State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION FOR ASSEMBLY BILL 118 AIR QUALITY IMPROVEMENT PROGRAM GUIDELINES

Public Hearing Date: April 24, 2009
Agenda Item No.: 09-4-6

I. GENERAL

Introduction and Background

In this rulemaking, the Air Resources Board (the Board or ARB) adopted a new regulation, known as the Air Quality Improvement Program (AQIP) Guidelines, that defines the AQIP's structure and establishes minimum administrative and implementation requirements, providing the overarching rules for how ARB will run the AQIP. This regulation fulfills the requirements of the Health and Safety Code section 44271(b). The requirements of the proposed regulation apply to the ARB in its role as program administrator, any external project administrator, and any business, organization, government agency, or other entity that applies for or receives funding under the AQIP.

The goal of this new, voluntary incentives program is to finance, through grants, revolving loans, or loan guarantees, projects that improve air quality, promote research on the air quality impacts of alternative fuels and advanced technology vehicles, and support work force training. The AQIP will award approximately $50 million per year through 2015 to a variety of project types specified in Assembly Bill 118. In the January proposed budget, the legislature has appropriated $42.3 million to ARB for the AQIP for fiscal year 2009-10. However, the appropriated funding amount for AQIP for FY 2009-10 is subject to change with the final budget.

The rulemaking was initiated by a Notice of Public Hearing to consider the proposed regulations at the Board's April 24, 2009 hearing. The notice was released and made available to the public on March 5, 2009. The Staff Report: Initial Statement of Reasons (ISOR) for Proposed Rulemaking, entitled "Proposed AB 118 Air Quality Improvement Program Guidelines" was made available for public review and comment beginning March 5, 2009. The ISOR, which is incorporated by reference herein, described the rationale for the proposal. The text of the proposed regulation, which would add new sections 2350 through 2359 in title 13, California Code of Regulations (CCR),

was included as Appendix A, in the ISOR. These documents were also posted on the ARB internet site for the rulemaking at:
http://www.arb.ca.gov/regact/2009/aqip09/aqip09.htm

The regulatory AQIP Guidelines are paired with the non-regulatory Funding Plan to direct ARB's implementation of AQIP. The AQIP Guidelines require a Board approved funding plan on an annual basis and each of these items were presented to the Board simultaneously.

Description of Board Action

On April 24, 2009, the Board conducted a public hearing to consider ARB staff's proposed AB 118 Air Quality Improvement Program Guidelines and public meeting to consider the proposed FY 2009-10 Funding Plan. Written and oral comments that pertain to the AQIP Guidelines were received on the proposed regulation and the FY 2009-10 Funding Plan from March 10, 2009 to April 24, 2009, and at the public hearing. At the conclusion of the hearing, the Board adopted Resolution 09-32, in which the Board approved the adoption of the proposed regulation and the proposed FY 2009-10 Funding Plan without any modifications. In approving the proposed regulation, the Board directed the Executive Officer to determine if additional conforming modifications to the regulation were appropriate and if no additional modifications were appropriate, to take final action to adopt the regulation. The Executive Officer determined that no additional modifications were appropriate, and issued Executive Order R-09-009, adopting the new regulatory text.

In accordance with section 11346.9(a)(3) of the Government Code, this Final Statement of Reasons (FSOR) summarizes the written and oral comments received during the 45-day comment period preceding the April 24, 2009 hearing; and comments received at the public hearing on April 24, 2009. The FSOR includes ARB's responses to only those comments pertaining to the proposed regulation.

Modifications to the Original Regulation

The following non-substantive changes to correct typographical errors were incorporated into the final regulation order. The amendments are shown in underline to indicate additions and strikeout to indicate deletions.

Proposed Regulation for AB 118 Air Quality Improvement Program Guidelines

Adopt new sections 2350 through 235~~60~~9, 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.)

§ 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)~~ (1) A list of the specific projects which were awarded funding pursuant to Funding Plans in the previous fiscal years.
~~(b)~~ (2) The expected benefits of the previous fiscal year's Funding Plan in promoting clean, alternative fuels and advanced vehicle technologies.
~~(c)~~ (3) Improvement in air quality and public health and greenhouse gas emission reductions.
~~(d)~~ (4) Recommendations for future actions.

Documents Incorporated by Reference

There are no documents incorporated by reference in title 13, sections 2350 through 2359.

Economic and Fiscal Impacts

The Board's Executive Officer has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable from the State Mandates Claims Fund pursuant to part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code. The regulatory action will not affect federal funding.

Costs to the State associated with this regulation are tied to costs to the implementation of the AQIP through 2015. Development of the AQIP guidelines and implementation of the AQIP program will require eight positions per year and $250,000 annually in contracts through 2015. The cost of these positions is approximately $170,000 per position per year. These positions are filled and included in the fiscal year 2008-09 budget for implementation of the AQIP. This regulation does not require any additional budgeted funds or positions.

ARB staff has evaluated the potential economic impacts on representative private persons and businesses. Participation in the AQIP is purely voluntary for all participants including the public, businesses, local agencies, and school districts. There are no mandated economic or fiscal impacts by this action to the public, business, local agencies, or school districts.

The Board's Executive Officer has determined that this regulatory action will 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 this regulatory action will not eliminate jobs and or existing businesses within the State of California. There is a potential for creating jobs for project administrators who work in areas related to clean air vehicle and equipment technologies. The program will potentially help stimulate growth in these companies that are currently doing business with the State of California.

The Board's Executive Officer has also determined, pursuant to Section 11346.9(a)(5) of the Government Code (Administrative Procedures Act), that no proposed alternative would lessen the adverse economic impact on small businesses. ARB's proposed regulatory action will in fact positively affect small businesses that focus on clean air vehicle and equipment technologies.

Consideration of Alternatives

The Board has determined that no alternative considered by the agency would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

45-day Comment Submittals

The following organizations and individuals provided written comments during the 45-day comment period. Only those individuals delineated with an asterisk (*) provided comments on the proposed regulations; the remaining individuals submitted comments on the 2009-10 AQIP Funding Plan which is a non-regulatory document:

Abbreviation	Commenter
FONTAINE*	Bobby Fontaine
FERMI	Steve Fermi
FARABAUGH	Colette Farabaugh

SCAQMD*	Barry Wallerstein South Coast Air Quality Management District
OPEI	William Guerry Outdoor Power Equipment Institute
KAMMERER	Bill Kammerer
CLARK	Richard Clark

Oral Testimony Received at the April 24, 2009 Board hearing:

The following organizations and individuals presented oral testimony at the hearing on April 24, 2009. Only those individuals delineated with an (*) provided comments on the proposed regulations; the remaining individuals submitted comments on the AQIP 2009-10 Funding Plan which is a non-regulatory document. Organizations identified with a double asterisk (**) also submitted written comments on the proposed regulation during the 45-day comment period.

Abbreviation	Commenter
CEC*	Aleecia Macias California Energy Commission
APTERA**	Laura Marion Aptera Motors
CEERT*	John Shears Center for Energy Efficiency and Renewable Technologies
BAREFOOT	Max Scheder-Bieschin Barefoot Motors, Inc.
BAAQMD	Damien Breen Bay Area Air Quality Management District
PLUG	Jay Friedland Plug In America
CALSTART*	Jaime Hall CALSTART
SCAQMD**	Matt Miyasato South Coast Air Quality Management District

NAVISTAR*	Mel Assagai Navistar
VECTRIX	Colleen Quinn Vectrix
ENVIRO*	Bonnie Holmes-Gen American Lung Association
SMITH*	Mark Aubry Smith Electric

Comment Summary and Agency Responses

Set forth below is a summary of each public comment submitted as an objection or recommendation made regarding the regulatory action proposed, together with an explanation of how the proposed action was changed in response to comments, or the reasons for making no change. Responses are provided only to objections or recommendations directed at the agency's proposed action or the procedures followed by ARB in proposing or adopting the action.

The AQIP 2009-10 Funding Plan is not a regulatory document and therefore does not require enumeration and agency response in the FSOR document. The AQIP Guidelines and AQIP 2009-10 Funding Plan were posted for public review concurrently, and both documents were considered at the April 24, 2009 Board meeting. Several comments regarding the FY 2009-10 Funding Plan were submitted to the AQIP Guidelines docket. Though not required for rulemaking, Funding Plan comments are briefly described in this FSOR in light of the fact the AQIP Guidelines and FY 2009-10 Funding Plan were simultaneously presented to the Board. Comments regarding the FY 2009-10 Funding Plan did not pertain to the regulatory language available for comment. As such, these comments are not addressed in the agency's responses.

A. AQIP Guidelines

1. Comment: Support the AQIP Guidelines and recommend adoption by the Board (CEC, APTERA, CEERT, CALSTART, SCAQMD, NAVISTAR, ENVIRO, SMITH).

   Agency Response: ARB agrees with the testimony given in support of the AQIP Guidelines.

2. Comment: Change the use of anhydrous ethanol to hydrous ethanol to reduce U.S dependence on oil (FONTAINE)

   Agency Response: This comment is irrelevant to the proposed regulation, therefore no changes to the regulation will be made in response to this comment.

3. Comment: The AQIP Guidelines should be coordinated with other funding programs such as Carl Moyer, and the Proposition 1B programs to align their requirements and provide adequate amounts of funding for all low-emitting and commercially available technologies. Having such a comprehensive and integrated approach would identify areas of actual overlap, simplify the evaluation of projects and streamline the implementation process for all programs (SCAQMD).

   Agency Response: ARB agrees with this comment. To clarify, the AQIP Guidelines establish the overarching rules for the program, whereas the annual AQIP Funding Plan, required by the Guidelines, will define how each year's funding is distributed. Throughout development of the AQIP Guidelines and annual Funding Plans, ARB has coordinated, and will continue to coordinate, with other ARB incentive programs in order to offer a comprehensive and streamlined incentives portfolio.

4. Comment: Section 2353 of the AQIP Guidelines (funding plan development) should incorporate funding of the cleanest technologies. For example, the AQIP should give priority to the cleanest technologies in each source category instead of allocating $25 million to hybrid trucks (SCAQMD).

   Agency Response: ARB does not agree that Section 2353 of the AQIP Guidelines should incorporate funding of the cleanest technologies. Section 2353 outlines specific administrative requirements ARB must follow in the development of the annual funding plan, which includes requirements for a public process to accept suggestions for funding categories to recommend for Board approval. Specific details, such as the types of projects to fund, pertain to the annual AQIP 2009-10 Funding Plan, a non-regulatory document that ARB must develop separately and bring to the Board on an annual basis. ARB has followed the public process required in Section 2353 of the AQIP Guidelines in developing the FY 2009-10 Funding Plan. As a result, the Funding Plan contains 5 project categories covering deployment and demonstration projects that either have not been funded through other programs or do not have a secured source of funding.

5. Comment: Include a requirement in the AQIP Guidelines to address environmental justice in each project solicitation and provide higher priority to projects located in those areas (SCAQMD).

   Agency Response:

   ARB agrees with the importance of reducing emissions in environmental justice areas. The AQIP Guidelines are consistent with the Board's approved Policies and Actions for Environmental Justice, which formally establish a framework for incorporating environmental justice into ARB programs. Specific criteria to address environmental justice is dependent on the types of projects the Board approves in the annual AQIP Funding Plans and is not included as a requirement in the AQIP Guidelines. In the AQIP 2009-2010 Funding Plan, for example, some projects are designed to commercialize advanced technologies statewide in order to assist California in meeting its long-term 2020 State Implementation Plan and longer-term climate change goals; whereas, other project are regionally specific and would achieve emission reductions focused in local communities. In all instances, the types of vehicles and equipment funded through the various AQIP projects will reduce criteria pollutant, air toxic, and green house gas emissions statewide and all Californians, including those in environmental justice areas, will benefit.

B. AQIP 2009-10 Funding Plan

Funding Plan comments are briefly described in this FSOR because the AQIP Guidelines and FY 2009-10 Funding Plan were simultaneously presented to the Board, and several comments regarding the FY 2009-10 Funding Plan were submitted to the AQIP Guidelines docket. Comments regarding the FY 2009-10 Funding Plan did not pertain to the regulatory language available for comment. As such, these comments are irrelevant to the regulation and are not addressed in the agency's responses.

1. Comment: Support the AQIP 2009-10 Funding Plan and recommend approval by the Board (CEC, APTERA, CEERT, BAREFOOT, BAAQMD, PLUG, CALSTART, SCAQMD, NAVISTAR, VECTRIX, ENVIRO, SMITH).

2. Comment: Extend the Alternative Fuel Vehicle Incentives Program (AFVIP), and continue to offer consumer rebates for zero emission vehicles (FERMI, FARABAUGH, and CLARK).

3. Comment: Increase the incentives voucher amount for diesel hybrids to $50,000 per truck for Class 8; increasing the incentive amounts in place of tax credits could yield better results. Increase the incentive for vehicles with the lowest certified engine or certified hybrid test cycle emissions (SCAQMD).

4. Comment: For deployment projects, the cleanest available heavy-duty trucks should also be allowed under AB 118, specifically natural gas trucks certified at 2010 levels. AB 118 funds should be provided either in combination with other state incentive funds or separately to help fund these trucks up to an amount that makes them competitive with diesel trucks (approximately $90,000 total incentive) (SCAQMD).

5. Comment: Approve the Zero-Emission Agricultural Zero-Emission UTV rebate project in order to help speed adoption of electric agricultural vehicles (KAMMERER).

6. Comment: Expand the scope of the Lawn and Garden Equipment Replacement (LGER) project to include other types of clean technologies and not limit that program to cordless zero-emission equipment (e.g. alternative fuel, hybrid, and CARB Blue Sky certified equipment) (OPEI).

7. Comment: ARB should scale the size of the LGER rebate to the product's retail price. ARB should provide greater flexibility in the criteria for proposed programs that involve more expensive commercial products (OPEI).

8. Comment: Develop cost-effective criteria to evaluate the broadest array of projects (OPEI).

9. Comment: CARB should develop criteria that would consider the delta in mass emissions from the old unit compared to the new unit and the number of hours the old and new units will be used (OPEI).

10. Comment: ARB should serve as the central point of contact to facilitate the development of individual projects and not use local air districts or other public entities to request and administer program funds. Designate an ARB official for interested manufacturers to contact for the UTV and LGER programs (OPEI).