

**BUREAU OF AUTOMOTIVE REPAIR**

**INITIAL STATEMENT OF REASONS**

**HEARING DATES:** October 26, 2009

**SUBJECT MATTER OF PROPOSED REGULATIONS:** \$1,500 Retirement Incentive for Low-Income Vehicle Owners

Vehicle Retirement State Assistance Limits, Vehicle Owner Income Requirements, Repair Assistance Participation Limit, and Application Form Revisions including Updated Federal Poverty Guidelines

**SECTIONS AFFECTED:** §§ 3394.3, 3394.4 and 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The Bureau of Automotive Repair (BAR or Bureau) is proposing the following amendments to existing regulations:

- I. Increase from \$1,000 to \$1,500 the incentive for low-income vehicle owners who retire their vehicle under the Vehicle Retirement (VR) option of BAR's Consumer Assistance Program (CAP). All other eligible vehicle owners shall receive \$1,000 to retire their vehicle. Assembly Bill 1870 (Lieber, Chapter 761, Statutes of 2006) authorizes BAR to offer consumers up to \$1,500 to retire their high polluting vehicles when they fail a biennial Smog Check inspection. (proposed § 3394.3)
- II. Establish the maximum vehicle owner income allowed for participation in the income-eligible components of both the Vehicle Retirement and Repair Assistance (RA) options of CAP at 225% of the federal poverty guidelines. (§ 3394.4)
- III. Limit participation in the Repair Assistance option to vehicle owners who have not previously received financial assistance from CAP for the same vehicle. (§ 3394.4)
- IV. Amend the CAP application to include the increased Vehicle Retirement incentive and updated federal poverty guidelines as published annually by the U.S. Department of Health and Human Services. (DHHS § 3394.6)

The proposed action will make the following changes to existing regulation:

1. Amend Section 3394.3 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. Amend subsection (a) to change the text from “payment up to one thousand dollars (\$1,000) for each vehicle” to “payment up to one thousand five hundred (\$1,500) for vehicle owners that meet the household income level requirements listed in subdivision (a)(2)(A) of section 3394.3. All other eligible vehicle owners shall receive \$1,000 for each vehicle retired from operation. All vehicles shall be retired from operation at a dismantler operating under contract with the Bureau of Automotive Repair.”

This edit increases from \$1,000 to \$1,500 the incentive for vehicle owners to retire their vehicle when they meet specified household income level requirements.

With this proposal, BAR intends to increase the incentive for vehicle owners to participate in VR and improve the air quality benefits currently achieved by the program through the retirement of high-polluting vehicles. This will help BAR to achieve additional emissions benefits and assist the State in meeting federal clean air goals. This increased incentive will also assist those who otherwise cannot afford or choose not to replace their high-polluting vehicle due to the disparity between the vehicle’s perceived value and the incentive offered. It should also provide vehicle owners additional funds to purchase a newer and lower emitting vehicle.

- b. Add to subsection (a) the following text: “The Consumer Assistance Program cannot change the vehicle owner’s eligibility status or the amount paid to a vehicle owner once the dismantler has purchased the vehicle.”

This edit conforms to proposed regulatory language. This is being added to clarify that a vehicle owner's eligibility status cannot be changed once an approved vehicle has been retired. This is necessary to help vehicle owners avoid confusion regarding what financial assistance is available at the time they apply for and meet specified criteria.

- c. Add to subsection (b) the following text: “The Consumer Assistance Program cannot change the vehicle owner’s eligibility status or associated co-payment specified in section 3394.4 once the station has initiated any diagnostic or repair work on the vehicle.”

This edit conforms to proposed regulatory language. This is being added to clarify that a vehicle owner's eligibility status cannot be changed once an approved vehicle is in the process of being repaired. This is necessary to help vehicle owners avoid confusion regarding what financial assistance is available at the time they apply for and meet specified criteria.

2. Amend Section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Remove from subparagraph (A) of subsection (a) (2) the numerical section (i) and the reference date of "Until December 31, 2008". Also, delete the numerical section (ii) in its entirety.

This edit permanently establishes the maximum vehicle owner income allowed for participation in the income-eligible component of the Repair Assistance option of CAP to 225% of federal poverty guidelines as published annually by the DHHS. The regulation addresses the maximum income level to be set at 185% of the federal poverty guidelines as of January 1, 2009. However, Health and Safety (H&S) Code section 44062.1 (g) addresses the department's ability to increase the maximum income level to 225% based on available funds. The department has determined that funds are available. As a result, this change is necessary to increase participation in the program.

- b. Add language to subsection (4) to limit participation under the Repair Assistance option for vehicle owners who have not previously received repair assistance from CAP for the same vehicle.

This edit limits Repair Assistance to one time for the owner of a particular vehicle. This should help encourage vehicle owners to participate in CAP's Vehicle Retirement option. This change is consistent with the limitation established for issuance of a repair cost waiver under the Smog Check Program at HSC section 44062.1.

This edit adds new language resulting with a new subsection (4). Current subsection (4) will now be renumbered as subsection (5).

- c. Add subsection (6) to allow income-eligibility as an added option for Vehicle Retirement.

This edit adds new language allowing vehicle owners applying for VR with a household income less than or equal to 225% federal poverty guidelines as published by the DHHS, to receive a VR incentive of \$1,500. All other eligible vehicle owners will receive a VR incentive of \$1,000. This is necessary to distinguish the amount of payment to be paid to a vehicle owner.

- d. Other minor conforming, grammatical and editorial changes that have no regulatory effect are also included. For example changing "a" to "the".
3. Amend Section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
    - a. In subsection (a), the current application form (02/08) is changed to (04/09).
    - b. The incorporated form will reflect the following changes:
      - Takes into consideration the above referenced revisions of this regulatory proposal, including the \$1,500 Vehicle Retirement incentive for low-income vehicle owners and the poverty guidelines as published in the Federal Register in February 2009 by the DHHS.
      - The updated version of the application includes other minor, technical, grammatical and editorial changes to clarify and simplify the application.
      - Duplicative information that is currently in the application will be removed for the purposes of ease-of-use and readability.
      - The proposed application will be four pages in length and more user-friendly.

#### Incorporation by Reference

The incorporation by reference in Section 3394.6 of the Consumer Assistance Program (CAP) application form (PPD 08\_022 CAP/APP (04/09)) is appropriate since publishing this document in the California Code of Regulations would be cumbersome, unduly expensive, impractical and unnecessary. This revision reflects the correct version of the application that includes the increased vehicle retirement incentive. The revised application will be incorporated by reference, replacing the version dated 02/08. If anyone should wish to examine the revised application, it is always available upon request from BAR. The revised application will also be available for review throughout this rulemaking process and will be available on BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).

#### **FACTUAL BASIS**

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 and light trucks, by requiring them to meet specific emissions standards.

The Bureau is also charged with the implementation and administration of CAP. CAP provides financial assistance to qualified vehicle owners whose vehicle fails their biennial (every-other-year) Smog Check. HSC section 44062.1 establishes the Repair Assistance option, the eligibility requirements, and the program funding. HSC section 44094 establishes the same for Vehicle Retirement. Participation in CAP is limited to available funds.

CAP offers two options for vehicle owners whose vehicle fail their biennial Smog Check. First, Repair Assistance (RA) is available to vehicle owners who, if qualified, receive financial assistance towards emissions-related repairs to help their vehicles pass their Smog Check inspection. Repairs on CAP-approved vehicles must be performed by Smog Check stations that have Gold Shield status, as determined by BAR. Second, Vehicle Retirement (VR) 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. The vehicle must pass a visual and operational inspection before it is retired.

The VR option provides an economic incentive for vehicle owners to retire high-polluting vehicles that might otherwise remain in service. In 2006, HSC section 44062.3 was enacted by Assembly Bill (AB) 1870, which permits BAR to pay qualified vehicle owners "up to" \$1,500 to retire their vehicle when they fail a biennial Smog Check inspection. The current Vehicle Retirement incentive of \$1,000 is offered to all qualified consumers regardless of their income. In accordance with AB 1870, BAR is now proposing, through regulation, to increase the incentive to \$1,500. This increased incentive would be available to consumers whose incomes do not exceed federal poverty guidelines.

There are several reasons why vehicle owners choose to retire their vehicle. One reason is that the cost of repairs necessary to keep a vehicle running exceeds the value of the vehicle. In addition, some vehicle owners want to upgrade to a better vehicle, yet do not want the complications associated with selling a vehicle that cannot pass a Smog Check inspection. Finally, some vehicle owners simply want to help clean the air. If they can do so by retiring their vehicle, they are willing, provided that they are fairly compensated. By offering an increased incentive to vehicle owners considering vehicle retirement for any of these reasons, BAR hopes to encourage vehicle owners to reach this decision earlier in the vehicle's life and to purchase a newer and lower emitting vehicle.

Limiting vehicle owner participation in the RA option to one time per registered owner of a particular vehicle would have several benefits. In Fiscal Year 2007-08, approximately 3,800 of the 45,000 participants in the RA option had previously had the same vehicle repaired through CAP. By not permanently fixing the emissions systems that caused or contributed to the vehicle's inability to pass its Smog Check inspection, the vehicle continued to emit more than it should. This defeats the purpose of the RA option. In

addition, the repair of a vehicle's emissions system more than once adversely impacts the efficiency and effectiveness of CAP, as the resources available to CAP have remained static while overall vehicle owner participation has increased. This means that vehicle owners who participate in CAP more than once in future years will effectively displace vehicle owners who may never have participated in CAP and own a vehicle that may have durable repairs. Repairing the same vehicles again is also an inefficient use of State resources. As a result, the one-time limit to the Repair Assistance option in conjunction with the increased Vehicle Retirement incentive may serve to change vehicle owners' behavior in terms of continued ownership of their high polluting vehicles.

Pursuant to California Code of Regulations (CCR) section 3394.4(a)(2)(A), income eligibility for CAP is based on the most current federal poverty guidelines. On January 23, 2009, DHHS released an official income level for poverty, more commonly referred to as the "federal poverty guidelines." The income eligibility table is included in the CAP application as a way for applicants to determine their eligibility based on income. Based on the latest information from DHHS, the application table must be adjusted accordingly in order to remain current with the regulations. CCR section 3394.4(a)(2)(A) clearly contemplates adjustments in the federal poverty guidelines and establishes eligibility based on the published information.

The Consumer Assistance Program application will conform to the proposed regulation and include the \$1,500 Vehicle Retirement incentive for low-income vehicle owners and revised poverty guidelines as published in the Federal Register in February 2009 by the DHHS. The income eligibility table, which reflects federal poverty guidelines as of January 2009, will be updated to reflect the new federal income level for poverty.

Minor, technical, grammatical and editorial changes have been made to the application in order to clarify and simplify the application. For example, duplicative information that is currently in the application will be removed for the purposes of readability, formatting will be altered and the survey will be removed to conserve space. The proposed application will be four pages in length and through these proposed revisions will be more user-friendly.

### **UNDERLYING DATA:**

Technical, theoretical or empirical studies or reports relied upon:

- AB 1870, (Lieber, Chapter 761, Statutes of 2006).
- Department of Consumer Affairs, Bureau of Automotive Repair. Consumer Assistance Program application, PPD 08\_022 CAP/APP (02/08).
- Department of Consumer Affairs, Bureau of Automotive Repair. Consumer Assistance Program application, PPD 08\_022 CAP/APP (04/09).

- Department of Consumer Affairs, Bureau of Automotive Repair. “Average Cost per Repair within the Consumer Assistance Program.”
- Department of Consumer Affairs, Bureau of Automotive Repair. “Costs Associated with Increasing Vehicle Retirement Incentive to \$1500.”
- Department of Consumer Affairs, Bureau of Automotive Repair. “Number of Repeated Individuals Utilizing Repair Assistance.”
- Federal Register. “2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia.” Vol. 74, No. 14, Friday, January 23, 2009, pp. 4199-4201.

**Business Impact:**

This regulation will not adversely impact businesses. This initial determination is based on the following facts, evidence, documents, or testimony:

*Automotive Dismantler Impact*

Increasing the amount paid under the VR option will create additional incentive for vehicle owner participation. Automotive dismantlers who contract with the Bureau would see an increase in business through this proposed change. These dismantlers are generally reimbursed for their administrative cost of retiring each vehicle. They also receive additional revenue from the sale of select salvage materials from each retired vehicle.

*Vehicle Owner Impact*

For Fiscal Year 2007-08, CAP paid for repairs on approximately 3,800 vehicles that had previously been repaired through the program. At an average of \$385 per repair, vehicle owners would incur \$1.46 million in costs annually to make these repairs on their own given the participation limit of one time per registered owner for a particular vehicle. However, this may be offset by those vehicle owners who retire their vehicles under the VR option. Finally, this proposed regulatory action would not impact vehicle owners until the third year after the regulation has been adopted<sup>1</sup>.

**Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

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<sup>1</sup> In the first year following the adoption of this regulation, vehicle owners would continue to be eligible to participate in the Repair Assistance option. The second year is designated as an off-cycle year and no inspection is required, since Smog Checks are mandated every other year. In the third year, if the vehicle owner received repair assistance in the previous biennial cycle, the vehicle owner would be ineligible to receive further assistance through RA.

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

1. BAR considered offering all eligible vehicle owners, regardless of income, \$1,500 to participate in the VR option. However, BAR concluded that it was not cost-effective to offer all vehicle owners an extra incentive when significant numbers were already accepting \$1,000 to retire their vehicle. This alternative also would have exceeded BAR's budget for the program.
2. BAR considered taking no action. However, BAR would not be able to implement the provisions of AB 1870 and provide vehicle owners a greater incentive to retire their vehicle.

In addition, BAR has expenditure authority to continue the maximum household income level at 225% of the federal poverty guidelines for the income-eligible component of the RA option. Reducing the level at 185%, as described in regulation, would be unnecessary.

Finally, BAR determined that continuing to allow vehicle owners to participate in the RA option more than once over several Smog Check cycles would be inefficient because of limited state resources.