

**TITLE 16
BUREAU OF AUTOMOTIVE REPAIR**

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

**Enhanced Fleet Modernization Program
SPECIFICALLY**

**Vehicle Retirement State Assistance Limits;
Eligibility Requirements; Ineligible Vehicles;
Application Revisions for CAP; and Application Revisions for EFMP**

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 hearings to be held at the following locations on the following dates:

NORTHERN CALIFORNIA

September 7, 2010, 1:00 p.m
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd
Sacramento, CA 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 September 7, 2010**, or must be received by the Bureau at one of the above referenced hearings. **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 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.

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 (H&S) §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, the vehicle must pass a visual and operational inspection before it is retired.

BACKGROUND:

Vehicle retirement provides an economic incentive to owners who wish to retire high-polluting vehicles that might otherwise remain in service. In 2007, H&S §44125 and 44126 was enacted by Assembly Bill (AB) 118 (Nunez, Chapter 750, Statutes of 2007) ARB was charged with developing EFMP program specifics in consultation with BAR. The Bureau seeks to update its regulations to incorporate EFMP regulations as adopted by ARB.

The current vehicle retirement program is limited solely to vehicles that have failed a biennial Smog Check. 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 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.

There are two main features to the EFMP regulation. First, the proposal would incorporate off-cycle¹ vehicles into the program and provide statewide incentives for vehicle retirement. EFMP

¹ Vehicles subject to the biennial Smog Check Program must receive an inspection every other year. Current regulations allow vehicles that have failed a biennial Smog Check inspection to qualify for vehicle retirement. Vehicles that are off their biennial cycle will be eligible for retirement under EFMP. Furthermore, EFMP allows for the retirement of vehicles exempt from the Program (e.g. gasoline powered vehicles 1975 and older.)

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 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 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.

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.

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 continue to be four pages in length and through these revisions 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 maximum payment available for owners who wish to retire their vehicle.

Section 3394.4 identifies eligibility requirements for the CAP.

Section 3394.5 specifies which vehicles are ineligible for participation in CAP.

Section 3394.6 describes the application for the CAP.

Section 3394.7 describes the application for EFMP.

EFFECT OF REGULATORY ACTION:

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

I. ELIGIBILITY REQUIREMENTS:

- Remove the Revivable Junk Receipt requirement from Section 3394.4.
- 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.
- 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 Malfunction Indicator Light (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 scraped. 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 and 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 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 and 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 what 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 11, 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 the 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.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND 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 in direct costs associated with the retirement of eligible vehicles in FY 2010-11, with ongoing expenditures of \$14.4 million in subsequent fiscal years.

No cost or savings in federal funding to the state.

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. 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 voluntarily and may provide positive benefits to those businesses that wish to participate in the program.

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:

Steven Hall
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2135
Fax No.: (916) 255-1369
E-mail: steven_hall@dca.ca.gov

The backup contact person is:

Tracy Brazil
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2279
Fax No.: (916) 255-1369
E-mail: tracy_brazil@dca.ca.gov

WEB SITE ACCESS

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