

# AB 118 Air Quality Improvement Program Guidelines Draft Regulatory Language

## Discussion Document for February 4 and 5, 2009 Public Workshops

### Introduction

In 2007, Governor Schwarzenegger signed into law the *California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007* (Assembly Bill (AB) 118, Statutes of 2007, Chapter 750). The Act creates the Air Quality Improvement Program (AQIP), a voluntary incentive program administered by the Air Resources Board (ARB or Board) to fund clean vehicle and equipment projects to reduce criteria pollutant emissions, research on the air quality impacts of alternative fuels, and advanced technology workforce training.

Statute requires ARB to develop guidelines to administer the AQIP. ARB staff is in the process of developing a proposed regulation – known as the AQIP Guidelines – to fulfill this requirement. The AQIP Guidelines would define the program's structure and establish minimum administrative and implementation requirements.

This document contains staff's draft AQIP Guidelines regulatory text for discussion at the public workshops on February 4 and 5, 2009. It builds upon the concepts presented at earlier public workshops held in November 2008. Staff encourages comments on the draft regulation either at the workshops or afterward. Staff plans to release the proposed AQIP Guidelines on March 6, 2009 for consideration at the April 23-24, 2009 Board meeting.

### Draft Regulatory Text

#### **Proposed Regulation for AB118 Air Quality Improvement Program Guidelines**

Adopt new sections 2350 through 2361, Title 13, chapter 8.2, California Code of Regulations (CCR) to read as follows: (Note: The entire text of sections 2350 through 2361 is new language.)

#### **Chapter 8.2. Guidelines for the AB118 Air Quality Improvement Program**

##### **§ 2350. Purpose**

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

## § 2351. Applicability

This regulation applies to the ARB as program administrator of the AQIP. This regulation also applies to any person, business, organization, government agency, or other entity that applies for or receives funding under the AQIP including project administrators and end users.

## § 2352. Definitions

- (a) **“Applicant”** means any person who applies to ARB for funding.
- (b) **“ARB”, “Board” or “Program Administrator”** means the California Air Resources Board.
- (c) **“Earned Interest”** means interest generated from AQIP funds held in interest-bearing accounts.
- (d) **“Expenditure”** means the payment of funds from the AQIP project administrator to an end user.
- (e) **“Funding Plan”** means the Board-approved plan which designates eligible project categories, funding targets, and funding mechanisms for a specific fiscal year.
- (f) **“Funding Target”** means the funding amount which the Board approves in the annual Funding Plan for a specific project category.
- (g) **“Grant”** means the awarding of funds via a competitive process to a person.
- (h) **“Match Funding”** means non-State funds dedicated to the project by the applicant.
- (i) **“Person”** shall have the same meaning as defined in HSC section 39047.
- (j) **“Project”** means the purchase or leasing of a vehicle or piece of equipment, the demonstration of a clean vehicle or equipment technology, a specific air quality research task or tasks, or workforce training authorized by HSC Section 44274(c).
- (k) **“Project Category Administrator” or “Project Administrator”** means a person selected by ARB to administer a specific project category.
- (l) **“Project Category”** means a type of vehicle or equipment technology, demonstration project, research project, or workforce training or other project allowed by HSC Section 44274(c) approved by the Board in the annual Funding Plan.

(m) **“Project Solicitation”** means ARB’s competitive process to select a specific project for funding or to select a project administrator..

(n) **“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 HSC section 44271(c).

## § 2353. Funding Plan

- (a) ARB staff must bring 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 select 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 Project Categories:** The Funding Plan must include a description of the project categories eligible for funding in that fiscal year. To receive AQIP funding, all project categories must be eligible for funding pursuant to HSC section 44274(c).
  - (2) **Funding Targets:** The Funding Plan must include funding targets for the eligible project categories. The Funding Plan may include a contingency plan for expenditure of funds if applications for project categories 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 the selected project categories and funding targets. The justification must include one or more of the following: an evaluation of

potential emission reductions, cost-effectiveness, contribution to regional air quality improvements, and the ability to promote the use of clean alternative fuels and vehicle technologies, as required by HSC section 44274(b).

- (4) **Project Administrator:** For each project category, the Funding Plan must indicate whether ARB or a third party will act as project administrator. Third party project administrators must be selected via a competitive process.
- (5) **Surplus Emission Reductions:** All vehicle and equipment projects are subject to the requirements of section 2356(c). The Funding Plan may include additional project eligibility criteria to ensure surplus emission reductions.

#### **§ 2354. Project Solicitations**

For each project category in the Funding Plan, ARB shall issue a competitive solicitation for: 1) specific vehicle or equipment projects, research projects, or workforce training projects; or 2) a project administrator. ARB must issue project solicitations 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. ARB shall enter into grant agreements with entities selected for funding via the AQIP solicitation process.

- (a) **Project Selection 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 one or more 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 Administrator Selection Criteria:** ARB solicitations for third-party project category administrators must identify all specific eligibility and selection criteria. The selection of project category administrators must be based upon one or more of the following factors: emission reductions achieved; demonstrable resources, staffing, and experience to successfully implement the program; local expertise; match funding provided or ability to leverage additional emission reductions; program simplicity and transparency; administrative costs; and level of oversight and accountability. The relative importance of these and other potential factors in choosing a project administrator must depend on what is necessary to ensure the most effective and efficient implementation of the AQIP for each project category.

- (c) **Application and Project Evaluation Deadlines:** The project solicitation must specify the dates by which applications must be submitted and applicants must be notified by the project administrator 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 category, 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. All program administration funding must meet the requirements of section 2356(a).

#### **§ 2355. Program Administrator**

ARB is responsible for overall administration of the AQIP, pursuant to HSC Section 44274(a). These responsibilities include development of the Guidelines, development of the annual Funding Plan, development of annual project category solicitations, program oversight responsibilities, and administration responsibilities. As the program administrator, ARB is responsible for setting minimum administration requirements for each project category.

#### **§ 2356. Project Category Administrator**

ARB may select project administrators for one or more specific project categories.

- (a) **Responsibilities:** ARB shall define project administrator responsibilities and requirements for each project category in the annual Funding Plan, project solicitations, and/or project grants. These may include reporting milestones, outreach expectations, auditing and oversight protocols, conflict-of-interest requirements, progress on disbursement of funds, and other requirements.
- (b) **Earned Interest:** The project administrator must maintain accounting records that track interest earned from AQIP funds and expended on AQIP projects. The calculation of interest must be based upon an average daily balance or some other reasonable and demonstrable method of allocating the proceeds back into the AQIP. Interest earned by a project administrator on AQIP funds must be directed to the project category which the project administrator is implementing and must meet all applicable requirements of the AQIP.
- (c) **Surplus Emission Reductions:** Emission reductions achieved 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 the AQIP shall be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity.

#### **§ 2357. Compliance with the AB 118 Air Quality Guidelines**

The requirements of CCR Title 13, chapter 8.1 section 2343 apply to all projects funded through the AQIP. Compliance with CCR section 2343 will be conducted accordingly:

- (a) Potential project categories will be screened for compliance with the Air Quality Guidelines prior to project solicitation or project selection.
- (b) Those project categories that meet the requirements of the Air Quality Guidelines, as defined in CCR section 2343, will be eligible for inclusion in the project solicitation.
- (c) Emerging technologies, as defined by CCR title 13, chapter 8.1 section 2342(d), may be eligible for inclusion in project solicitations. Project solicitations for emerging technologies must include criteria for submittal of documentation by the project applicant and subsequent ARB review of documentation consistent with the case-by-case evaluation defined in CCR section 2343(d)(3).

#### **§ 2358. Sustainability Provisions**

*Staff plans to use the sustainability provisions being developed as part of ARB's Low Carbon Fuel Standard regulation to establish sustainability goals for the AQIP as required in HSC Section 44271(a)(2). In this section of AQIP Guidelines, staff plans to refer to the relevant sections of the Low Carbon Fuel Standard to ensure consistency between the two programs.*

#### **§ 2359. 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 must conduct program and/or fiscal audits of project administration and implementation.
- (c) Project administrators and 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 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.

#### **§ 2360. Program Reporting**

Beginning in 2010, and at least biennially thereafter, ARB staff must report to the Board on progress in implementing the AQIP. 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, greenhouse gas emission reductions, and the progress made towards achieving these benefits.
- (d) Recommendations for future actions.
- (e) This report may be used to fulfill the HSC section 44274(d) requirement for a biennial AQIP report to the Legislature.

#### **§ 2361. 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.