a baseline for future adjustments. The certification fee has been calculated at \$174.28 and is rounded to the nearest \$5 to arrive at a certification fee of \$175. This amount differs from the anticipated fee of \$205 discussed in the Initial Statement of Reasons as a result of a change in anticipated program resources. The anticipated resources for the Program have been re-evaluated to consider the effect of a Compliance Assistance Program on compliance rates. Staff has considered less staffing than what was included in the preliminary analysis in Appendix E of the Initial Statement of Reasons. Attachment B provides an updated calculation of the certification fee with updated personnel service costs as well as updated contracts and equipment that cover the front end cost of necessary information technology (IT) system updates.
2. Subsection 94014(c)(1) states that the certification fee shall be updated every two years to account for the California Consumer Price Index Forecast for All Urban Consumers (CPI-U), as published by the California Department of Finance. The California CPI-U provides a standard index that allows for the measurement of the weighted average of price changes. As a metric, it identifies periods of inflation or deflation. Program costs are based on goods and services to the state, so incorporating changes to the certification fee based on the California CPI-U would ensure the Program remains revenue neutral in the event of inflation. The fee is to be updated on January 1 every two years to account for any increases in California CPI-U that indicate inflation. In the event that an increase as a result of CPI would increase the fee beyond program costs, the EO may maintain the existing fee. This will create a predictable increase every two years, unless unnecessary, providing greater certainty to fee payers and other stakeholders.
3. Subsection 94014(c)(2) establishes a requirement that the fee revisions shall be publicly noticed. Additionally, this subsection requires that the notice is posted on CARB's Program web page 30 days prior to a fee revision. This provision replaced the originally proposed requirement that CARB hold a public meeting

before revising the fee. The public meeting requirement was intended to provide stakeholders with a detailed explanation of the adjustments determined by the previously proposed formula, which has been replaced in the current proposal. In the current proposal, future adjustments would be made every two years, based on published forecasted California CPI-U that is publicly available and can be used by the stakeholders to anticipate future fee adjustments. The public notice provided under this subsection would provide additional certainty by requiring CARB to inform fee payers of the revised fee amount 30 days before the fee update takes effect.

4. Subsections 94014(c)(3)-(8) have been removed as CARB has reconsidered the formula formerly proposed in subsection 94014(c)(5), and is currently proposing to replace the formula and related provisions with an established numeric fee in subsection 94014(b) and an automatic fee adjustment, in accordance with changes in California CPI-U, as described in revised proposed subsection (c)(1). Changing the mechanism to automatically adjust the fee by the California CPI-U provides more clarity and predictability for the stakeholders, while also helping to ensure that the Program is reimbursed for its resource costs.
5. In subsection 94014(e), the requirement addressing refunds has been updated to state that refunds will not be issued unless the certification application was rejected due to an administrative error made by CARB. While CARB previously proposed to allow written refund requests with adequate justification, CARB has subsequently identified CARB error as the only justification likely to merit a refund. To clarify this requirement, CARB has removed the ability for certification applicants to request refunds for other reasons.

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

### **Additional Document Added to the Record**

In the interest of completeness, staff has also added to the rulemaking record and invites comments on Attachment B to this Notice, titled, "Updated Certification Fee Calculation Method."

This document is attached this notice and is also available on CARB's rulemaking page as listed above. The document is also available for inspection by contacting Chris Hopkins, Regulations Coordinator, at (916) 445-9564.

### **Agency Contacts**

Inquiries concerning the substance of the proposed regulation may be directed to Samantha Aguila, Air Pollution Specialist, Citations and Hotline Section, at (916) 229-0868 or Sara Martinez, Air Pollution Specialist, Citations and Hotline Section, at (916) 229-0874.

## **Public Comments**

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

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

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

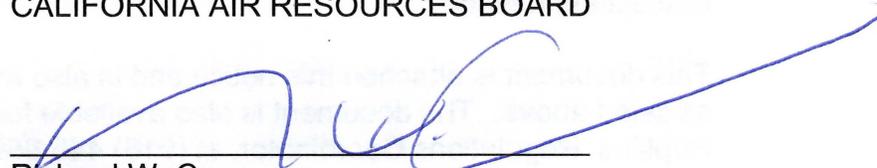
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received no later than the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk's Office at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



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Richard W. Corey  
Executive Officer

Date: *October 24, 2019*

### Attachments

*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 at [www.ARB.ca.gov](http://www.ARB.ca.gov).*