

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AB 118 AIR QUALITY GUIDELINES FOR THE AIR QUALITY IMPROVEMENT PROGRAM AND THE ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE AND TECHNOLOGY PROGRAM

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of a regulation that delineates air quality guidelines to ensure that the newly-established Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program complement California's existing air quality programs.

DATE: September 25, 2008

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
Auditorium
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., September 25, 2008, and may continue at 8:30 a.m., September 26, 2008. This item may not be considered until September 26, 2008. Please consult the agenda for the meeting, which will be available at least ten days before September 25, 2008, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 2340, 2341, 2342, 2343, 2344, 2345, of new Chapter 8.1 to 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" (Assembly Bill 118, Statutes of 2007, Chapter 750). That law provides approximately \$200 million in annual incentive funding to promote alternative fuel and

vehicle technologies in order to help meet California's air quality and climate change goals, advance California's leadership in clean technologies, and reduce the State's demand for petroleum. Those incentive funds are generated from increases in the smog abatement, vehicle registration, and vessel registration fees.

Assembly Bill 118 specifies that such incentive funding will be administered under several new programs, including the Air Quality Improvement Program (AQIP), which will be administered by ARB, and the Alternative and Renewable Fuel and Vehicle Technology Program, which will be administered by the California Energy Resources Conservation and Development Commission (Energy Commission). Assembly Bill 118 includes a provision which directs ARB to develop guidelines to ensure that both these programs complement California's existing air quality programs. The guidelines must ensure that the programs: (1) do not interfere with efforts to achieve and maintain ambient air quality standards and to reduce emissions of toxic air contaminants; and (2) maintain or improve upon emission benefits in the State Implementation Plan and California's clean fuels regulations.

These new incentive programs will, in general, be conducted in a similar fashion as existing incentive programs. Individuals and businesses apply for funding through the administering agency. The administering agency, using specified criteria and an established process, evaluates the merits of each application and subsequently awards funds to the most promising projects. Individuals and businesses that choose to receive funding participate in incentive programs on a strictly voluntary basis.

Under the oversight of ARB, AQIP will award approximately \$50 million per year through 2015 to a variety of project types specified in Assembly Bill 118, including off-road and on-road equipment, evaporative emission controls, hybrid technologies, lawn and garden equipment, research regarding the air quality impacts of alternative fuels and vehicles, and workforce training to reduce air pollutant emissions. AQIP will play a complementary role to existing ARB incentive programs, such as the Carl Moyer Memorial Air Quality Standards Attainment Program and the Goods Movement Emission Reduction Program, since it will be able to fund a broader variety of project types, including emerging technologies.

Under the oversight of the Energy Commission, the Alternative and Renewable Fuel and Vehicle Technology Program will award approximately \$120 million per year through 2015 to develop innovative technologies and alternative fuels and to deploy them into the marketplace. One focus of such efforts is to help attain California's greenhouse gas reduction goals. Eligible project types listed in the bill include: improvements to the characteristics of alternative and renewable low-carbon fuels, in-state production and infrastructure for alternative and renewable low-carbon fuels, improvements to light-duty, medium-duty, and heavy-duty vehicle technologies to lower greenhouse gas emissions, acceleration of the commercialization of vehicles and alternative and renewable fuels, related workforce training, and program promotion and education.

The bill also creates a third incentive program, the Enhanced Fleet Modernization Program, which will provide approximately \$30 million in annual funding to expand the Bureau of Automotive Repair's existing voluntary retirement (car scrap) program, and will include high-emitting passenger cars and light-duty and medium-duty trucks. While the Bureau of Automotive Affairs will administer the car scrap program, ARB is required to establish the guidelines for its implementation.

ARB, the Energy Commission, and the Bureau of Automotive Repair are working in coordination to develop and implement the three incentive programs. The guidelines proposed here represent the first step in such a coordinated approach. In this step, ARB is directed by Assembly Bill 118 to establish guidelines to ensure that two of the new incentive programs—AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program—complement existing air quality programs and fuels regulations. The proposed guidelines, known as the AB 118 Air Quality Guidelines (Guidelines), will be used as an initial screen in the process that the administering agencies will use to evaluate proposed projects for funding under those two programs. Air quality safeguards are already built into the existing car scrap program and will be carried forward into the expanded Enhanced Fleet Modernization Program.

Within a year, detailed and specific implementation guidelines for each of the three incentive programs will be developed. The proposed Guidelines will help structure those future efforts. For AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program, those future guidelines will specify the rest of the process (after the screening process outlined in the proposed Guidelines) that the administering agencies will use to select the most promising eligible projects for funding. The Energy Commission plans to propose such additional guidelines for implementing the Alternative and Renewable Fuel and Vehicle Technology Program in the Fall of 2008. ARB plans to propose additional guidelines for implementing AQIP, along with guidelines for implementing the Enhanced Fleet Modernization Program in the Spring of 2009.

Description of the Proposed Regulatory Action:

As mentioned above, Assembly Bill 118 includes a provision (Health and Safety Code Section 44271(b)) that directs ARB to develop guidelines that ensure that AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program complement existing air quality programs and fuels regulations. These Guidelines, currently proposed for Board approval, set standards that the funding agencies (i.e., ARB and the Energy Commission) will use to initially evaluate potential projects for incentive funding under AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program. These Guidelines are designed to screen out those projects that would interfere with existing air quality programs. The pollutants that will be considered in evaluating potential projects include criteria pollutants (oxides of nitrogen, reactive organic gases, carbon monoxide, and particulate matter), toxic air contaminants (set forth in the California Code of Regulations sections 93000 and 93001), and greenhouse gases (such as carbon dioxide, methane, including those defined in AB 32).

Because Assembly Bill 118 is designed to improve, not merely maintain, air quality in California, these proposed Guidelines—which are narrowly designed to ensure that potential projects are not detrimental to air quality—represent the initial step in the process that funding agencies will use to select projects to receive incentive funding. In subsequent steps, each of the two funding agencies will further evaluate potential projects using additional guidelines that are currently under development, as mentioned above. Thus, the specific funding criteria, funding procedures, and their associated guidelines are outside the scope of the proposed Guidelines under current consideration at this hearing.

Assembly Bill 118 lists a wide range of project types that would be eligible for incentive funding, some of which do not have a direct air quality impact. Because of this, the proposed Guidelines clarify which project types would be required to undergo an air quality impact analysis. These project types include most vehicle and equipment projects, most fuel projects, including infrastructure, research projects that involve the construction of infrastructure that triggers permitting or licensing requirements, and research projects that supply fuel for sale. Projects that do not have a direct air quality impact, such as workplace training, research projects other than those types listed above, and certain demonstration projects, would be exempt from such an analysis.

The proposed Guidelines spell out procedures that the administering agencies will use to initially evaluate vehicle and equipment projects, fuel and infrastructure projects, and the localized impacts of potential projects. Using as a basic foundation the robust procedures employed in the well-established and successful Carl Moyer Memorial Air Quality Standards Attainment Program, the procedures laid out in the proposed Guidelines require the air quality impacts of each potential fuel or vehicle technology project to be evaluated using a comparison of the proposed technology with the relevant “baseline” technology. The baseline technology is the conventional fuel or vehicle that the proposed technology would replace. These comparisons incorporate tools and concepts behind the upcoming ARB low-carbon fuel standard to ensure consistency with that regulation. Generally, if a potential project results in emissions that are equal to or less than that of the baseline technology, it will pass that part of the analysis and may be eligible for further consideration for receiving incentive funding.

Some projects that result in minor criteria pollutant or toxic air contaminant increases relative to the baseline technology may still pass the screen if the project reduces other pollutants to a substantial degree, advances the goals of Assembly Bill 118, and the resultant pollutant trade-offs are approved in a public process. As an additional safeguard, the proposed Guidelines require full mitigation of any such emission increases by concurrent emission reductions achieved by other projects receiving incentive funding within the same air basin.

The proposed evaluation procedures also require that funding agencies ensure that potential projects will comply with relevant air pollution requirements. Accordingly, the evaluation of fuel projects includes a check for consistency with any existing fuel

specifications that apply. Also, proposed projects that trigger existing permitting, licensing, or environmental review requirements must comply with such requirements and must commit to implement all air quality mitigation measures recommended and required by the applicable oversight agencies.

To ensure that Assembly Bill 118 is implemented in a manner that ensures the fair treatment of people of all races, cultures, and income levels, potential projects that trigger permitting, licensing, or environmental review requirements will only be approved for funding after a publically-noticed meeting; this will ensure that residents have the opportunity for input regarding projects that are being considered for funding in their community. Such projects will be included in an annual analysis to evaluate whether they are being located disproportionately in environmental justice areas.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the proposed Guidelines. The proposed Guidelines delineate the first phase in the process by which ARB and the Energy Commission will select projects to award public incentive funds. Participation by individuals and businesses in the incentive programs established by Assembly Bill 118 is strictly voluntary.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board 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 titled, "Staff Report: Initial Statement of Reasons for Rulemaking - Proposed AB 118 Air Quality Guidelines for the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the ARB 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, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on September 25, 2008.

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 web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Johanna Levine, Air Pollution Specialist, at (916) 324-6971 or by email at jlevine@arb.ca.gov, or Mr. Andrew Panson, Staff Air Pollution Specialist, at (916) 323-2881 or by email at apanson@arb.ca.gov.

Further, the agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. 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 web site for this rulemaking at www.arb.ca.gov/regact/2008/aqipfuels08/aqipfuels08.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 and the Energy Commission in the development and implementation of this regulation. Funding for these positions is included in the proposed California State budget for fiscal year 2008-2009. That notwithstanding, 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, 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. AQIP and the Alternative and Renewable Fuel and Vehicle Technology Programs are voluntary and provide grants for clean fuels and technologies. Therefore, the Guidelines will not impose an economic cost on businesses.

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 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. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to Title 1, CCR, section 4, that the proposed regulatory action would not affect small businesses because participation in the affected incentive programs is strictly voluntary with respect to small businesses and there are no mandated requirements and no associated impacts.

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

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 meeting, and in writing or by e-mail before the meeting. 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, September 24, 2008**, 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 ten 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.

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.

STATUTORY AUTHORITY AND REFERENCES

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

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 non-substantial 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

James N. Goldstene
Executive Officer

Date: July 29, 2008