CALIFORNIA
ENERGY
COMMISSION

INITIAL STATEMENT OF REASONS FOR PROPOSED RULEMAKING ALTERNATIVE AND RENEWABLE FUELS AND TECHNOLOGIES PROGRAM

DRAFT REGULATIONS

December 2008
CEC-600-2008-014-D

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Abstract

The proposed regulations clarify the California Energy Commission's (Energy Commission's) process for implementing its responsibilities under the Alternative and Renewable Fuel and Vehicle Technology Program, which was enacted in October 2007 as Assembly Bill (AB) 118 (Núñez, Chapter 750, Statutes of 2007). The program, found in Health and Safety Code sections 44270 to 44274, provides the Energy Commission with approximately $120 million per year for seven and a half years to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. These innovative projects will be funded through grants, loans, and other appropriate measures. Eligible funding recipients include public agencies, businesses, public-private partnerships, academic institutions, and consumers.

The proposed regulations clarify the following areas: eligibility of projects that produce or manufacture advanced vehicle technology, sustainability goals, funding restrictions, advisory body, and the investment plan.

Keywords: AB 118, alternative fuels and technologies, transportation, sustainability goals, natural resource protection, funding restrictions, advanced vehicle technology, advisory body, investment plan, alternative and renewable fuel and vehicle technology program, energy commission, climate change policy, low-carbon fuels, full fuel-cycle assessment, adverse impact on natural resources, biofuels, petroleum reduction, sustainability metrics and evaluation criteria, baseline standards, low carbon fuel standards, unanticipated environmental consequences, indirect and direct land use effects, adaptive management, environmental performance, carrying capacity, emission reduction credits, greenhouse gas emissions

Please use the following citation for this report:

Muench, Tobias. *Initial Statement of Reasons for Proposed Rulemaking Alternative and Renewable Fuels and Technologies Program*, Draft Regulations, California Energy Commission, Publication Number CEC-600-2008-001-D, December 2008.

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Executive Summary

The proposed regulations clarify the California Energy Commission's (Energy Commission's) process for implementing its responsibilities under the Alternative and Renewable Fuel and Vehicle Technology Program, which was enacted in October 2007 as Assembly Bill (AB) 118 (Núñez, Chapter 750, Statutes of 2007). The program, found in Health and Safety Code sections 44270 to 44274, provides the Energy Commission with approximately $120 million per year for seven and a half years to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. These innovative projects will be funded through grants, loans, and other appropriate measures. Eligible funding recipients include public agencies, businesses, public-private partnerships, academic institutions, and consumers.

The proposed regulations provide clarification and details regarding the following areas: eligibility of projects that produce or manufacture advanced vehicle technology, sustainability goals, funding restrictions, advisory body, and the investment plan.

Economic Impact

Adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts:

(1) The Alternative and Renewable Fuel and Vehicle Technology Program (AB 118) is a grant program intended to support and spur innovation in the market for new vehicle technologies and alternative and renewable transportation fuels. The purpose of the program is to create net economic benefits to firms, institutions and the general state economy by deploying new technologies that will be adopted in California markets and spur job creation and new business activity.

(2) The proposed regulations would apply only if a person voluntarily chooses to submit a project proposal to participate in the program.

(3) The proposed regulations have no provisions that would require, mandate, or impose anything directly affecting business in the state.

(4) These proposed regulations could have a modest cost impact to businesses choosing to apply for program funding related to application preparation and project development costs. The cost to specific entities applying for project funding would be specific to the individual applicant depending on such factors as prior experience with the public grant or loan process, level of automation, presence of existing staff to draft application, and complexity of the project to be funded. However, these costs are minimal compared to the amount of funding that could be received and would only impact entities that choose to apply for funding.

Technical, Theoretical, Reports, or Documents Relied On

The Energy Commission relied upon all documents in the Reference Section at the end of this document to formulate program regulations.

Federal Regulations

The proposed regulations do not duplicate or conflict with any federal regulations contained in the Code of Federal Regulations. Moreover, the proposed regulations are not mandated by federal law or regulation.

Alternatives

The Energy Commission has determined that no alternative action would be as effective in implementing the statutory intent of the Alternative and Renewable Fuel and Vehicle Technology Program as the proposed action described in the proposed regulations. Regulations are needed to clarify the Energy Commission's actions in establishing the advisory committee, preparing the Investment Plan, creating the sustainability goals, and establishing clear criteria by which project applications will be assessed for program funding. For example, the Energy Commission could distribute AB 118 funds in large block grants to existing institutions to fund their own transportation programs. Such an alternative course of action would not meet the legislative direction to the Energy Commission "to develop and deploy innovative technologies

that transform California's fuel and vehicle types to help attain the state's climate change policies" (Health and Safety Code section 44272(a)). The Energy Commission is not aware of any reasonable alternatives to the proposed regulations that would be more effective and/or less burdensome in achieving the same purpose in a manner consistent with applicable statutory directives.

Several alternatives to the proposed sustainability goals and evaluation criteria have been evaluated by Energy Commission staff in public workshops. In comment letters to the proceeding docket and via oral comment at public workshops, several environmental organizations proposed that the Energy Commission adopt a series of quantified sustainability standards and thresholds to ensure that the proposed sustainability goals would be applied in a rigorous, quantitative manner. Staff considered, but did not adopt this approach because there is insufficient science and data to develop quantitative sustainability metrics that could exceed current environmental regulatory standards. Staff is also concerned that stringent, quantitative sustainability standards could create the potential for unduly burdensome application, mitigation and technology costs for innovative alternative and renewable fuel producers that would result in barriers to market entry for new vehicle technologies and alternative and renewable transportation fuels.

Several industry groups proposed that the Energy Commission should use qualitative sustainability goals with no quantitative thresholds or metrics, or have no evaluation criteria related to sustainability goals. Some industry stakeholders recommended that sustainability issues be restricted to energy feedstocks and processing facilities located within California's borders. Staff considered but did not adopt this approach because a complete lack of quantifiable measures would not create sufficient incentives to industry to produce new technologies that can meet California's greenhouse gas reduction goals and sustainability goals. California's fuel demands make the state a market hub of global energy supplies. To have meaningful effects on creating sustainability standards and practices for alternative and renewable fuels, sustainability standards and measures will need to be applied at a state, national and global scale.

1. Section 3100 – Advanced Vehicle Technology

Specific Purpose

This section clarifies and makes specific the funding eligibility of projects that produce or manufacture vehicles and components in accordance with the objectives of eligible projects under Health and Safety Code section 44272(c). Section 44272(c) specifies that eligible projects include "[p]rojects to produce alternative and renewable low-carbon fuels in California." But it lacks parallel specificity for projects to produce advanced vehicle technology, even though section 44272(c) has other subsections that describe projects to "develop" vehicle technologies for a variety of purposes consistent with improving efficiency and reducing greenhouse gas emissions.

The Energy Commission included this regulation for advanced vehicle technology to explicitly include vehicle manufacturing and production as eligible projects. This is reasonably necessary

because it is not explicitly stated in statute and the regulation provides clarity to the public regarding the types of projects eligible for funding.

2. Section 3101 – Criteria for Project Funding

Specific Purpose

This section describes criteria by which projects will be evaluated for program funding. Health and Safety Code Section 44272(b) directs the Energy Commission to "provide preferences to those projects that maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program" based on the criteria. The Energy Commission included some of the criteria directly from Health and Safety Code Section 44272(b) to provide the applicant with a comprehensive list of criteria by which the projects will be evaluated. Namely, the Energy Commission reiterates criteria set forth in the statute in regulation sections 3101(a)(2), (3),(4), and (5). Including the criteria from the statute is necessary to avoid misleading the public to prepare information and applications based only on the criteria listed in the regulations. By including the complete package of criteria by which projects could be evaluated, the Energy Commission is preparing applicants for the breadth of information that would be expected in a funding application.

This section of the regulations provides clarification and greater detail on select criteria in the statute. General criteria are listed in this section, while Section 3101.5 elaborates on criteria that are more directly related to sustainability.

The section is necessary because it gives potential program applicants an understanding of the Energy Commission's priorities in determining which projects will be funded. During the informal rulemaking process, the most common question, aside from the date funding would be available, was about the criteria that would be used to evaluate projects.

The rationale and necessity for each criterion in which the Energy Commission provided additional clarification are as follows:

Section 3101(a)(1) elaborates on the project's ability to show economic benefits to California. The Energy Commission included some of the factors that would demonstrate an economic benefit to the state. This detail is necessary to guide applicants in developing justification for meeting this criterion with the proposed project. As the California economy struggles, new job creation, increased revenue, and business development is becoming a focal point of the program. Workforce development agencies, other government agencies, labor unions, and the general public are seeking support of projects that will increase the number of jobs opportunities available to Californians and viewing the program as one of the unique opportunities to stimulate a depressed economy.

More specifically, the Energy Commission will be looking for economic benefit to low income communities as mentioned in regulation. The Air Resources Board data shows a relationship between non-attainment areas (areas that do not meet air quality standards) and low income populations. The Energy Commission specified benefits to these communities in regulation to ensure that the communities are represented in those that see air quality and economic benefits

from the program. The Energy Commission received comments during the informal rulemaking process from the Apollo Alliance, Labor Federation, and several other organizations in support of this approach. Furthermore, the Air Resources Board's Air Quality Improvement Program draft guidelines call for explicit engagement of Environmental Justice organizations to ensure that underrepresented communities have a voice in projects that will impact their communities. For these reasons, the Energy Commission considers the inclusion of disadvantaged communities necessary to implement the statute that is consistent with Energy Commission policies for Environmental Justice communities and the means by which the program can improve the state of California's economy.

Section 3101(a)(6) clarifies that projects that provide the largest amount of non-state matching funds will be given greater preference. The statute calls for the Energy Commission to leverage state funds with other sources. Given the state of the economy, the Energy Commission emphasizes the importance of this criterion by indicating that projects will be compared against one another to determine which project offers the most favorable outcome with consideration to the state's financial contribution.

Section 3101(a)(7) and (8) captures criteria that are traditionally used by the Energy Commission to evaluate and score project proposals. With this regulation, the Energy Commission conveys to the project applicant the importance of demonstrating their ability to successfully implement the proposed project. The Energy Commission will be seeking feasible, viable projects that will have a positive long-term impact on California's air quality and alternative fuels market. This regulation is intended to communicate the stability and permanence of projects that will help the state reach our air quality goals.

Finally, in Section 3101(a)(9), the Energy Commission communicates the importance of demonstrating the cost-effectiveness of projects, with consideration to the greenhouse gas emissions reductions. This criterion complements the criterion in Section 3101(a)(6) by emphasizing the need for responsible use of state funds in the most effective manner. This section is intended to notify the applicant that their project will be compared against other projects with consideration to the Energy Commission's investment and the project's ability to maximize air quality benefits.

As mentioned above, the Energy Commission intends this section of the regulations to provide applicants with a comprehensive look at the criteria that will be used to evaluate projects. Many of the criteria are introduced in the statute and the Energy Commission provides additional clarification where necessary to assist the applicant in determining priorities via project evaluation criteria.

3. Section 3101.5 – Sustainability Goals and Evaluation Criteria

Specific Purpose

This section implements the statute's directive to establish "sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact natural resources, especially state and federal lands" (Health & Safety Code Section 44271(a)(2)). The section also establishes and defines the sustainability criteria that the Energy Commission will use to assess projects and award funds.

Factual Basis for Proposed Sustainability Goals and Criteria

As stated in staff papers and in public workshops conducted as part of the AB 118 regulatory proceeding, the Energy Commission recognizes state, federal, and international concerns about potential sustainability issues associated with the production and use of alternative and renewable transportation fuels, most notably with biofuels. The Energy Commission further recognizes that the volume of alternative and renewable fuels needed to help California meet its greenhouse gas reduction goals and substantially reduce petroleum use carries the risk of encouraging or promoting environmentally and socially destructive production practices in California, North America, and globally. The environmental and social risk is that rapid expansion of alternative fuel production, especially those fuels based on biomass feedstocks, in order to meet greenhouse gas emissions reduction goals could create unintended consequences to environmental quality and food production. After extensive research and consultation with government, academic, and industry experts, Energy Commission staff discovered there is no singular definition or measurement system for sustainability that is suitable to meet regulatory standards for the eight-year duration of the program. The proposed sustainability goals and criteria are the result of extensive discussions and review by interested members of the public, academic institutions, environmental and other interest groups, and Energy Commission staff and Commissioners. The criteria are designed to elicit information from applicants on how their projects impact and utilize natural resources. From the information provided, Energy Commission staff will be able to select projects to fund which best meet the objectives of the program and minimize environmental impacts. The resulting criteria reflect careful thought and a reasonable degree of consensus as to what sustainability topics applicants will need to provide information which will result in successful implementation and administration of the program.

Subsection 3101.5 (a) - Establishment of Sustainability Goals

Health and Safety Code Section 44271(a) directs the commission to "Establish sustainability goals to ensure that alternative and renewable fuel and vehicle deployment projects, on a full fuel-cycle assessment basis, will not adversely impact natural resources, especially state and federal lands." The purpose of subsection (a) is to establish three broad sustainability goals for the program, as required by statute, and clearly communicate to stakeholders and program applicants that these are the three environmental priority areas by which project applications will be assessed. The three proposed sustainability goals are intended to complement and expand upon the environmental preferences identified in Health and Safety Code Section 44272 (c), which include consistency with state climate change goals, reduction of criteria air pollutants, reduction in discharges of water pollutants, avoidance of impacts to the

sustainability of natural resources, and life-cycle scale greenhouse gas emissions reductions of at least 10 percent from the petroleum baseline.

The first sustainability goal is the substantial reduction of greenhouse gas emissions associated with California's transportation system to help meet California's 2020 and 2050 targets. This goal communicates to stakeholders and project applicants that the first priority in assessing project applications is to evaluate how much a proposed technology or alternative fuel can potentially reduce greenhouse gas emissions from the petroleum baseline. Climate change is a global scale sustainability issue. Continuing changes to climatic systems carries the risks of further changes to weather and hydrologic cycles, risks to societal capacities to grow food crops, risks of increases in infectious diseases from new vectors, and risks to ecosystem changes and loss of habitat and species diversity. California's transportation sector contributes 38 percent of California's total greenhouse gas inventory. There is substantial opportunity to reduce greenhouse gas emissions through programs such as AB 118, with associated environmental benefits to the state and planet.

The second sustainability goal is to protect the environment, including all natural resources, from the effects of alternative and renewable fuel development. This goal communicates to stakeholders and project applicants that the Energy Commission will closely examine all applications for program funding that carry the risk of adversely affecting natural resources, including lands, waters, ecosystems and habitats, and prime farmland used to grow food. This goal, and the associated evaluative criteria, is needed to ensure that additional environmental impacts – such as have occurred with the rapid expansion of corn-based ethanol in the American Midwest, sugarcane ethanol in Brazil, and palm oil in Southeast Asia – do not occur as a result of program funding of new alternative and renewable fuels, especially biofuels.

The third sustainability goal is to promote and enhance market acceptance of sustainably-produced alternative and renewable fuels by creating incentives to produce such fuels in accordance with certified, sustainable production practices and standards. The sustainability certification serves as a green labeling program, such as are commonly used in wood products, consumer products, apparel, and organically-produced foods. Green labeling programs such as these assure consumers that the product they are purchasing and using meets a specified environmental standard that exceeds existing environmental regulatory minimum standards.

Subsection 3101.5 (b) – Establishment of Sustainability Evaluation Criteria

As described, Health and Safety Code Section 44271(a)(2) requires the Energy Commission to establish sustainability goals. In order to carry out this broad directive, regulations are necessary to provide clear direction to the public as to what role sustainability will play in determining which projects receive funding. The proposed regulations for evaluation criteria are intended to inform applicants as to what elements in the project design would be expected to be described and what information the applicant is expected to provide so the sustainability of the project can be ascertained and compared to competing projects. For example, one of the sustainability criteria relates to water use. For those projects which consume water, the Energy Commission expects that the applicant, in reviewing the regulations and information in the solicitation, would be aware that to best meet the sustainability requirements, the applicant will

design a project which minimizes potable water use and maximizes the use of recycled water. The applicant would also be on notice that in the response to the solicitation, a full explanation of water resource use will be provided so the Energy Commission can accurately assess the projects impacts on water resources.

The regulations are drafted in a manner which allows the applicants to focus on the specific criteria that is most relevant to the type of project being proposed. It is important for the Energy Commission to build in flexibility to evaluate each project or solicitation on a case-by-case basis. For example, if the Energy Commission is seeking to fund a bio-fuel processing plant certain sustainability criteria are far more relevant than if the Energy Commission is seeking to fund work force training. Therefore, the Energy Commission would expect to see detailed information about greenhouse gas profile, water use, and feed stock source from those applicants seeking funding for a bio-fuel facility. For workforce training programs, water use is simply not relevant and the applicant can indicate so. Applicants are free to ignore the sustainability criteria or not provide adequate information for Energy Commission staff to evaluate the sustainability aspects of a proposed project. Such projects would be at a competitive disadvantage in comparison to projects with low environmental impacts and a high number of sustainability attributes. Greater preference will be provided to projects that meet the greatest number of sustainability criteria, or that exemplify state-of-the-art technologies that minimize environmental damage.

Each sustainability criterion or suite of criteria document the standards by which each project application will be assessed for how well it meets each of the three sustainability goals described in subsection (a).

Subsection 3101.5(b)(1)

This criterion will be used to assess how well each proposed project can meet the first sustainability goal, which states that "Strong preference will be given to projects that can best contribute to meeting California's climate change policy goals." Projects with the lowest greenhouse gas emissions, as measured on a full fuel-cycle or lifecycle basis, will be given stronger preference for funding. The criterion specifies that information on a proposed project's full fuel-cycle greenhouse gas emissions must be provided to the Energy Commission, and that the information meets the standards defined in draft regulations by the Air Resources Board for the Low-Carbon Fuel Standard, or an alternative methodology acceptable to the Energy Commission. The current preferred standard is to use the most recently updated version of the California Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) Model, developed by the Argonne National Laboratory. The California GREET model is continuously updated to incorporate new feedstocks, fuel pathways, and energy and environmental data, so the Energy Commission is not specifying in the draft AB 118 program regulations which version of GREET must be used.

Subsection 3101.5(b)(2)

The eight criteria in this subsection identify the specific factors the Energy Commission will use to evaluate how well projects meet the second sustainability goal, which states that "Strong preference will be given to projects that demonstrate environmental protection, natural resource

preservation, and superior environmental performance, by the use of manufacturing, production or agricultural technologies and practices which are more energy efficient and less environmentally damaging than current standard practices and technologies for the production of petroleum fuels, production of basic agricultural commodities and extraction of natural resources when measured on a life-cycle basis."

Criterion (2)(A) identifies a funding preference for projects using waste stream materials as their feedstock. Use of waste streams for feedstocks carries the potential of numerous environmental and economic benefits through their use for first or second generation biofuel production. Use of waste streams avoids primary impacts associated with other crop or forest-based feedstocks, and helps alleviate costs and issues associated with disposal of municipal, agricultural and forest-related waste streams.

Criterion (2)(B) identifies a funding preference for projects using existing Best Management Practices that exceed applicable Best Available Control Technologies. Best Management Practices are science-based technical standards developed to improve production efficiency and reduce environmental damage. Use of such practices is an important advancement beyond current environmental regulatory standards.

Criterion (2)(C) specifies a funding preference for a series of measures used by projects associated with purpose-grown energy crops as their feedstocks. These measures are intended to reduce the many environmental impacts that can occur when existing agricultural production of food and fiber crops is shifted to the production of bio-energy crops. Because many new crops are being developed as bio-energy feedstocks for use in California, measure (C)(i) creates an incentive, and evaluation criterion, for growers to develop a Sustainability Best Management Plan for the specific crop with the University of California at Davis, the state's leading agricultural sciences institution. Measure (C)(ii) is an evaluation criterion that specifies a preference for bio-energy crops that have been produced on lands historically used for agricultural purposes in California. This is intended to discourage conversion of wildlands and other non-agricultural to agricultural production. Measure (C)(iii) is an evaluation criterion specifying a funding preference for bio-energy crops that do not displace high value food crops and that do not use prime farmland. Measure (C)(iv) is an evaluation criterion that gives preference to bio-energy crops that are uniquely suited to California's natural resource constraints, which include limited supplies of irrigation water, a Mediterranean climate in most of the state, and a variety of soil types. The goal is to create a funding incentive to produce bio-energy crops that can be grown on marginal soils using little irrigation water.

California's chronic water shortages affect the state's economic sectors, municipalities, and a wide variety of aquatic-dependent ecosystems. It is California's ultimate natural resource constraint.

Criterion (2)(D) identifies a funding preference for infrastructure and agricultural projects that reduce or minimize water use or that use recycled or reclaimed waters.

Carbon emissions associated with the electricity used to produce, process, and distribute alternative and renewable fuels can constitute a large portion of the carbon footprint when

carbon emissions are measured on a full fuel-cycle basis. Renewable energy and cogeneration can eliminate or substantially reduce carbon emissions associated with power generation.

Criterion (2)(E) identifies a funding preference for projects that use such energy resources. The use of forest biomass resources as a potential feedstock source for ethanol production is highly controversial. The Energy Commission received substantive comments during the AB 118 rulemaking proceeding on the environmental risks of creating economic incentives for the use of forest biomass as a transportation fuel feedstock. Sustainably harvested forest biomass from thinning operations designed to reduce fire risks has the potential to create a waste-stream type feedstock for first and second generation ethanol production, while creating co-benefits of reduced fire risk and large scale carbon dioxide releases.

Criterion (2)(F) identifies a funding preference for forest biomass-related projects that procure feedstocks in a manner that does "not diminish the ecological values of forest stands, and that are consistent with forest restoration, fire risk management and ecosystem management goals."

Criterion (2)(G) identifies a funding preference for projects that can create additional environmental benefits or help restore degraded natural resources. For example, during public workshops, stakeholders described potential projects involving bio-energy crops that could help restore marginal, fallowed farmlands in the San Joaquin Valley. Appropriately designed and planned forest thinning projects that reduce fire risk, maintain carbon sink functions and improve wildlife habitat are another example of projects with the potential to create environmental benefits.

Criterion (2)(H) identifies a funding preference for infrastructure projects that incorporate the use and through-put of alternative and renewable fuels produced in accordance with the three sustainability goals. For example, ethanol (E- 85) fueling stations that can guarantee that a certain portion of their fuel has substantially lower carbon content than conventional ethanol fuels, such as low-carbon fuels produced with cellulosic technologies, or that are derived from feedstocks with extremely low-carbon content would receive a funding preference. A similar preference would be given to fueling infrastructure developers who can attest that a portion of the fuels that they procure and sell on the retail market are produced in accordance with a certified sustainability standard described in 3101.5 (b)(3)(A), or another comparable standard.

Subsection 3101.5(b)(3)

This criterion will be used to assess how well proposed projects meet the third sustainability goal, which is to enhance market and public acceptance of sustainably-produced alternative and renewable fuels through development of sustainability certification programs produced specifically for biofuels. This criterion specifies a funding preference for projects that produce fuels or feedstocks in accordance with a recognized sustainability certification system or that distribute or sell alternative fuels produced in accordance with such a certification system.

No regulatory standards have yet been developed by a government entity in the United States (U.S.) that define and specify a sustainably-produced alternative fuel. In contrast, the U.S. Department of Agriculture has developed a regulatory standard for certified organic foods. The precursor to developing a regulatory standard for sustainability is to develop, identify and

promote sustainability standards that can be certified by independent, third party organizations. The criterion lists a number of sustainability certification systems developed for alternative and renewable fuels – primarily biofuels – and their feedstocks. The list includes certification programs under development in the United States, Europe, and Asia or at the international scale. These certification programs have been discussed in public workshops during the AB 118 regulatory proceeding.

4. Section 3102 – Definitions

(a) The term "natural resources" encompasses a wide of array lands, waters, flora (vegetation), fauna (animals and wildlife). This definition establishes the components of "natural resources" to provide direction to applicants so that they can develop data sufficient to Energy Commission staff to make informed evaluations of potential effects on natural resources from various alternative and renewable fuel and vehicle technologies.

(b) The term "environmental performance" is defined so as to provide guidance to applicants so that they may understand how the operation of proposed industrial facilities and processes for the production of alternative and renewable fuels will be evaluated by Energy Commission staff when reviewing funding applications.

(c) The term "carrying capacity" is a term from the ecological sciences that is defined so that applicants and interested parties can understand the potential range of environmental effects from production of alternative and renewable fuels and vehicle technologies; a range that extends from no or minimal effect to catastrophic effect.

These definitions were necessary because the terms carry imprecise meanings which vary depending on source and context of the definition. By defining these terms in regulation for purposes of the funding program, applicants can better understand the type of information the Energy Commission is seeking in project applications. It also allows applicants and the Energy Commission to operate under one set of definitions which makes comparing projects easier and fairer.

5. Section 3103 – Funding Restrictions

Specific Purpose

The statute prohibits the Energy Commission from funding projects already required to be undertaken pursuant to state or federal law or district rules or regulations, herein, referred to as "funding restrictions." (Health & Safety Code § 44271(c)) This section clarifies the extent to which a project subject to meeting requirements under applicable laws, rules, or regulations would be eligible for funding to the extent the project exceeds legal requirements.

In addition, the proposed regulation clarifies the allowance and disallowance for emission reduction credits for funded projects. The regulation would restrict a funding recipient through the funding agreement from claiming emission reduction credits from a funded project except to the extent the credits are discounted in proportion to the amount of funding received from the program.

The proposed funding restrictions help focus allocations to those projects that may not occur without state funding, and limit funding for projects that help entities meet regulatory obligations.

Health and Safety Code Section 42271(c) states "eligible projects do not include those required to be undertaken pursuant to state or federal law or district rules or regulations." The intent of the statute is to disallow funding for projects that are mandated by law. The regulation is necessary to include local and regional rules among the list of laws and rules the Energy Commission will consider when determining whether a project is eligible for funding.

Placing the funding restriction in regulation establishes how the Energy Commission will evaluate projects where the applicant seeks to exceed what is required by law and how emission credits, which may be generated by the project, are distributed. These questions are not directly addressed by the statute.

6. Section 3104 – Advisory Body

Specific Purpose

The statute directs the Energy Commission to create an advisory body to help develop an investment plan for the program. (Health & Safety Code § 44271.5(a).) To establish an advisory body, the Energy Commission plans to assign the function to one of its standing policy committees. The Energy Commission is authorized by its enabling statute to appoint committees of at least two commissioners to carry on a variety of assignments in accordance with the Energy Commission's powers (Public Resources Code §25511.) Accordingly, it is the practice of the Energy Commission to establish standing committees that oversee policies and other matters as assigned related to areas of Energy Commission interest, activity, or responsibility. For example, the Energy Commission currently has a Fuels and Transportation policy committee, which could also function as an advisory body for this funding program, given its related responsibilities in the same general subject area. The proposed regulation is, thus, necessary to clarify how the Energy Commission will create the advisory body by using the existing committee system.

7. Section 3105 – Designation of Advisory Committee Presiding Member

Specific Purpose

The proposed regulation specifies the presiding member of the assigned policy committee as the presiding member of the advisory committee and the one who will preside over the advisory committee's public meetings for the program. This section further clarifies the make-up of the advisory body required by Health and Safety Code section 44271.5.

The presiding member of the policy committee that is assigned the role of the advisory body for this funding program is in the most reasonable position to also preside over the advisory committee (as the advisory body is proposed to be called). The presiding member of the Energy Commission's standing policy committee would already be overseeing matters closely related to the funding program and would be familiar with the program's mandate. This regulation is reasonably necessary to specify who shall preside over the advisory committee based on which

one of the Energy Commission's standing policy committees receives the assignment of serving as the advisory body for the funding program.

8. Section 3106 – Selection of Advisory Committee Members

Specific Purpose

This regulation provides specificity in the selection process of the advisory body in accordance with the statutory directive. The proposed regulation describes the process by which the assigned policy committee will solicit applications from persons interested in serving on the advisory committee. Solicitations will give applicants at least 14 days advance notice, describe the process by which members will be selected, and provide any criteria that will apply in deciding between two or more persons wishing to represent the same interest group. The regulation further specifies that the members will serve at the pleasure of the assigned policy committee, except that interest groups identified in Health and Safety Code section 44271.5(b) shall be represented on the advisory committee.

The regulation provides the public with information about the administrative process by which advisory committee members will be selected in accordance with the statutory directive to have representation of a broad variety of interest groups. This regulation is reasonably necessary to ensure fairness, neutrality, transparency, and the effective use of resources from all related fields of expertise. The statute states the areas from which experts need to be drawn. Given the broad range of interests to be represented on the advisory body, the solicitations may need to vary the selection criteria depending on where representation is needed to continue diversified membership as directed by statute. For this reason, the Energy Commission needs the flexibility in the regulation to tailor its selection criteria for each solicitation to target, as needed, certain interest groups.

9. Section 3107 – Advisory Committee Duties

Specific Purpose

The proposed regulation describes the minimum number of meetings (two) the advisory committee will hold each year. This regulation is necessary to effectuate the purpose of the statute because it further clarifies the role of the advisory committee as participating in public discussions and making public recommendations to the assigned policy committee on the investment plan. The regulation serves to clarify that the advisory committee's role is as a public advisor on the investment plan and not as a decision-maker.

The statute calls for public advisory body meetings that are subject to the Bagley-Keene Open Meeting Act. The regulation is necessary to ensure consistency with the statute in making the advisory committee meetings open and accessible to the public. The regulation is also necessary to clarify the advisory committee's advisory role in the Energy Commission's determination of funding priorities. This is reasonably necessary because the statute only provides a vague description of the advisory body's role in helping to develop an investment plan to determine priorities and opportunities for project funding.

10. Section 3108 – Purpose of Investment Plan

Specific Purpose

The proposed regulation clarifies the purpose of an Investment Plan that the Energy Commission is directed by statute to develop "to determine priorities and opportunities" for the program. (Health & Safety Code § 44271.5(a)) The ultimate purpose will be to develop and deploy innovative technologies that will transform the state's fuels and vehicles to help achieve state goals in reducing greenhouse gas emissions. The regulation further specifies that the assigned policy committee will have the responsibility of preparing and publishing the Investment Plan and that the plan will be subject to Energy Commission approval.

The regulation also specifies a public process by which the Investment Plan will be subject to public review and input. In addition, the regulation helps ensure public disclosure and discussion of existing public and private funding to help formulate funding strategies and identify opportunities for leveraging public or private funding. Finally, the regulation specifies that all funding decisions must be consistent with the investment plan.

The statute (Health & Safety Code Section 44272.5) does not provide detail by which the Investment Plan will be developed and shared with the public. The statute does, however, set precedence for transparency by requiring public accessibility to various parts of the program. This regulation is necessary to effectuate the purpose of the statute because it provides the public with an understanding of the process by which funding priorities will be determined and publicized through the Investment Plan vehicle. The regulation ensures a transparent and public process to identify program funding priorities. The regulation establishes accountability by calling the Energy Commission to document and explain variations to the funding allocations established in the Investment Plan.

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