

Appendix A

Proposed Regulation Order

PROPOSED REGULATION ORDER

Proposed Regulation for AB 118 Air Quality Improvement Program Guidelines

Adopt new sections 2350 through 2360, title 13, chapter 8.2, California Code of Regulations to read as follows: (Note: The entire text of sections 2350 through 2359 is new language.)

Chapter 8.2. Guidelines for the AB 118 Air Quality Improvement Program

§ 2350. Purpose

The purpose of this regulation is to fulfill the requirements of Health and Safety Code section 44274, which creates the Air Quality Improvement Program to be administered by the Air Resources Board (ARB) and requires ARB to develop guidelines to implement the program.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code. Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2351. Applicability

This regulation applies to the ARB as program administrator of the AQIP. This regulation also applies to any person that applies for or receives funding under the AQIP.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code. Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2352. Definitions

- (a) **“Applicant”** means any person who applies to ARB for funding.
- (b) **“AQIP”** means the Air Quality Improvement Program.
- (c) **“ARB” or “Board”** means the California Air Resources Board.
- (d) **“Executive Officer”** means the Executive Officer of the California Air Resources Board, or his or her delegate.
- (e) **“Expenditure”** means the payment of funds from the ARB to the grantee.

- (f) **“Funding Plan”** means the Board-approved plan which designates eligible projects, funding targets, and funding mechanisms for a specific fiscal year.
- (g) **“Funding Target”** means the funding amount which the Board approves in the annual Funding Plan for a specific project.
- (h) **“Grant”** means the awarding of funds via a competitive process to a person.
- (i) **“Grantee”** means any person who receives an AQIP grant, revolving loan, loan guarantee, loan, or other type of funding authorized by HEALTH AND SAFETY CODE section 44274(c).
- (j) **“Loan”** means a transaction wherein a lender allows a borrower the use of a specified sum of money for a specified period of time at a set rate of interest.
- (k) **“Loan Guarantee”** means a legally binding agreement under which the guarantor agrees to pay any or all of the amount due on the loan instrument in the event of nonpayment by the borrower.
- (l) **“Match Funding”** means non-State funds dedicated to the project by the applicant.
- (m) **“Person”** has the same meaning as defined in Health and Safety Code section 39047.
- (n) **“Project”** means that action or actions for which ARB awards a grant, revolving loan, loan guarantee, loans, and other appropriate funding measures authorized by Health and Safety Code section 44274(c).
- (o) **“Project Solicitation”** means ARB’s competitive process to select a specific project for funding.
- (p) **“Revolving Loan”** means an arrangement which allows for the loan amount to be withdrawn, repaid, and withdrawn again, in any manner and any number of times, until the arrangement expires.
- (q) **“Surplus Emission Reductions”** means emission reductions not required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a government entity, or legally binding agreements or documents, as described in Health and Safety Code section 44271(c).

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2353. Funding Plan

- (a) ARB staff must submit a Proposed Funding Plan to the Board for approval annually at a publicly noticed meeting.
- (b) **Funding Plan Development**
 - (1) **Public Workshops:** ARB must hold at least one public workshop to solicit comments on the development of each year's proposed Funding Plan.
 - (2) **Public Comment Period:** The Proposed Funding Plan must be published for review and comment by the public no less than 30 calendar days prior to Board consideration.
 - (3) **Board Approval:** ARB may solicit each fiscal year's projects only after the Funding Plan has been approved by the Board, and may commit to fund specific projects only after the Legislature has appropriated that fiscal year's funding.
- (c) **Funding Plan Components** – Each year's Funding Plan must, at a minimum, include the following:
 - (1) **Eligible Projects:** The Funding Plan must include a description of the projects eligible for funding in that fiscal year. To receive AQIP funding, a project must be eligible for funding pursuant to Health and Safety Code section 44274(c) and be approved by the Board in the annual Funding Plan.
 - (2) **Funding Targets:** The Funding Plan must include funding targets for the eligible projects. The Funding Plan may include a contingency plan for expenditure of funds if applications for projects do not reach the Board-approved funding targets or in the event of other unforeseen circumstances.
 - (3) **Justification:** The Funding Plan must include ARB policy and technical justification for that fiscal year's eligible projects and funding targets.
 - (4) **Surplus Emission Reductions:** Emission reductions achieved by AQIP projects in the Funding Plan must not be required by any federal, State, or local regulation, memorandum of understanding/agreement with a regulatory agency, settlement agreement, mitigation requirement, or other local mandate. No emission reductions generated by an AQIP grant shall be used as a marketable emission reduction credit, or to offset any emission reduction obligation of any person or entity. The Funding Plan

may include additional project eligibility criteria to ensure surplus emission reductions.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2354. Grant Project Solicitations

ARB shall issue a competitive solicitation for each grant project in the Funding Plan. ARB shall begin issuing solicitations for competitive grant projects in the Funding Plan no later than 90 days after the fiscal year's funds are appropriated by the Legislature or 90 days after Board approval of the Funding Plan, whichever is later.

- (a) **Project Criteria:** ARB project solicitations must describe eligibility requirements in sufficient detail for potential applicants to determine if any specific vehicle or piece of equipment, research project, or workforce training project would be eligible for funding. The project solicitation must define the criteria by which projects are evaluated and selected. These must include, but are not limited to, an evaluation of the following: potential emission reductions, cost-effectiveness, contribution to regional air quality improvements, ability to promote the use of clean alternative fuels and vehicle technologies, and applicant's ability to successfully implement the project.
- (b) **Project Evaluation Requirements:** A panel of not less than three individuals shall score each project application deemed compliant with the applicable statute, these regulations, and the applicable project solicitation. The panel shall use the applicant's responses and ability to meet the project-specific criteria to determine a project score. Eligible projects shall be ranked by score, with the highest scoring project or projects first in line to receive AQIP funding. The Board may delegate authority to the Executive Officer to resolicit for a project or to direct funding to another project in the Funding Plan if project applications fail to meet a minimum project score.
- (c) **Application and Project Evaluation Deadlines:** The project solicitation must specify the dates by which applications must be submitted and applicants must be notified if they have or have not been selected to receive funding.
- (d) **Match Funding:** The project solicitation must describe the match funding requirements for each project, if applicable.
- (e) **Project Administration:** The project solicitation must describe project administrative requirements. These include but are not limited to implementation milestones, reporting requirements, and project oversight responsibilities. The project solicitation must also identify maximum funding available for expenses associated with program administration.

- (f) **Provisions for Air Quality Loans:** Projects funded via revolving loan, loan guarantee, or other loan mechanism must be implemented via one of the two mechanisms described below.
- (1) ARB shall enter into an agreement with the State Treasurer or any of the boards, authorities or commissions chaired by the Treasurer. In this case, section 2354(a) through section 2354(e) do not apply.
 - (2) ARB shall issue a competitive solicitation. The solicitation will include, but is not limited to, the project solicitation criteria in section 2354(a) through section 2354(e).

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2355. Program Administration

- (a) **Responsibilities:** ARB is responsible for overall administration of the AQIP, pursuant to Health and Safety Code Section 44274(a). These responsibilities include development of the Guidelines, development of the annual Funding Plan, development of annual project solicitations, program oversight responsibilities, and administration responsibilities. As the program administrator, ARB is responsible for setting minimum administration and implementation requirements for each project.
- (b) **Project Administration:** ARB must define project administration responsibilities and requirements for each project in the annual Funding Plan, project solicitations, project grants and/or project loan agreements. These may include reporting milestones, outreach expectations, auditing and oversight protocols, conflict-of-interest requirements, progress on disbursement of funds, and other requirements.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2356. Compliance with the AB 118 Air Quality Guidelines

The requirements of title 13, California Code of Regulations, section 2343 apply to all projects funded through the AQIP and shall be conducted as follows:

- (a) Potential projects must be screened for compliance with title 13, California Code of Regulations, section 2343 prior to inclusion in the Funding Plan.
- (b) Only those projects that meet the requirements of title 13, California Code of Regulation, section 2343 will be eligible for inclusion in the Funding Plan.

- (c) Emerging technologies, as defined in title 13, California Code of Regulations, section 2342(d), may be eligible for inclusion in the Funding Plan. Emerging technology projects identified in the Funding Plan must include the documentation required in title 13, California Code of Regulations, section 2343(d)(3)

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2357. Oversight and Accountability

- (a) ARB has primary oversight responsibility for the AQIP to ensure transparent and efficient implementation, and that AQIP funds are spent consistent with the requirements of statute and these guidelines.
- (b) ARB staff or its designees have primary responsibility for conducting program reviews and/or fiscal audits of AQIP administration and implementation.
- (c) Grant recipients must allow ARB, the California Department of Finance, the California Bureau of State Audits, or any authorized designee access, during normal business hours, to conduct program reviews and fiscal audits or other evaluations. Granting of access includes, but is not limited to, reviewing project records, site visits, and other evaluations as needed. Project evaluations or site visits may occur unannounced as ARB staff or its designee deems necessary.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2358. Program Reporting

Beginning in 2010, and at least biennially thereafter, ARB staff must report to the Board on progress in implementing the AQIP.

- (a) The report must be made available for public review and include all of the following:
 - (a) A list of the specific projects which were awarded funding pursuant to Funding Plans in the previous fiscal years.
 - (b) The expected benefits of the previous fiscal year's Funding Plan in promoting clean, alternative fuels and advanced vehicle technologies.
 - (c) Improvement in air quality and public health and greenhouse gas emission reductions.

- (d) Recommendations for future actions.
- (b) This report may be used to fulfill the Health and Safety Code section 44274(d) requirement for a biennial AQIP report to the Legislature.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.

§ 2359. Severability

Each part of this article shall be deemed severable, and in the event that any provision of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

NOTE: Authority cited: 39600, 39601, 44271, and 44274, Health and Safety Code.
Reference cited: 39600, 39601, 44271, and 44274, Health and Safety Code.