

Bureau of Automotive Repair

INITIAL STATEMENT OF REASONS

HEARING DATE: September 7, 2010

SUBJECT MATTER OF THE PROPOSED REGULATION:

Enhanced Fleet Modernization Program

- I. Eligibility Requirements;
- II. Ineligible Vehicles;
- III. Application and Documentation for CAP;
- IV. Application and Documentation for EFMP

SECTIONS AFFECTED:

§ 3394.4, 3394.5, 3394.6, and 3394.7 of Title 16, Division 33, Chapter 1, Article 11, California Code of Regulations

SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR) is proposing the following amendments to regulations in order to incorporate off-cycle vehicle retirement, clean up obsolete text, and to align with new California Air Resources Board (ARB) regulations, specifically, the Enhanced Fleet Modernization Program (EFMP).

- I. **ELIGIBILITY REQUIREMENTS:** Remove the Revivable Junk Receipt requirement from Section 3394.4. In addition, make minor punctuation and grammatical changes to the text by removing unused hyphens. Remove expired text regarding the 180 day registration qualification requirement. Add new qualifications that vehicles cannot be placed in non-operational status for 60 days or more within the 24 months immediately preceding the registration expiration date. Furthermore, vehicles with a registration that has lapsed for 121 days or more in the 24 months immediately preceding the registration expiration date shall be ineligible for CAP. Clarify the definition of an emission related failure; consumers that have failed a Smog Check due to the MIL being illuminated are eligible for CAP. Remove “or light-duty” and add “sports utility vehicle (SUV) or van” to provide additional retirement opportunities to consumers. Change the gross vehicle weight from 8,500 to 10,000 pounds. (§ 3394.4)
- II. **INELIGIBLE VEHICLES:** Add language to specify that dismantled and total loss salvaged vehicles that have not been re-registered pursuant to section 11519 of the Vehicle Code are ineligible for participation in the Vehicle Retirement (VR) and Repair Assistance (RA) options of CAP. Furthermore, minor punctuation and grammatical changes will be made to the text. (§3394.5)

- III. **APPLICATION AND DOCUMENTATION REQUIREMENTS FOR THE CONSUMER ASSISTANCE PROGRAM:** Minor, technical, grammatical and editorial changes have been made to the text and CAP application to provide further clarity. (§3394.6)
- IV. **APPLICATION AND DOCUMENTATION REQUIREMENTS FOR THE ENHANCED FLEET MODERNIZATION PROGRAM:** Incorporate requirements including an application for participation in the EFMP for retirement of off-cycle vehicles and vehicles not subject to a biennial Smog Check. (§3394.7)

These proposed actions will make the following changes to existing regulation:

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

- a. Remove from section (a) subsection (5)(A) text “Obtain a Revivable Junk Receipt from the Department of Motor Vehicles after receiving written confirmation from the Bureau of Automotive Repair on program eligibility;”. Furthermore, remove hyphens in “twelve-(12)” from subsection (5)(A) and (B).

Removing the Revivable Junk Receipt requirement will remove a step in the vehicle retirement process for consumers. Consumers will no longer be required to obtain a Junk Receipt from DMV, this function will be incorporated into the dismantlers function to verify clear title prior to a vehicle being scrapped. Remove unused and unnecessary hyphens in subsections (5)(A) and (B).

This edit renumbers subparagraph (5)(B) which will now become (5)(A) and (5)(C) will be renumbered as (5)(B).

- b. Remove subsection (c) subparagraph (4)(A) entirely.

This edit will remove expired text regarding CAP eligibility requirements, specifically, that the vehicle registration must be expired for less than 180 days from the postmark date on the application. This edit helps simplify BAR regulations.

This edit renumbers subsection (c) subparagraph (4)(B) which will now become (4).

- c. Amend subsection (c) by renumbering subparagraph (5) to (5)(A) and replace “and” with “or.” Add subsection (5)(B) and add text “Vehicle is placed in non-operational status pursuant to Vehicle Code Section 4604, et seq., for a total of 60 or fewer days for the 24 months immediately preceding the

registration expiration date; or”.

This revision adds additional qualifications to the VR option of CAP. In order to qualify for EFMP a consumer’s vehicle cannot be of non-operational status for more than 60 days in the 24 months immediately preceding the registration expiration date. This will make certain that vehicles being retired have a measurable impact on air quality based on the remaining useful life of the vehicle and the emissions of the typical or average replacement vehicle. Requiring a vehicle to be placed in non-operational status for fewer than 60 days within 24 months will discourage consumers wishing to retire a vehicle that is not driven on a regular basis and therefore has no emissions credit value. Furthermore, VR is a highly efficient and cost effective means of reducing air pollution caused by older vehicles that contribute a disproportionate amount of smog-forming emissions. For example, beginning in 2010 an estimated 30% of vehicles will be over 13 years old; these vehicles account for approximately 25% of the vehicle miles driven by consumers, but are responsible for contributing up to 75% of the air pollution in California. This proposal will provide additional protection by requiring consumers to meet additional criteria in order to participate in CAP.

This edit renumbers subsection (c) subparagraph (5) to (5)(A) and adds subparagraph (5)(B).

- d. Add to subsection (c) subparagraph (5)(C) “Vehicle registration has lapsed for less than 121 days for the 24 months immediately preceding the registration expiration date.”

This revision adds additional qualifications to the VR option of CAP. In order for consumers to retire a vehicle the registration shall not lapse for more than 121 days in the 24 months immediately preceding the registration expiration date. This will ensure that vehicles being retired have a measurable impact on air quality due to the remaining useful life of the vehicle being retired. These changes are necessary to make certain that the reductions in air pollution are real and surplus. This edit will add an additional layer of consumer protection to ensure funds are spent in a responsible manner and the State receives the greatest emissions reductions for the fewest dollars spent.

This edit adds subparagraph (5)(C) to subsection (c).

- e. Remove from subsection (c) subparagraph (6)(A) entirely.

This edit will remove expired text which requires the vehicle registration be expired for less than 180 days after the date the application is postmarked. This revision will remove expired text and provide the general public with clear and concise regulations.

This edit removes (A) from subparagraph (6).

- f. Amend subsection (c) subparagraph (6)(B) to delete the comma after adjustment and add “or”. In addition, remove “, or a non-emission related failure identified by the malfunction indicator light”.

Modern vehicles are equipped with On-Board Diagnostics (OBDII), which uses electronic means to diagnose engine problems. Vehicles use a malfunction indicator light (MIL) to alert the operator when the vehicle has an emission related problem. This revision will allow all MIL failures to qualify for CAP VR. Vehicles with the MIL illuminated can cause excessive pollution if continually driven without the proper repairs. Allowing vehicles that have failed due to the MIL to qualify for CAP will assist BAR in reaching emissions reduction goals. In addition, retiring vehicles will benefit consumers with improved air quality and help to reduce the negative externalities that are associated with air pollution such as: asthma, lung irritation and damage, and environmental concerns.

This edit renumbers subsection (c) subparagraph (6)(B) to (6).

- g. Amend subsection (c) subparagraph (7) to remove “or light-duty” and add “sports utility vehicle (SUV) or van,”.

This edit will expand CAP to provide additional financial opportunities to consumers wanting to retire their vehicle. This edit aligns with ARB regulations adopted for the EFMP which allows for the retirement of trucks, SUVs, and vans. This revision will provide further emissions reductions and benefit California’s air quality.

- h. Amend subsection (c) subparagraph (7) to remove “8,500” and replace it with “10,000”.

This revision would increase the existing weight limit for CAP from 8,500 to 10,000 pounds gross vehicle weight. All vehicles up to 10,000 pounds gross vehicle weight are eligible to participate in CAP. This will benefit consumers with expanded retirement opportunities and is instrumental in reducing smog-forming emissions. The edit also aligns with ARB’s EFMP regulation.

2. Amend §3394.5 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend subsection (a) subparagraph (6) to add text “or total loss salvage” and “that has not been re-registered”.

This revision adds text to clarify that a dismantled or total loss salvage vehicle that has not been re-registered with DMV pursuant to Section 11519 of

Vehicle Code is ineligible for participation in CAP. This will ensure that vehicles being retired have a measurable impact on air quality due to the remaining useful life of the vehicle being retired. These changes will dissuade consumers from purchasing salvaged vehicles for the sole purpose of retiring them for profit through CAP. This edit will result in consolidating the ineligible vehicle requirements to one section.

3. Amend §3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Amend the title of the section to read “Application and Documentation Requirements for the Consumer Assistance Program”.

Separating the requirements for participation in the CAP and EFMP will provide consumers clear and concise regulations.

- b. Amend subsection (a) by removing “an” and adding “the”. Remove “must” and replace it with “shall meet the requirements pursuant to 3394.4 et seq. and”.

These changes will clarify the requirements associated with the CAP and reference the code section in which the requirements are listed.

- c. Amend subsection (a) by removing “PPD” and change the application date from “(03/10)” to “(05/10)”.

The incorporated form will reflect the following changes:

- I. Incorporate EFMP which expands CAP to include the retirement of off-cycle vehicles which do not require a biennial Smog Check inspection.
- II. The updated version splits the vehicle retirement option into three sections: vehicles that have failed a biennial Smog Check, off-cycle vehicles, and a general qualifications category that applies to both options.
- III. Require applicants to provide their date of birth on an application.
- IV. The updated version of the application includes other minor, technical, grammatical, and editorial changes to clarify and simplify the application.
- V. The proposed application is more user-friendly.

Divide the CAP application into different segments to allow for more flexible requirements for EFMP. This change will result in the retirement of additional vehicles, specifically, off-cycle vehicles that do not require or have failed a Smog Check. By requiring consumers to provide their date of birth BAR will be able to use this information as a unique identifier and add

additional safeguards to ensure funds are spent in a responsible manner. Incorporating off-cycle vehicle retirement into the program will allow BAR to achieve additional reductions in smog-forming emissions.

- d. Amend subsection (a) by adding “and required documentation” to the text.

This edit requires consumers who are applying for CAP to provide additional documentation prior to their approval. Consumers applying under the income eligible option must provide qualifying documentation that shows the income or benefits.

This edit help ensure that funds are spent in a responsible manner and funds intended for low-income consumers fulfill its mandated requirements. This edit will help prevent consumers from misusing the program.

- e. Amend subsection (b) subparagraph (2) to add “provide” to the regulation text. In addition, remove “show proof of household income by providing a copy of”.

This edit will provide consumers a better understanding of what documents will be accepted for the verification of income when applying as a CAP income eligible consumer.

- f. Amend subsection (b) by changing subparagraph (6) to (6)(A) and add “; or”.

This edit will allow for the addition of subparagraph (6)(B).

- g. Amend subsection (b) to add subparagraph (6)(B). Add text “The applicant must show proof of household income by providing one of the following:”. Amend subsection (6)(B) to renumber (B), (C), (D), (E), and (F) to (i), (ii), (iii), (iv), and (v). In addition, add text “or” to sections (i), (ii), and (iii),

This edit will clarify which documents will be accepted for the verification of a household income and make the regulations easier for consumers to comprehend.

4. Add §3394.7 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Add title “Application and Documentation Requirements for the Enhanced Fleet Modernization Program”.

Separating the requirements for participation in the CAP and EFMP will provide consumers clear and concise regulations.

- b. Add to section 3394.7 “In order to participate in the Enhanced Fleet Modernization Program the applicant shall meet the requirements pursuant to Title 13, Chapter 13, Article 2, California Code of Regulations, submit a completed application, 08_022 CAP/APP (05/10), which is hereby incorporated by reference, and required documentation to the Department or its designee with original signature(s).”

The proposed language provides consumers clarification on how to apply for the EFMP and the specific criteria that must be met before a vehicle can be retired. AB 118, Nunez (Chapter 750, Statutes of 2007) required ARB to write the program specifics for EFMP and required BAR to administer to retirement program. Statute directed BAR and ARB to work in conjunction to provide the public with an effective program for retiring off-cycle vehicles. For this reason BAR must reference the requirements for EFMP which are promulgated in ARB’s code section.

INCORPORATION BY REFERENCE

The incorporation by reference in §3394.6 the Consumer Assistance Program (CAP) application form (08_022 CAP/APP (05/10)) 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 and includes the incorporation of vehicle retirement for vehicles participating in the EFMP authorized pursuant to Title 13, Chapter 13, Article 2, California Code of Regulations. The revised application will be incorporated by reference, replacing the version dated 03/10. 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 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, SUVs, and trucks by requiring these vehicles to meet specific emissions standards as a condition of vehicle registration.

The Bureau is also charged with the administration of CAP which provides financial assistance to qualified vehicle owners that wish to retire their vehicle. Health and Safety Code (HSC) §44125 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 and the vehicle must pass a visual and operational inspection before it is retired.

Air Resources Board (ARB) has been charged with drafting the regulations and setting program specifics for the EFMP pursuant to HSC §44125. BAR has proposed, through regulation, to update its regulations to incorporate EFMP, which will commence in 2010.

Air pollution is a serious problem for California – over 90 percent of Californians live in areas that have unhealthy air at times. Air pollution has been tied to serious health impacts. Research in Southern California shows that children exposed to unhealthy levels of ozone, or smog, suffer decreased lung function growth and increased asthma. In addition, recent evidence has linked the onset of asthma with exposure to elevated ozone levels in exercising children.

One of the prime contributors to air pollution in California is mobile source emissions produced by cars, SUVs, and trucks. New cars are over 97 percent cleaner than their uncontrolled predecessors; however, older high-polluting vehicles still exist and contribute a disproportionate amount of pollution. Approximately 30% of the vehicle fleet is over 13 years old and releases up to 75% of the mobile source pollution.

In response to these issues, BAR and the ARB have developed program guidelines for vehicle retirement. Although voluntary accelerated vehicle retirement programs operate in several areas of the State, the programs have not achieved their full potential due to funding being less than anticipated. In FY 08-09 CAP successfully retired 22,331 high-polluting vehicles, far less than the ARB's recommendation of 60,000 as reported in "Proposed Strategies for California's 2007 State Implementation Plan (SIP)." AB 118 (Nunez, Chapter 750, Statutes of 2007) recognized this deficiency and responded by providing additional funding through 2015 to specifically target the highest emitting vehicles in areas with the worst air quality.

Regulations for EFMP meet the legislative direction to expand the State's existing vehicle retirement program to remove the highest polluting vehicles in the areas with the greatest air quality problems. Emission reduction programs based on compensation have the potential to provide greater environmental benefits when compared to traditional repair work and at lower costs to the public. Traditional repair work, in some cases, does not provide durable repairs which can cause vehicles to produce excessive emissions soon after the repair work. By accelerating the fleet turnover, California can reduce air pollution associated with motor vehicles by bringing more low-emission vehicles into the on-road fleet earlier.

There are two main features to ARB's EFMP regulation. First, the proposal would incorporate off-cycle vehicles into the program and provide statewide incentives for vehicle retirement. EFMP greatly expands the vehicle population that can be retired in any given year and is projected to retire up to 11,500 vehicles per year when fully implemented. Consumers would retire their vehicle at a participating dismantler, receiving immediate compensation for their vehicle. By offering an incentive to owners considering vehicle retirement BAR hopes to encourage consumers to reach this decision earlier in the vehicle's life and to replace it with a newer, lower emitting

vehicle.

EFMP would also significantly expand vehicle eligibility; most requirements would be consistent with the State's existing program. For example, eligible vehicles would have to pass the same visual and functional inspections and be retired at dismantlers who have contracts with BAR. Additional flexibility is provided to the vehicle registration requirements to allow for wider participation.

There are several reasons why consumers choose to retire vehicles. One reason is that the cost of repairs necessary to keep a vehicle running often exceeds the value of the vehicle. By allocating additional funds to permanently remove these vehicles California can obtain real and measurable emission reductions. Additionally, some vehicle owners wish to upgrade to a cleaner vehicle, yet do not want the complications associated with selling a vehicle that may have little resale value. Offering incentives to off-cycle vehicles will provide owners an easy and cost effective means to retire their vehicle and reduce pollution.

At the anticipated funding level of \$12.125 million for FY 10-11, EFMP is expected to result in the early retirement of up to 11,500 vehicles statewide each year. The program is voluntary and does not require mandatory participation by consumers or businesses. For businesses choosing to participate, the program is expected to provide modest positive impacts. Businesses that will benefit include new or used car dealerships due to the expected increase in vehicle sales and licensed dismantlers who will see an increase in the amount of vehicles retired.

In order to incorporate the EFMP, minor technical, grammatical, and editorial changes have been made to the CAP application. For example, formatting will be altered to clarify and simplify the application. The proposed application will be four pages in length and through these proposed revisions be more user-friendly.

UNDERLYING DATA

Technical, theoretical or empirical studies or reports relied upon:

- AB 118, (Nunez, Chapter 750, Statutes of 2007).
- Air Resources Board Staff Report: Initial Statement of Reasons for Proposed Rulemaking, May 8, 2009.
- Air Resources Board Modifications to the Proposed Regulation Order (EFMP), April 2, 2010.
- Department of Consumer Affairs, Bureau of Automotive Repair. Consumer Assistance Program application, 08_022 CAP/APP (04/09).

- Department of Consumer Affairs, Bureau of Automotive Repair. Consumer Assistance Program application, 08_022 CAP/APP (03/10).
- Air Resources Board's Proposed Strategy for California's 2007 State Implementation Plans, pages 100-101, April 26, 2007.
- Air Resources Board, The Carl Moyer Program Guidelines: Approved Revision 2008, Chapter XI, April 22, 2008.
- 8. R. L. Polk & Co., Medium Age of Vehicles, PRNewswire, March 3, 2009.
- Department of Consumer Affairs, Bureau of Automotive Repair. "Number of Repeated Individuals Utilizing Repair Assistance."
- Air Resources Board's Air Pollution Sources, Effects and Control, December 27, 2005.

BUSINESS IMPACT

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

Automotive Dismantler

Automotive dismantlers have contracts to scrap vehicles on BAR's behalf. Dismantlers would see an increase in business through this proposed change.

Dealerships

Given the recent decline in the auto sales industry, the EFMP may help to maintain current employment levels as opposed to creating new jobs. Consumers that retire a vehicle will be compensated through CAP and use the retirement incentive to purchase a replacement vehicle from a new or used car dealer.

Vehicle Owner Impact

Vehicle retirement is a consumer driven program which consumers will not participate in if it does not provide economical benefits. Owners of older, higher polluting vehicles will benefit due to expanded options for replacing their vehicle with a newer, cleaner vehicle. Vehicles with remaining useful life, which may have little resale value, would receive a cash value 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 their vehicle.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

CONSIDERATION OF ALTERNATIVES:

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:

BAR considered taking no action. However, this option runs counter to the provisions of AB 118 (Nunez, Chapter 750, Statutes of 2007) to provide vehicle owners additional retirement options.