

State of California  
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

PUBLIC HEARING TO CONSIDER REGULATIONS FOR  
AN ENHANCED FLEET MODERNIZATION PROGRAM (CAR SCRAP)

Public Hearing Date: June 26, 2009

First Public Availability Dates: December 9, 2009 – December 28, 2009

Second Public Availability Dates: March 18, 2010 – April 2, 2010

Third Public Availability Dates: July 12, 2010 – July 27, 2010

Addendum Prepared: July 30, 2010

Agenda Item No.: 09-6-7

I. Background

On May 4, 2010, the California Air Resources Board (ARB) submitted the Final Statement of Reasons (FSOR) and a Final Regulation Order containing proposed new regulations (title 13 Cal. Code Regs. sec. 2620 and following) establishing the Enhanced Fleet Modernization Program (EFMP) to the Office of Administrative Law (OAL) for review and approval.

On June 16, 2010, OAL disapproved the proposed regulations because they did not comply with the California Administrative Procedures Act (APA) required standards for consistency with the APA and with the authorizing statute.

A. Failure to comply with the APA.

1. In its disapproval, OAL noted that section 2627 of the proposed regulation did not comply with the standard specified in Government Code section 111346(a), which requires basic minimum procedural requirements for the adoption or amendment of regulations. As submitted to OAL, section 2627(a) read:

Vouchers will initially be offered in the South Coast and San Joaquin Valley air basins with inclusion of other air districts as determined by the Board. The Bureau shall consult with the Board annually regarding the status and expansion of the voucher program.

OAL opined that adding districts to the program by determination of the Board constitutes amending the regulation, which requires following the procedures on the APA. OAL concluded that addition of districts to the program cannot be accomplished merely at the Board's discretion.

2. To resolve the problem identified by OAL, ARB has revised the section to read as follows:

Vouchers will initially be offered in the South Coast and San Joaquin Valley air basins. The Bureau shall consult with the Board annually regarding the status and expansion of the voucher program.

This removes the Board's discretion to add air districts to the program without following the APA. This proposed revision was published on July 12, 2010, and made available to the public for comment for not less than 15 days.

B. Inconsistency with authorizing legislation.

1. OAL disapproved of section 2624(b)(2)(D), which read, as submitted to OAL:

An unregistered vehicle may also be eligible if proven to have been driven primarily in California for the last two years and not to have been registered in any other state or country in the last two years, provided that the vehicle must be registered as an operable vehicle at the postmarked date of application. Documentation of operation in California includes the following.

...

OAL's disapproved this language because OAL concluded that it altered the effect of the program contemplated by the Legislature in the authorizing statute, Health and Safety Code section 44125. OAL found that by requiring DMV registration for every vehicle, the regulation impaired the scope of section 44125.

2. ARB has remedied OAL's concern by revising the regulatory language to read as follows:

An unregistered vehicle may also be eligible if proven to have been driven primarily in California for the last two years and not to have been registered in any other state or country in the last two years. Documentation of operation in California includes the following:

...

This revision removes the registration requirement that led to OAL's disapproval. This proposed revision was published on July 12, 2010, and made available to the public for comment for not less than 15 days.

C. Comments received during third 15-day period.

ARB received two comments during the third 15-day period. The first comment, from Richard Tebbano, was on the subject of carpool lane use by hybrid vehicles. The comment had no connection to the proposed regulation; therefore, ARB will not respond to it in this Addendum.

The second comment, from the Bay Area Air Quality Management District (BAAQMD), addresses the EFMP on two issues:

Comment: The EFMP regulatory language should seek to leverage and augment local funding sources, not compete for the same vehicles as existing programs. (BAAQMD)

ARB Response: As stated in the Initial Statement of Reasons (ISOR), the EFMP applies to a larger group of vehicles than do existing vehicle retirement programs. Many vehicles covered by the new program will not be eligible for local programs. Where there is overlap, e.g. pre-1990 vehicles, the new program augments local funding by helping to speed the retirement of a large group of vehicles for which demand for incentives is greater than the available funding.

Comment: The EFMP regulatory language excludes every air district in the state bar the South Coast Air Quality Management District and the San Joaquin Valley Air Pollution Control District from participating in the voucher portion of the program. (BAAQMD)

ARB Response: The ISOR states that the EFMP as established in the regulation is a pilot program. While the BAAQMD may have 20 percent of the State's population, SCAQMD and SJVUAPCD have the poorest air quality. (ISOR p. 6.) Staff selected the two air districts with the poorest air quality to initiate the pilot voucher program, with plans to expand to additional districts after gaining experience with public interest and viability of the program design. Thus, the original regulation language attempted to allow the board flexibility in the expansion schedule and scope. However, OAL disapproved of the language, stating that expansion of the program must be accomplished through the required public process.

Staff anticipates that expanding the EFMP to additional districts through the standard rulemaking process should not be difficult, and expects additional changes will likely be required in response to public acceptance and program performance. Such a rulemaking could be used to correct flaws in the program discovered during its pilot phase. The current revisions to the regulatory language are not intended to exclude any area of the state from participation, but rather to manage development of the pilot program to ensure its long term success. At the adopting hearing, the board and staff committed to evaluation of the pilot program after the first year.

