

## **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION FOR AB 118 AIR QUALITY IMPROVEMENT PROGRAM GUIDELINES**

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider adoption of a regulation that defines the guidelines for implementation of the Assembly Bill (AB) 118 Air Quality Improvement Program (AQIP).

DATE: April 23 - 24, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a 2-day meeting of the Board, which will commence at 9:00 a.m., Thursday, April 23, 2009, and may continue at 8:30 a.m., Friday, April 24, 2009. This item may not be considered until April 24, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before April 23, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by FAX at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled board hearing. TTY/TDD/Speech-to-Speech users may dial 711 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

#### **Sections Affected:**

Proposed adoption to new sections 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, and 2359, new chapter 8.2, title 13, California Code of Regulations.

#### **Background:**

On October 14, 2007, Governor Schwarzenegger signed into State law the "California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007" (AB 118; Statutes of 2007, Chapter 750). That law provides approximately \$200 million in annual incentive funding to fund air quality and greenhouse gas improvement projects and develop and deploy technology and alternative and

renewable fuels. Those incentive funds are generated from increases in smog abatement, vehicle registration, and vessel registration fees.

The bill creates the AQIP, a voluntary incentive program administered by ARB which will provide about \$50 million in annual funding through 2015. Health and Safety Code (HSC) section 44274(a) requires ARB to develop guidelines to implement the AQIP. Staff's proposed regulation would fulfill this requirement.

AB 118 also creates 2 other new incentive programs: the Alternative and Renewable Fuel and Vehicle Technology Program administered by the California Energy Commission (Energy Commission) to fund alternative and renewable fuels and vehicle technologies to help attain California's climate change policies; and the Enhanced Fleet Modernization Program which expands the Bureau of Automotive Repair's (BAR) voluntary vehicle retirement program. The proposed regulation does not address either of these programs. The ARB, the Energy Commission, and BAR are working in coordination to develop and implement these incentive programs. Guidelines for these programs are being developed through separate rulemakings.

The goal of the AQIP is to fund air quality improvement projects (including vehicle and equipment projects) research on the air quality impacts of alternative fuels and advanced technology vehicles, and workforce training. AB 118 specifies 8 broad project types which are eligible for AQIP funding:

- On-road and off-road equipment projects.
- Projects to mitigate off-road gasoline exhaust and evaporative emissions.
- Research on the air quality impact of alternative fuels.
- University of California research to increase sustainable biofuels production and improve collection of biomass feedstock.
- Lawn and garden equipment replacement.
- Medium-duty and heavy-duty vehicle/equipment projects including lower emission school buses, electric or hybrid vehicles/equipment, and regional air quality programs in the most impacted parts of California.
- Workforce training related to advanced technology to reduce air pollution.
- Projects to identify and reduce emissions from high-emitting light-duty vehicles.

AB 118 directs ARB to evaluate projects based on potential reduction of criteria or toxic air pollutants, cost-effectiveness, contribution to regional air quality improvement, and ability to promote the use of clean alternative fuels and vehicle technologies.

The AQIP will complement California's existing portfolio of incentive programs, including the Carl Moyer Memorial Air Quality Standards Attainment Program, the Goods Movement Emission Reduction Program, and Lower Emission School Bus Program. ARB staff is building upon the experience gained in running these programs as it develops the AQIP, and plans to implement the AQIP in a coordinated manner with these programs.

## **Description of the Proposed Regulatory Action:**

As mentioned above, Health and safety Code section 44274(a) requires ARB to develop guidelines to implement the AQIP. The proposed regulation (Guidelines) fulfills this requirement. These regulatory Guidelines establish the overall administrative requirements for the program through 2015 and apply to all funding years. These Guidelines will be paired with the AQIP funding plan – which is updated and approved by the Board annually – to direct implementation of the AQIP. The funding plan describes specific projects eligible for funding that fiscal year and details project implementation requirements. While these Guidelines are administrative in nature and will have no impact on the California economy, staff expects funded projects will have a positive impact on participating California businesses and an undefined positive impact on job creation. Staff's proposed FY 2009-10 Funding Plan will be released on March 20, 2009 and will be considered by the Board at the April 2009 Board meeting.

### **Funding Plan**

The Funding Plan is each fiscal year's blueprint for expending AQIP funds appropriated to the ARB in each year's State budget and would be developed in accordance with the requirements established in the AQIP Guidelines. The Funding Plan would be required to be approved by the Board annually. The Funding Plan describes the project categories ARB intends to fund and funding targets for each category, along with the justification for these decisions. The proposed Guidelines establish the process by which the Funding Plan is developed along with required minimum components, including: eligible projects, funding targets, policy and technical justifications, and requirements to ensure surplus emission reductions.

### **Project Solicitations**

The proposed Guidelines would establish the requirements for issuing project solicitations. The competitive solicitations would be issued for each of the projects in the Board-approved Funding Plan. These solicitations would include all the programmatic details potential grantees need to apply for funds. The proposed Guidelines define the elements that must be included in each project solicitation, including: project eligibility and administration requirements, application requirements and deadlines, project evaluation and selection criteria, and match funding requirements.

### **Program Administration**

The proposed Guidelines would establish the minimum administration requirements for all AQIP projects. The proposed Guidelines require that project administration responsibilities be clearly defined in the Funding Plan, project solicitations, project applications, and project grant agreements.

Other Guidelines provisions include compliance with the AB 118 Air Quality Guidelines for the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle and Technology Program (adopted by the Board in September 2008), oversight

and accountability through program reviews and fiscal audits, and reporting to the Board beginning in 2010 and at least biennially thereafter.

### **COMPARABLE FEDERAL REGULATIONS**

There are no federal regulations comparable to the proposed regulation. The proposed regulation defines the AQIP's structure and establishes minimum program administrative and implementation requirements. Participation by individuals and businesses in the AQIP is strictly voluntary.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB 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 proposed regulation. The ISOR is entitled: "Staff Report: Initial Statement of Reasons for Rulemaking – Proposed AB 118 Air Quality Improvement Program Guidelines."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on April 23, 2009.

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 the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Joe Calavita, Staff Air Pollution Specialist, at (916) 445-4586 or by email at [jcalavita@arb.ca.gov](mailto:jcalavita@arb.ca.gov) or Ms. Johanna Levine, Air Pollution Specialist, at (916) 324-6971 or by email at [jlevine@arb.ca.gov](mailto:jlevine@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board 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.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at [www.arb.ca.gov/regact/2009/aqip2009/aqip2009.htm](http://www.arb.ca.gov/regact/2009/aqip2009/aqip2009.htm).

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

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 create slight costs to ARB in the implementation of the AQIP. Funding for these positions has been included in the California State Budget. Except for these costs, the proposed regulatory action would not create costs or savings to any other State agency, or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The AQIP is purely voluntary. Businesses, individuals, and public agencies will not participate unless it is economically beneficial for them to do so.

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.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action – which sets administrative requirements for the AQIP – would not 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. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses although participation in the AQIP is strictly voluntary with and there are no mandated requirements, small businesses that choose to participate in the AQIP would be affected by enforcement of the regulation.

The proposed regulation will not impose reporting requirements on private persons or businesses.

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 or would be as effective and less burdensome to affected private persons than the proposed action.

### **SUBMITTAL OF COMMENTS**

Interested members of the public may also present comments orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written comments submissions not physically submitted at the meeting must be received **no later than 12:00 noon, Pacific Standard Time, April 22, 2009**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

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

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 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, this information may become available via Google, Yahoo, and any other search engines.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board 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.

### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 44271 and 44274. This action is proposed to implement, interpret and make specific Health and Safety Code, sections 39600, 39601, 44271, and 44274.

### **HEARING PROCEDURES**

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also

adopt 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 that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene  
Executive Officer

Date: February 24, 2009

*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 our Web –site at [www.arb.ca.gov](http://www.arb.ca.gov).*