

**DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE**

**STATEMENT OF EMERGENCY
FOR ADOPTION OF REGULATIONS**

Amend Title 16 California Code of Regulations, Sections 3394.3-3394.7.

The Department of Consumer Affairs (DCA)/Bureau of Automotive Repair (BAR) hereby find that adoption of regulations on an emergency basis is required to implement the Enhanced Fleet Modernization Program (EFMP). The DCA specifically finds that these emergency regulations are necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

The reduction of ozone pollution is among California's most urgent priorities. In its 2010 State Of The Air Report, the American Lung Association found that 17 of the most polluted counties in the nation were in California. This translates to highly toxic levels of pollution for approximately 34 million Californians. Years of studies have confirmed that mobile sources are responsible for approximately 40 percent of statewide greenhouse gas emissions and significant degradation to public health and environmental quality due to air and water pollution. To address this issue, the Legislature passed AB 118 (Nunez, Chapter 750, Statutes of 2007). This bill requires BAR to administer the EFMP to retire high-polluting vehicles commencing January 1, 2010. Since July 1, 2008, \$1 from vehicle registration fees has been deposited into the Enhanced Fleet Modernization Subaccount to retire these vehicles. These regulations would cause the immediate release of those funds and cause the state to uniformly and effectively address the environmental degradation facing California.

NEED FOR IMMEDIATE ACTION

Each year as many as 32,000 California residents die from breathing toxic particulate matter. Studies have consistently shown that the effect of air pollution include increased mortality, increased respiratory illness, decreased lung function, lung inflammation, potential immunological changes, and decreased tolerance for exercise. This results in approximately 87 people dying each day as a result of elevated levels of emissions. For California this results in an additional 29,808 hospital and emergency room admissions from 2005 to 2007 and an additional \$193 million in avoidable costs. If state clean air standards had been met during this period, an estimated \$204 million in health care costs could have been avoided.

Evidence shows that vehicles 15 years old and older account for less than 15% of the miles traveled on California roads, while emitting 60% of the smog forming emissions. The EFMP is designed to remove these older high-polluting vehicles from California roads resulting in 1,710 tons of emissions removed from the air each year. Emergency implementation of the EFMP is necessary to not only save lives, but to preserve the public health, safety, and general welfare of all Californians, and to help California meet state and federal clean air standards. Adoption of

these regulations would immediately begin the removal of high polluting vehicles from California roads. Each month of inaction costs Californians their lives.

California depends heavily on Federal funding to build and maintain its highways. The ability to secure this funding depends, in part, on California meeting its emissions reduction goals. California has consistently fallen short in meeting its emissions targets. As a result, California is at serious risk of jeopardizing billions in Federal highway funds. The loss of Federal highway funds, in turn, substantially hurts California's economy. The harm to California is compounded by the correlation between well-maintained highways, the free flow of vehicles, and air quality. Poorly maintained highways minimize the ability of even newer vehicles to run efficiently.

As written, AB 118 requires the Air Resources Board to first adopt guidelines before BAR may commence the removal of high pollution vehicles from California's roads. After unforeseen delays, the ARB regulations have been re-submitted for approval. Adoption of the BAR EFMP regulations on an emergency basis is now made more critical because without the regulations, California cannot begin to address the urgent need to remove high polluting vehicles from its roads. Immediate implementation of the EFMP is also critical to allow California to become compliant with Federal clean air standards.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44100, 44101, 44102, 44103, 44104, 44104.5, 44105, 44106, 44107, 44109, 44115, 44120, 44121, 44122, 44125 and 44126 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs (DCA), is the state agency charged with the administration and implementation of the Smog Check Program (Program). It is designed to reduce emissions from mobile sources, such as passenger vehicles, SUVs, and trucks by requiring them to meet specific emissions standards.

Section 3394.3-3394.7, Consumer Assistance Program

The Bureau is also charged with the administration of Consumer Assistance Program (CAP), which provides financial assistance to qualified vehicle owners that wish to retire their vehicle. Health and Safety Code (HSC) §44125 and §44126 establishes the Enhanced Fleet Modernization Program (EFMP); participation in EFMP is limited to available funds. EFMP is available to vehicle owners who, if eligible, receive compensation to retire their high-polluting vehicles. Approved applicants must take their vehicle to an authorized dismantler where the vehicle must pass a visual and operational inspection before it is accepted for retirement.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

The proposed Enhanced Fleet Modernization Program (EFMP) is a voluntary vehicle retirement program authorized pursuant to AB 118 (Nunez, Chapter 750, Statutes of 2007). The purpose of the legislation is to augment the State's existing vehicle retirement program. Funding for the program is provided through a \$1 increase in vehicle registration fees. BAR projects incurring \$12.125 million annually in direct costs associated with the retirement of eligible vehicles.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

BUSINESS IMPACT:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The Bureau will be updating regulations to incorporate the creation of EFMP. Since ARB has been charged with writing specific program requirements in consultation with BAR, there will be no adverse impacts to businesses in the state.

This proposed action will amend the CAP application to include EFMP. This regulatory action provides consumers easily understood directions when applying for CAP.

IMPACT ON JOBS/NEW BUSINESSES:

The Bureau has determined that this regulatory proposal will not eliminate jobs or existing businesses in the State of California. Potentially, a small number of new jobs may be created due to the increase in vehicle retirement and the need for consumers to replace their vehicle.

Given the recent decline in the auto sales industry, the EFMP may help to maintain current employment levels as opposed to creating new jobs.

EFMP is a consumer driven program, which consumers will not participate in if it does not provide them with economic benefits. Owners of older, higher polluting vehicles will benefit due to expanded options for replacing their vehicle with a newer, cleaner vehicle. Owners of vehicles with little resale value that continue to be driven would receive a cash incentive as a result of EFMP. In turn, newer vehicles may be purchased as a result of the incentive received from retiring a vehicle. Individuals and businesses selling used vehicles may benefit slightly due to greater demand for resale vehicles.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, other than the Business Impact described above.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Bureau has determined that the proposed regulations would not affect small businesses.

Requirements under this regulation do not mandate small business participation. The programs under EFMP are voluntary and may provide positive benefits to those businesses that wish to participate in the program.

**AVAILABILITY AND LOCATION OF THE RULEMAKING FILE
AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

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WEB SITE ACCESS

Materials regarding this proposal can also be found on the Bureau's Web site at www.smogcheck.ca.gov.