

DOCKETED

Docket Number:	15-OIR-02
Project Title:	Modification of Alternative and Renewable Fuel and Vehicle Technology Program Funding Restrictions
TN #:	205853
Document Title:	Certification Resolution with Exhibit A
Description:	Resolution No.: 15-0812-11b
Filer:	Tiffani Winter
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RESOLUTION NO: 15-0812-11b

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION

WHEREAS, on February 25, 2015 the California Energy Commission ("Energy Commission") made a finding of emergency and adopted an emergency regulation that changed California Code of Regulations, Title 20, section 3103 ("§ 3103"); and

WHEREAS, on March 12, 2015 the Office of Administrative Law ("OAL") approved the Energy Commission's emergency regulation, which became effective on March 12, 2015; and

WHEREAS, the Energy Commission:

- Published, on June 12, 2015 in the California Regulatory Notice Register a Notice of Proposed Amendments ("Notice") to Alternative and Renewable Fuel and Vehicle Technology Program Funding Regulations Title 20, California Code of Regulations, sections 3100-3104;
- Delivered on June 12, 2015 the Notice to every person on the Energy Commission's Business Meeting Agenda, Alternative Fuels, and Transportation list servers and to every person who had requested notice of such matters, and posted the Notice on the Energy Commission's website;
- On June 12, 2015 also made publically available on the Energy Commission's website the text of the proposed regulations, initial statement of reasons, and information upon which the proposal is based; and

WHEREAS, the Notice specified that written comments must be submitted to the Energy Commission by 4:00 p.m. on July 28, 2015 and that a public hearing for consideration and possible adoption of the draft regulatory language would be held on August 12, 2015; and

WHEREAS, the Energy Commission has considered those comments, comments received during this business meeting, staff's responses, and the entire record of this proceeding as reflected in Docket 15-OIR-02; and

WHEREAS, the Energy Commission has considered the application of the California Environmental Quality Act (CEQA) to the adoption of this regulation, as detailed in the analysis set forth in the July 30, 2015 Memorandum by the Chief Counsel's Office titled "CEQA Application to Funding Restrictions for the Alternative and Renewable Fuel and Vehicle Technology Program" ("Memorandum");

THEREFORE BE IT RESOLVED THAT the Energy Commission adopts the findings in the Office of the Chief Counsel's July 30, 2015 Memorandum that adoption of the proposed regulation is not a "project" under CEQA and California Code of Regulations, Title 14, section 15378; and that in the event that adoption were determined to be a project, it would nonetheless be exempt from CEQA requirements pursuant to the "common sense" exemption (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)); and

BE IT FURTHER RESOLVED THAT based on the entire record for Docket 15-OIR-02, the Energy Commission finds that the proposed regulation, attached hereto as Exhibit A:

1. Is not inconsistent or incompatible with existing state regulations;
2. Is not inconsistent or incompatible with existing federal law;
3. Is not mandated by federal law or regulations;
4. Will impose no direct costs, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code;
5. Will result in no costs or savings in federal funding to the State of California;
6. Will result in no costs or savings to any state agency;
7. Will result in no nondiscretionary costs or savings to local agencies or school districts;
8. Will have no impact on housing costs;
9. Will have no significant, statewide adverse effect on businesses in general or small businesses in particular;
10. Is expected to benefit small businesses within the California alternative fuels and vehicle technology sectors;
11. Will have no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations;
12. Will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars;
13. Is expected to create between 96 and 100 new jobs within the state;

14. Is expected to create approximately 0 to 15 new businesses within the state and will not eliminate any existing businesses;
15. May allow some businesses currently doing business within the state to expand;
16. Is expected to benefit the health and welfare of residents of California and the environment;
17. Will not require any additional mandatory reporting;
18. Has no alternatives that would be more effective in carrying out the purposes of the Health & Safety Code, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes;
19. Will provide increased clarity to the regulated community; and

BE IT FURTHER RESOLVED THAT under the authority of, and to implement, interpret, and make specific, sections 25213 and 25218(e) of the Public Resources Code, and sections 44271 and 44272 of the Health and Safety Code, the Energy Commission hereby adopts the proposed regulation, the text of which is attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED THAT the Energy Commission directs the Executive Director to take, on behalf of the Commission, all actions reasonably necessary to have the adopted regulations go into effect, including but not limited to incorporating any changes approved by the Energy Commission into the final Express Terms submitted OAL; making any appropriate nonsubstantive changes required by OAL; preparing and filing all appropriate documents with OAL; and preparing and filing the Notice of Exemption with the Governor's Office of Planning and Research.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Energy Commission held on August 12, 2015.

AYE: Weisenmiller, McAllister, Hochschild, Scott
NAY: None
ABSENT: Douglas
ABSTAIN: None



TIFFANI WINTER
Secretariat

EXHIBIT A

California Code of Regulations, Title 20, Section 3103

- a) A project shall not be eligible for funding if it is mandated by any local, regional, state, or federal law, rule, or regulation.
- b) If a project is one that helps the ~~proposing entity applicant~~ meet a performance requirement mandated by local, regional, state, or federal law, rule, or regulation, the project shall not be eligible for funding.
- c) To the extent a project exceeds what is required for compliance with a legally enforceable requirement, it may receive funding for that part of the project that the applicant demonstrates is not mandated to meet the requirement. Credits generated by the excess, however, may not be used or sold by the ~~proposing entity applicant~~ to offset a legally enforceable requirement, ~~except to the extent allowed by subsection (d)(b).~~
- d) For purposes of this section, a legally enforceable requirement refers to any requirement enforceable by a local, regional, state, or federal agency for the purpose of reducing the emission of one or more criteria pollutants, toxic air contaminants, or any greenhouse gas.
- e) For purposes of this section, the following are not subject to the restrictions contained in subdivisions (a) and (c):
 - 1. A project that produces opt-in fuels under the Low Carbon Fuel Standard (California Code of Regulations, title 17, section 95480.1, subdivision (b));
 - 2. A project that produces biofuel that meets or falls below the average carbon intensity requirements set forth in the Low Carbon Fuel Standard (California Code of Regulations, title 17, section 95482, subdivisions (b) and (c)) for the year in which the credits are generated;
 - 3. A project under which the applicant has voluntarily opted-in to an emission reduction credit generating program for the purpose of participating in the program's credit market; and
 - 4. A project that had been awarded funding under Health and Safety Code section 44272 prior to the effective date of this section as amended and also satisfies at least one of the requirements listed in subdivisions (e)(1)-(3).

~~(b) A project that generates credits that the applicant plans to claim based on the reduction of criteria pollutants, toxic air contaminants, or greenhouse gases may not be eligible for funding unless all of the following occur:~~

- ~~(1) the applicant seeks funding for only a portion of the project;~~
- ~~(2) the applicant agrees in the funding agreement to discount emission credits at least in proportion to the amount of funding received;~~
- ~~(3) the project satisfies one or more of the criteria in sections 3101 and 3101.5, as appropriate.~~