

## DOCKETED

<b>Docket Number:</b>	15-OIR-02
<b>Project Title:</b>	Modification of Alternative and Renewable Fuel and Vehicle Technology Program Funding Restrictions
<b>TN #:</b>	205005
<b>Document Title:</b>	Notice of Proposed Action
<b>Description:</b>	Proposed Amendments to Alternative and Renewable Fuel and Vehicle Technology Program Funding Regulations - Title 20, California Code of Regulations, sections 3100-3108 - Public Hearing August 12, 2015
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
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## **NOTICE OF PROPOSED ACTION**

### **Proposed Amendments to Alternative and Renewable Fuel and Vehicle Technology Program Funding Regulations Title 20, California Code of Regulations, sections 3100-3108**

California Energy Commission  
Docket No. 15-OIR-02  
June, 2015

The California Energy Commission (“Energy Commission”) proposes to update its Alternative and Renewable Fuel and Vehicle Technology Program (“ARFVTP”) regulations, located in the 3103 section of Title 20 of the California Code of Regulations (“section 3103”). The update eliminates an emissions credits discounting requirement, and clarifies funding restrictions. On February 25, 2015 the Energy Commission adopted emergency changes to section 3103. Those changes became effective on March 12, 2015. This rulemaking confirms those emergency changes, as required by Government Code section 11346.1(a), and makes additional minor changes. This rulemaking is also conducted under the authority of Public Resources Code sections 24210, 25213, 25218(e); and Health and Safety Code section 44272(a).

#### **PUBLIC HEARING – Gov. Code §§ 11346.5(a)(1), 11346.5(a)(17)**

The Energy Commission will hold a public hearing as part of its monthly Business Meeting for consideration and possible adoption of the draft regulatory language on the following date and time unless the Energy Commission decides to modify the express terms through issuance of 15-day language.

August 12, 2015  
10:00 a.m.  
California Energy Commission  
First Floor, Art Rosenfeld Hearing Room (Hearing Room A)  
1516 9th Street  
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

Audio for the August 12, 2015, adoption hearing will be broadcast over the internet. Information on agendas and how to use the Energy Commission’s web system can be found at [http://www.energy.ca.gov/business\\_meetings/](http://www.energy.ca.gov/business_meetings/).

If you have a disability and require assistance to participate in these hearings, please contact Lou

Quiroz at (916) 654-5146 or [Lou.Quiroz@energy.ca.gov](mailto:Lou.Quiroz@energy.ca.gov) at least 5 days in advance.

At this hearing, any person may present oral or written statements or arguments relevant to the proposed action. Interested persons may also submit written comments (see below).

**WRITTEN COMMENT PERIOD -- Gov. Code §§ 11346.4(a), 11346.5(a)(15)**

**Written comments should be submitted by 4:00 p.m. on July 28, 2015.** If you wish to provide comments on the draft regulatory language, please submit comments to the Energy Commission Dockets Unit at:

Docket Unit  
California Energy Commission  
Docket No. 15-OIR-02  
1516 9th Street, MS-4  
Sacramento, CA 95814  
Or e-mailing them to: [DOCKET@energy.ca.gov](mailto:DOCKET@energy.ca.gov)  
Or faxing them to Dockets at (916) 654-3843

Please note that written comments, attachments, and associated contact information included within the written comments and attachments (e.g., your address, phone, email, etc.) become part of the viewable public record.

**PUBLIC ADVISER**

The Energy Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228 or contact [publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)

**STATUTORY AUTHORITY AND REFERENCE -- Gov. Code § 11346.5(a)(2); Cal. Code of Regs., tit. 1, § 14**

The Energy Commission proposes to update and clarify elements of the ARFVTP under the authority of Public Resources Code sections 24210, 25213, 25218(e); and Health and Safety Code section 44272(a). The proposed regulations would implement, interpret, or make specific Health and Safety Code sections 44271-44272.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW – Gov. Code § 11346.5(a)(3)**

Section 11346.5(a)(3)(A): The following regulations and statutes are related directly to the proposed action: Sections 44272-44273 of the Health and Safety Code, which create and establish requirements and an administrative framework for the ARFVTP; and sections 3100–3108 of Title 20 of the California Code of Regulations, which govern funding of projects under the ARFVTP. The effect of the action proposed in this rulemaking, which is specific to section 3103 of Title 20 of the California Code of Regulations, would be to eliminate unintended economic harm to ARFVTP fund recipients by eliminating an emissions credit discounting requirement, and to clarify what projects are subject to remaining funding restrictions. Specifically, the new language makes the following changes to section 3103:

- Divides what was formerly one paragraph into subsections for clarity and ease of reading;
- Eliminates the requirement to discount emissions credits generated by ARFVTP-funded projects;
- Eliminates the requirement that projects which generate emissions credits are eligible for only partial funding;
- Changes the term “proposing entity” to “applicant” to be consistent with the terminology in statute;
- Deletes a reference to obsolete language; and
- Adds a list of project types which are exempt from certain funding restrictions to clarify continued eligibility for ARFVTP funding for these project types.

Section 11346.5(a)(3)(B): The Energy Commission has found no existing comparable federal regulations or statutes.

Section 11346.5(a)(3)(C): The broader objective of these changes is to further the development and deployment of innovative technologies to transform California's fuel and vehicle types to help attain the state's climate change policies, consistent with the mandate of Health & Safety Code section 44272(a). The specific benefits anticipated as a result of these changes are increased certainty for entities with regulated projects, via clearer and more functional regulations; and environmental protection via increased viability of projects that will result in decreased greenhouse gas emissions. While elimination of the discounting requirement does not add any new emissions credits to the market, it is likely to help the profitability of projects funded under the ARFVTP.

Section 11346.5(a)(3)(D): During the process of developing these regulations and amendments, the Commission has conducted a search of any similar regulations on this topic and has concluded that the proposed regulation is consistent and compatible with existing state regulations. There are no contradictory provisions in other regulatory sections relating to the ARFVTP (i.e., Cal. Code Regs., tit. 20, §§ 3100-3108). The proposed regulation is complimentary to and not inconsistent with the Air Resources Board's regulations on the Low Carbon Fuel Standard (i.e., Cal. Code Regs., tit. 17, §§ 95480-95490). No other state regulations deal with the same subject matter.

**DOCUMENTS INCORPORATED BY REFERENCE – Cal. Code Regs., tit. 1, § 20(c)(3)**

There are no documents incorporated by reference.

**MANDATED BY FEDERAL LAW OR REGULATIONS – Gov. Code §§ 11346.2(c), 11346.9**

The proposed revisions are not mandated by federal law or regulations.

**OTHER STATUTORY REQUIREMENTS – Gov. Code § 11346.5(a)(4)**

There are no other matters prescribed by statute which are applicable to the Energy Commission or to this specific regulation or class of regulations.

**LOCAL MANDATE DETERMINATION – Gov. Code § 11346.5(a)(5)**

The proposed regulations relate to a voluntary funding program and do not impose a mandate on local agencies or school districts.

**FISCAL IMPACTS – Gov. Code § 11346.5(a)(6)**

- Cost to any local agency or school district requiring reimbursement pursuant to Government Code sections 17500 *et seq.*

The Energy Commission is unaware of any cost impacts that a local agency or school district would incur in compliance with the proposed action, as the changes are specific to the Alternative and Renewable Fuels and Vehicle Technology Program. No school district or local agency has informed the Energy Commission of any costs associated with the proposed regulatory language changes.

- Cost or savings to any state agency.

The Energy Commission is unaware of any cost impacts that a state agency would incur in compliance with changes to the Alternative and Renewable Fuels and Vehicle Technology Program regulation. The proposed regulation does not change any existing requirement or impose a new requirement on any state agency. No state agency has informed the Energy Commission of any costs associated with the proposed regulatory language changes.

- Other non-discretionary cost or savings imposed upon local agencies.

The Energy Commission is unaware of any cost impacts that a local agency would incur in

compliance with changes to the Alternative and Renewable Fuels and Vehicle Technology Program regulation. The proposed regulation does not change any existing requirement or impose a new requirement on any local agency. No local agency has informed the Energy Commission of any costs associated with the proposed regulatory language changes.

- Cost or savings in federal funding to the state.

The Energy Commission is unaware of any cost or savings impacts on federal funding that would result from changes to the ARFVTP regulation.

#### **HOUSING COSTS -- Gov. Code § 11346.5(a)(12)**

The Energy Commission is unaware of any costs impacts to housing from the proposed regulations, which have no relation to the permitting; building; or repair of housing.

#### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE -- Gov. Code §§ 11346.3(a), 11346.5(a)(7), 11346.5(a)(8)**

The Energy Commission initially determines that the revised regulations 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. The ARFVTP is a voluntary funding program and does not mandate any action by California businesses. The revised regulations directly affect only ARFVTP grant recipients and will improve the likelihood of project success and ability to compete with businesses in other states. The proposed changes could have a small impact on the market price of LCFS credits by incentivizing additional sales of LCFS credits, but this supply impact is offset by credits being sold at a higher undiscounted price with implementation of proposed regulatory changes. (See Economic Impact Assessment in Initial Statement of Reasons, and Calculations Supporting Economic Impact Assessment, Docket 15-OIR-02 TN# 204714. We encourage interested persons to comment on this issue as part of the public review process to help us reach a final determination.

#### **STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT – Gov. Code § 11346.5(a)(10)**

The Energy Commission concludes that:

- It is likely that the proposed changes will result in the creation of between 96 and 160 jobs within California, including jobs for engineering and environmental technology specialists, financial and accounting services, marketing and sales services, agribusiness, and heavy and light construction.

- It is likely that the proposed changes will not result in any jobs eliminated.
- It is likely that the proposed changes will result in the creation of between 0 and 15 new businesses within the alternative fuels and vehicle technology sectors of the California economy, including businesses that manufacture component parts and equipment; produce biofuel and biomethane; own alternative fuel infrastructure; and provide engineering and technical services and financing, accounting, and investment guidance.
- It is likely that the proposed changes will not result in any elimination of existing businesses.
- It is likely that the proposed changes will expand existing businesses currently doing business in the state. Specifically, it is likely that the proposed changes will lead to a total revenue increase of up to \$5,478,649 for ARFVT grant recipients who generate and sell Low Carbon Fuel Standard credits in any single year.
- It is likely that the proposed changes will, by improving the likelihood of successful production of alternative and renewable fuel products, result in air quality improvements; reduce greenhouse gas emissions; and avoid adverse impacts of climate change, thereby improving the health and welfare of California residents and the California environment.

#### **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS – Gov. Code § 11346.5(a)(9)**

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **BUSINESS REPORT – Gov. Code §§ 11346.5(a)(11), 11346.3(d)**

The proposed changes would not require a report to be made or create new reporting requirements.

#### **SMALL BUSINESS IMPACTS – Cal. Code Regs., tit. 1, § 4(a) and (b)**

The proposed changes affect small business in that any small business awarded ARFVTP grant funding will no longer need to comply with a previously-existing requirement to discount emissions credits generated by ARFVTP-funded projects. The deletion of the discounting requirement increases the value of the credits generated by an ARFVTP-funded project. The change is proposed in response to business stakeholder concern, including small businesses.

(See survey responses in Docket 15-OIR-02 from CR&R, TN# 204705-13; Pixley Biogas, TN# 204705-19; Buster Biofuels, TN# 204705-9; Blue Line Transfer, TN# 204705-8; Springboard Biodiesel, TN# 204705-23; Pearson Fuels, TN## TN# 204705-18 and 204705-20; Biodiesel Industries, TN# 204705-7; New Leaf Biofuel, TN# 204705-16; Environ, TN# 204705-14; Shawn Garvey, TN# 204707; Whole Energy Pacifica, TN# 204705-23; Agricultural Waste Solutions, TN# 204705-3. See also letters from ARVFTP participants in Docket 15-OIR-02: TN #204432, Letter from AEMETIS of February 11, 2015; TN #204435, Letter from Pacific Ethanol of March 18, 2015; TN #204436, Letter from Bioenergy Association of California of February 12, 2015; TN #204438, Letter from Community Fuels of February 11, 2015; TN #204439, Letter from Renewable Natural Gas of February 11, 2015; TN #204454, Letter from Air Resources Board of January 30, 2015.) The revised regulations will increase the likelihood of ARVFTP project success, which in turn will lead to increased economic activities for small businesses within the California alternative fuels and vehicle technology sectors.

#### **ALTERNATIVES STATEMENT – Gov. Code § 11346.5(a)(13)**

The Energy Commission must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### **CONTACT PERSON – Gov. Code § 11346.5(a)(14)**

Inquiries concerning all aspects of the rulemaking process should be directed to Samantha Arens at (916) 651-9410 or by e-mail at [samantha.arens@energy.ca.gov](mailto:samantha.arens@energy.ca.gov). The designated backup contact person is Tim Olson, who can be reached at (916) 654-4528 and [tim.olson@energy.ca.gov](mailto:tim.olson@energy.ca.gov).

#### **AVAILABILITY OF THE PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH THE PROPOSAL IS BASED – Gov. Code §§ 11346.5(a)(16), 11346.5(b), 11346.2(a)**

The Energy Commission has prepared an initial statement of reasons for the proposed regulations, has available all the information upon which the proposed changes are based, and has available the express terms of the regulation.

To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Energy Commission's website at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-OIR-02> or contact Tim Olson at (916) 654-4528 or by e-mail at [tim.olson@energy.ca.gov](mailto:tim.olson@energy.ca.gov).



Additionally, the Energy Commission has available all the information upon which the proposed regulation is based, posted at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-OIR-02>. You may also obtain copies of docketed information by contacting the Docket Office at:

Docket Unit  
California Energy Commission  
Docket No. 15-OIR-02  
1516 9th Street, MS-4  
Sacramento, CA 95814  
(916) 654-5076  
[DOCKET@energy.ca.gov](mailto:DOCKET@energy.ca.gov)

**AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS – Gov. Code § 11346.5(a)(18)**

The proposed regulation could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of any of the ARFVTP regulations. If the Energy Commission considers changes to the proposed regulations pursuant to Government Code section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Energy Commission adopts or amends the resulting regulation.

**COPY OF THE FINAL STATEMENT OF REASONS -- Gov. Code § 11346.5(a)(19)**

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Energy Commission's website at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-OIR-02> or contacting Tim Olson at (916) 654-4528 or by e-mail at [tim.olson@energy.ca.gov](mailto:tim.olson@energy.ca.gov).

**INTERNET ACCESS – Gov. Code §§ 11346.4(a)(6), 11346.5(a)(20)**

The Energy Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Energy Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, as well as many other documents in the rulemaking file, have been posted at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=15-OIR-02>.

