

**TITLE 16
BUREAU OF AUTOMOTIVE REPAIR**

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC
HEARING CONCERNING**

**\$1500 Retirement Incentive for Low-Income Vehicle Owners
SPECIFICALLY**

**Vehicle Retirement State Assistance Limits;
Vehicle Owner Income Requirements;
Repair Assistance Participation Limit;
And**

Application Form Revisions including Updated Federal Poverty Guidelines

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at the hearing to be held at the following location on the following date:

NORTHERN CALIFORNIA

October 26, 2009, 10:00 a.m
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd
Sacramento, California 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on November 2, 2009** or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Sections 44001.3, 44001.5, 44002, 44091, 44094, and 44095 of the Health and Safety Code and Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014.2, 44014.7, 44015, 44017, 44017.1, 44037.1, 44062.1, 44091, 44092, 44093, 44094, and 44095 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, within the Department of Consumer Affairs, is the state agency charged with administration and implementation of the Smog Check Program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light trucks, by requiring that these vehicles meet specific emissions standards.

The Bureau is also charged with the implementation and administration of the Consumer Assistance Program (CAP). CAP provides financial assistance to qualified vehicle owners whose vehicles fail their biennial (every-other-year) Smog Check. Health and Safety Code (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.

BACKGROUND:

CAP offers two options for vehicle owners whose vehicles 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 vehicle owners 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 vehicle owners whose incomes do not exceed federal poverty guidelines.

There are several reasons why vehicle owners choose to retire their vehicles. 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 Title 16, California Code of Regulations (CCR) section 3394.4(a)(2)(A), income eligibility for CAP is based on the federal poverty guidelines published annually by the U.S. Department of Health and Human Services (DHHS). 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. The application table must be adjusted based on the latest information from DHHS in order to remain consistent with the regulations. Title 16, 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 the 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.

CURRENT REGULATION:

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 11, is summarized as follows:

Section 3394.3 specifies the payment amount available to vehicle owners for vehicle retirement and repair assistance.

Section 3394.4 identifies the eligibility requirements for assistance through the Consumer Assistance Program.

Section 3394.6 describes the application for the Consumer Assistance Program.

EFFECT OF REGULATORY ACTION:

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 \$1000 to retire their vehicle. Assembly Bill 1870 (Lieber, Chapter 761, Statutes of 2006) authorizes BAR to offer vehicle owners up to \$1,500 to retire their high polluting vehicle when they fail a biennial Smog Check inspection. (proposed § 3394.3)
- II. Establish the maximum vehicle owner's 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 the 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)

Specifically, 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 of one thousand five hundred dollars (\$1,500) to retire their vehicle. All other eligible vehicle owners shall receive \$1,000 to retire their vehicle. All vehicles shall be retired from operation at a dismantler operating under contract with the Bureau of Automotive Repair."

- 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.”
 - 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.”
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.
 - b. Add language to subsection (4) to limit participation under the Repair Assistance option vehicle owners who have not previously received repair assistance from CAP for the same vehicle.
 - c. Add subsection (6) to allow income-eligibility as an added option for Vehicle Retirement.
 - d. Other minor conforming, grammatical and editorial changes that have no regulatory effect are also included.
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 date of (02/08) is changed to (04/09).
 - b. Application Form No. PPD 08-22 CAP/APP, incorporated by reference at this regulation, will be updated to add the new federal income poverty level as published in the Federal Register in February 2009.

FISCAL IMPACT ESTIMATES

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

As a result, BAR anticipates an increase in the participation of low-income vehicle owners in Vehicle Retirement. BAR has the funding available to meet these additional costs.

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 REQUIRE 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:

This proposed action will increase from \$1,000 to \$1,500 the incentive for low-income vehicle owners who retire their vehicles under the Vehicle Retirement (VR) option of BAR's Consumer Assistance Program (CAP). The fact that this regulatory action will give low-income vehicle owners more compensation for retiring their high-polluting vehicle supports how this regulation will not impose adverse impact on businesses.

This proposed action will 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. The fact that this regulatory action offers financial assistance to more vehicle owners supports how this regulation will not impose adverse impact on businesses.

This proposed action will limit participation in the Repair Assistance option to those vehicle owners that have not previously received repair assistance from the Consumer Assistance Program. The fact that this regulatory action merely steers low-income vehicle owners to retire their high-polluting vehicles, rather than try to continuously repair them, supports how this regulation will not impose adverse impact on businesses.

This proposed action will 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). The fact that this regulatory action updates that information in the application and enhances the readability of the application for vehicle owners supports how this regulation will not impose adverse impact on businesses.

IMPACT ON JOBS/NEW BUSINESSES:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The 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, and that are known to the Bureau are:

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 vehicle under the VR option. Finally, this proposed regulatory action would not impact vehicle owners until the third year after the regulation has been adopted.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be 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 proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

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.