

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC MEETING TO CONSIDER PROPOSED AMENDMENTS TO THE ENHANCED
FLEET MODERNIZATION PROGRAM (CAR SCRAP)

Public Hearing Date: June 26, 2014
Agenda Item No.: 14-5-3

I. GENERAL

A. Actions Taken During this Rulemaking

In this rulemaking, the Air Resources Board (ARB or Board) is adopting amendments to the State's existing vehicle retirement program, the Enhanced Fleet Modernization Program (EFMP), to focus the program on low-income participants, to expand program flexibility to improve program participation, and to ensure that retired vehicles are functional, the last of which will enhance the emissions benefits of the program. The program was created by Health and Safety Code section 44125, adopted as part of the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 (Assembly Bill 118, Statutes of 2007, Chapter 750; Health and Safety Code sections 44125-44126) section 44125(a).

Additional legislation, Senate Bill 459 (SB 459 [Pavley], Chapter 437, Statutes of 2013) directed that ARB revise EFMP to increase the benefits of the program for low-income California residents, and to increase outreach to community-based organizations. Among other items, it required the Board to consider increased emphasis on the reduction of greenhouse gas emissions and that the guidelines ensure vehicles eligible for retirement demonstrate sufficient remaining life. Demonstrations may include, but not be limited to, proof of registration history or the passing of a smog test inspection.

The Staff Report: Initial Statement of Reasons for Rulemaking (ISOR or Staff Report), entitled "Proposed Amendments to the Enhanced Fleet Modernization Program (Car Scrap)," released May 6, 2014, is incorporated by reference herein. The Staff Report contained a description of the rationale for the proposed amendments. On May 6, 2014, all references relied upon and identified in the Staff Report were made available to the public.

The text of the proposed regulation, which would amend sections 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, and 2629, title 13, California Code of Regulations (CCR) was included in the ISOR as Appendix A. These documents were also posted on ARB's internet site for this rulemaking at:
<http://www.arb.ca.gov/regact/2014/carscrap14/carscrap14.htm>

On June 26, 2014, the Board conducted a public hearing to consider amendments to the EFMP regulation. At the conclusion of the hearing, the Board adopted Resolution 14-17, in which it approved the proposed amendments to sections 2620 through 2630 in title 13, CCR. Resolution 14-17 directed the Executive Officer to incorporate ARB staff's suggested modifications, along with such other conforming modifications as might be appropriate, and to make such modifications available for a supplemental comment period of at least 15 days.

The regulatory text and modifications were made available starting November 17, 2014, for a supplemental 15-day comment period ending December 2, 2014, by issuance of a Notice of Public Availability of Modified Text (15-day Notice or Notice) and supporting documents. Two written letters were received; one was not included in the Final Statement of Reasons (FSOR) as it is outside the scope of the 15-day changes. Though the second comment letter was received late, the comments and responses are provided as a courtesy. After considering the comments submitted during the 15-day comment period, the Executive Officer determined that the additional modifications to the proposed amended regulation were appropriate.

In accordance with Government Code section 11346.9(a)(1), this FSOR updates the ISOR by identifying and explaining the modifications that were made to the original proposal as a result of public comment. The FSOR also summarizes the written and oral comments received during the 45-day public comment period prior to the hearing and the testimony received on June 26, 2014, and comments received during the subsequent 15-day comment period.

B. MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

Pursuant to Government Code section 11346.9, the Executive Officer has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. The program is directed toward individuals and participation is voluntary. The proposed regulatory action would not create costs or mandate to any school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to the local agencies. The proposed regulatory action would provide a positive impact to local air districts, as funding for program implementation would be increased from 5 percent to 10 percent, with an additional 5 percent available to third-party entities to support participation of low-income consumers.

C. CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR, the Board determined that no alternative considered by the agency would be more effective and less burdensome to affected private persons in carrying out the regulatory actions proposed purpose. Furthermore, the action taken by the Board would be more cost-effective to affected private persons and equally as effective in the implementation of statutory policy or other provisions of law.

Making no changes to the existing program was rejected because leaving the program as is would fail to address the issues identified in the program study and would not be responsive to the requirements set forth in Health and Safety Code section 44125.

Immediately increasing the retirement incentive amount was rejected since the fixed funding available would mean the number of consumers that could participate would be reduced. Additionally, an increase would negatively impact program cost-effectiveness, and affect other existing retirement programs, in particular, the Consumer Assistance Program administered by the Bureau of Automotive Repair (BAR or Bureau). The proposal does allow for adjustment in the incentive values, if the data suggest that participation has dropped significantly.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

A. MODIFICATIONS APPROVED AT THE BOARD HEARING AND PROVIDED FOR IN THE 15-DAY COMMENT PERIOD

Summary of Modifications – First 15-Day Comment Period

Various modifications to the original proposal were made to address comments received during the 45-day public comment period, and to clarify the regulatory language. A description and rationale for the modifications to the regulation as released on November 17, 2014, are set forth below.

Modifications to Reporting Requirements

In section 2622(d), language has been modified to remove BAR from the reporting requirements since the Bureau is not involved in implementation of the Retire and Replace program.

In sections 2622(d)(2) and 2622(d)(3), VIN (Vehicle Identification Number) was added to the list of reporting requirements for retired and replacement vehicles respectively.

Program Review Changes

In section 2623(b), language was added to give ARB's Executive Officer the ability to use data in addition to the required quarterly reports when considering incentive adjustments.

In section 2627(a), language has been modified to remove the Bureau from consultation with ARB regarding the Retire and Replace program.

Non-Substantial Modifications

In Section 2620(b), language has been modified to clarify that the existing EFMP Pilot Voucher Replacement Program is being replaced by the Retire and Replace Program.

In section 2621(c), language was modified to improve clarity.

In section 2622(a), language was modified to improve clarity.

In section 2623(a), modifications to the regulatory text have been made to clarify that ARB will continuously monitor participation in the Retirement-Only component of the program, and to identify the location of the Consumer Assistance Program application.

In section 2623(c)(1), language was added to clarify that should the Retirement-Only incentive be increased, only vehicles passing a smog check test would be eligible for the increased incentive amount.

In section 2624(c)(2), language has been included to clarify the eligibility of currently registered vehicles with more than 120 days lapse in the previous 24 months.

In section 2624(f), the text has been changed to correct a reference.

In section 2626(d), modifications to the regulatory text have been made to improve clarity.

In section 2627(f)(8), modifications to the regulatory text have been made to improve clarity.

In section 2627(g)(2)(A), language previously moved to footnotes has been reinstated for clarity.

In section 2627(l), language has been added to improve clarity.

In section 2627(l), the Retire and Replace Incentives table was modified. The columns for "Plug-in Hybrid" and "Zero-Emission Vehicle" have been consolidated for clarity.

The above-described modifications constitute non-substantial changes to the regulatory text because they more accurately reflect the numbering of a section and correct spelling and grammatical errors, but do not materially alter the requirements or conditions of the proposed rulemaking action.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period in response to the June 26, 2014, public hearing notice, and written and oral comments were presented at the Board Hearing. Listed below are the organizations and individuals that provided comments during the 45-day comment period:

Commenter	Affiliation
Carlock, Mark (May 29, 2014)	Foundation for California Community Colleges (FCCC)
Zhu, Leon (June 2, 2014)	Himself (Zhu)
Sadredin, Seyed (Letter June 19, 2014, Oral, June 26, 2014)	San Joaquin Valley Air Pollution Control District (SJVAPCD)
Baumhefner, Max (June 19, 2014)	Charge Ahead California/Natural Resources Defense Council (CAC/NRDC)
Wheeler, Cole (June 23, 2014)	Next Generation (NG)
Daniels, Jan	Pick-N-Pull (PNP)
Shahan, Rosemary (Oral, June 26, 2014)	Consumers for Auto Reliability and Safety (CARS)
Knox, Tom (Letter, Oral, June 26, 2014)	Valley Clean Air Now (Valley CAN)
Hogo, Henry (Oral, June 26, 2014)	South Coast Air Quality Management District (SCAQMD)
Barba, James (Oral, June 26, 2014)	NG
Magavern, Bill (Oral, June 26, 2014)	Coalition for Clean Air (CCA)
Menom, Carishma (Oral, June 26, 2014)	NRDC/CAC
Marin, Jose (Oral, June 26, 2014)	Tune In/Tune Up (TI/TU)
Garcia, Veronica (Oral, June 26, 2014)	TI/TU
Barrett, Will (Oral, June 26, 2014)	American Lung Association (ALA)

Remove Functionality Test

1. Comment: In the conduct of the EFMP pilot program in the South Coast Air Basin, requiring an ASM (Acceleration Simulation Mode) test, even though free to the potential participant, was seen as an obstacle to participation. There is also no data correlating the ability to complete an ASM with either the remaining useful life of the vehicle or the mileage accrual rate. Instead of requiring a functionality test, the state should consider using EMFAC to establish an actuarial table predicting remaining useful life of a vehicle according to model year and odometer reading. Doing so will help improve upon the low participation rates achieved in the past as well as save funds that might be better spent on other aspects of the program. (FCCC)

The additional cost of a Smog Check is a possible deterrent to low-income consumers to participate. (PNP)

Agency Response: EMFAC is an effective tool in assessing broad fleet impacts but not useful in determining individual vehicle characteristics. While data may not be available to correlate the completion of the Smog Check test with remaining useful life, the completion of a Smog Check test is a significant indicator to determining a vehicle's functional capability. It provides an easily available means to indicate that a vehicle has remaining useful life. The additional effort is justified by the need to eliminate end-of-life vehicles from the program per SB 459. Note that ASM testing is required only for the Retirement-Only element. Implementing air districts may develop other metrics to determine vehicle functionality for the Retire and Replace program.

Remove Income Limits

2. Comment: The proposed revision of EFMP sets income limits for consumer participation. While I support that more subsidies should be allowed for low-income motorists, I believe to make the program exclusive for low-income and moderate income motorist hampers the original goal of the program, which is to improve the state air quality. Such limitations can be especially harmful given the extremely low participation rate during the pilot period. (Zhu)

Agency Response: The proposed changes are designed to provide greater air quality benefits while focusing the program on low-income consumers. The EFMP Retirement-Only program is oversubscribed, typically exhausting the funding within the first eight months of each fiscal year, with approximately 80 percent of the participants meeting the aforementioned income eligibility criteria. Restricting program participation will ensure that the limited funds go to the target population and meet the directive of SB 459 that EFMP focus on low-income participants.

For the Retire and Replace program, provisions have been made to allow for adjustments if participation is too low. Developing meaningful relationships with community-based organizations and leaders to leverage the trust that they have developed within targeted communities will also help ensure full use of the funding. A pilot program funded by the San Joaquin Valley Air Pollution Control District has successfully demonstrated the importance of focused outreach to low-income consumers.

Incentive Levels

3. Comment: The base incentive level for vehicle replacement should initially be set at \$5,000 for both low- and moderate-income participants. These incentive levels could be reviewed periodically and adjusted depending on program demand as CARB has done with the Clean Vehicle Rebate Project. Incentives for higher fuel efficiency vehicles, plug-in hybrid, and electric vehicles would need to be increased as well as the cost of these vehicles increases accordingly. (SJVAPCD, Valley CAN)

We'd like to ask you to raise the minimum base incentive for low-income participants from \$4,000 to \$5,000. We had a very tough time with these low-income communities even with the \$5,000 incentive to get them through the process. (SJVAPCD Testimony)

We request that the base incentive for low-income consumers be \$5,000. At \$4,000, you don't have the same kind of loan-to-value ratio. (Valley CAN, CCA)

Agency Response: Staff believes that it is prudent to initiate the program at slightly lower incentive levels and assess whether other program changes are sufficient to improve program participation. However, regular monitoring will be used to assess whether incentive amounts are sufficient to ensure full participation. If not, the Executive Officer, in consultation with the implementing Air Districts, would be able to adjust the incentive amounts offered and eligibility requirements. Such an adjustment would be made only after at least one public workshop in each implementing District.

Moderate and Above Moderate Income Requirements

4. Comment: In order to provide additional benefit to the low-income category compared to the moderate income category, we suggest limiting the moderate income participants to purchasing a vehicle 4 years old or newer. (SJVAPCD)

Agency Response: The proposal represents a balance between the economics and environment while keeping the program as simple as possible. Adding additional provisions is counter to this effort. Other than for low-income consumers, the program is designed to provide incentives for better fuel efficiency and advanced technology. Limiting the options for moderate income and above moderate income to the most recent four model years would provide minimal emissions benefit and would not necessarily provide any additional benefit to the low income category.

5. Comment: We recommend that Moderate Income participants be allowed to access the baseline program, with a corresponding increase in the model year requirement to 6 years or newer. Given the demographics, geography and infrastructure of the Valley, we do not anticipate much demand for plug-in hybrids, ZEVs, and Alternative Transportation Mobility options. Reorienting higher tiers of funding to the 8 year old or newer category will encourage maximum participation among San Joaquin Valley communities. (Valley CAN)

Agency Response: Incentivizing vehicle retirement and replacement is complex, with many complicating factors. The incentive levels and vehicle requirements are designed to modernize the fleet based on the correlation between the household transportation budget averages, as stated by the Bureau of Labor Statistics, and income eligibility thresholds derived from

current Federal Poverty guidelines. Increasing the proposed incentive levels would reduce the number of consumers that can participate before funding is exhausted, and thus negatively impact the program's overall air quality benefits. While we expect the program to be fully subscribed, staff will monitor and recommend changes if the level of participation is below expectations, as noted in the response to Comment 3.

6. Comment: In order to ensure that EFMP incentive dollars are spent in the communities of most need, we propose eliminating the \$2,500 incentives for "Above Moderate Income" consumers to purchase either Plug-in Hybrids or Zero Emission Vehicles. There are existing incentive programs that would provide comparable incentive levels to the values proposed. (SJVAPCD)

Agency Response: Providing a relatively small incentive to consumers between 300 percent and 400 percent of the federal poverty level is consistent with the legislature and ARB's support for advanced clean cars. These technologies are still relatively expensive, so additional incentives are needed for consumers in this income class. Appendix C of the Staff Report displays income eligibility for varying household sizes and subsequent estimated vehicle affordability. The ability to combine incentives from multiple programs towards the purchase of advanced technology vehicles ensures that all consumers retain equal incentive opportunity relative to the household annual income and vehicle affordability.

Program Administration Funding

7. Comment: We request that the combined limit for administration and outreach be increased to a total not to exceed 20 percent. (Valley CAN)

Agency Response: The staff proposal would double the existing allowance for program administration and provide an additional 5 percent for contracts with third-party entities to address issues associated with participation of lower-income consumers. Overall funding for administration and outreach would thus total up to 15 percent. As noted in the Staff Report, staff intends to enable coordination with other programs to promote synergy and reduce unnecessary outreach costs. Staff believes that this level provides the proper balance between providing program support and ensuring that the vast majority of the funding is used for vehicle incentives.

Leveraging Other Funding

8. Comment: The retire-and-replace program should be coordinated with the implementation of the pilot programs in disadvantaged communities proposed in the Fiscal Year 2014-15 Funding Plan for the Air Quality Improvement Program and Low Carbon Transportation Greenhouse Gas Reduction Fund Investments. (CAC, NRDC)

Agency Response: ARB agrees with the comment and is already coordinating with these programs. For example, staff is working to add additional incentive amounts which would translate into a higher down payment for a new or used advanced-technology vehicle, or provide finance assistance to reduce interest rates as discussed in section II.B.3.(b) of the Staff Report.

Appropriate Efficiency Requirements

9. Comment: Set the minimum fuel economy for low-income participants at 20 miles per gallon instead of 24 miles per gallon. (SJVAPCD Testimony)

We propose eliminating or greatly reducing fuel efficiency requirements for the base incentive level while maintaining the higher proposed incentive level for applicants who choose to purchase vehicles achieving 35 miles per gallon or greater. (SJVAPCD)

Instead of imposing any additional fuel economy requirements, an escalator should be added so that future years keep pace with the increase in average MPG of cars eight model years old, i.e., an increase of one MPG over the current baseline starting in July 2016 and every year thereafter. (Valley CAN)

Agency Response: SB 459 requires that the program changes emphasize reducing greenhouse gas emissions and improving vehicle efficiency. In addition, the Board made it clear that reducing greenhouse gas emissions is an essential element of any replacement program. The requirements set forth address the statutory directives while providing a wide variety of replacement options. See also Comments 10 and 11 and the associated agency responses.

10. Comment: We recommend that the ARB increase minimum fuel efficiency standards for all replacement vehicles, including those purchased by the lowest income households, which will be allowed to purchase vehicles with efficiencies as low as 20 miles per gallon. (NG)

The minimum efficiency requirement for conventional replacement vehicles should be raised to provide greater lasting fuel cost saving and emission reductions. For example, a household that purchases a 27-mile per gallon car instead of a 20-mile per gallon vehicle at the same price point will save approximately \$750 annually. (CAC, NRDC, NG)

We recommend that ARB continue to review and update the fuel economy thresholds to maximize air quality and cost savings under the program moving forward. (ALA)

Agency Response: Increasing the minimum fuel efficiency will reduce the number of vehicles available to consumers and in many cases increase

initial costs that could reduce the number of consumers able to benefit from long-term cost savings. Experience to date has shown that the requirements need to be as minimal and streamlined as possible to allow the greatest flexibility for consumers to find a vehicle that meets their needs. See also Comments 9 and 11 and the associated agency responses.

11. Comment: We ask that the fuel efficiency guidelines in the Staff Report are followed. (Valley CAN)

It is imperative that we maintain the flexibility while we are guiding participants through the vehicle purchase process. Imposing additional requirements for higher fuel efficiency would increase the prices of vehicles anywhere from \$1,000 to \$3,000. This extra cost will place the program out of reach for many, if not all, of our low-income participants. (Valley CAN, TI/TU [Garcia])

Agency Response: Staff agrees and has made no changes to the proposed fuel economy requirements. See also Comments 9 and 10 and the associated agency responses.

Dealership Acceptance of Vehicles

12. Comment: Section 44125 (d)(2) provides an option for automobile dealerships or other used car sellers to accept cars for retirement. This is problematic as demonstrated by the many issues that happened in the federal “Cash for Clunkers” program. We believe all vehicles should go directly to a contracted dismantler who knows the requirements and is under contract to perform and dismantle retired vehicles as required. (PNP)

Agency Response: The comment refers to statutory language and is thus out of the purview of the regulatory process. The proposed amendments are designed to address the directives contained in Health and Safety Code Section 44125.

Low-Income and Financing Issues

13. Comment: We would like the program and funding to target low-income and environmental justice communities. (SJVAPCD Testimony)

Agency Response: The proposed changes would restrict the Retirement-Only program to low-income consumers, those with annual incomes of less than 225 percent of the federal poverty level (FPL). The changes to the Retire and Replace program would restrict program eligibility to motorists with household incomes of 400 percent of the FPL or less. Implementing air districts will have the flexibility to develop outreach approaches tailored to maximizing participation within the district.

14. Comment: We recommend that low-income financial assistance be a continued and central focus of EFMP implementation efforts. Our analysis suggests that EFMP will not be successful in reaching low-income households without a strong effort to increase the availability of affordable auto loans to low-income households. (NG)

The most impactful assistance that the State of California could give to ensure program participation would be to open access to a loan-loss reserve fund to guarantee vehicle finance for qualified program participants. This finance program could be done through a Community Development Financial Institution (CDFI) or other qualified lender. (Valley CAN)

Agency Response: Staff agrees on the need to leverage funding from other incentive programs to maximize the success of EFMP and is working with other programs, including the Low-Carbon Transportation Greenhouse Gas Reduction Fund, to provide increased financial assistance, including a loan loss reserve account, as part of the Retire and Replace program. Further information can be found in the Staff Report, section II.B.3.(b).

Consumer Protections

15. Comment: We are asking for more consumer protection to be built into the program. I believe that the staff got it right when they wrote that consumer protection is essential to ensuring that the program benefits are realized by the participants and that they can get a fair deal. (CARS)

Agency Response: In developing its proposal, staff determined that consumer protection is essential to ensuring that the program benefits are realized by the participants. Section II.B.3.(c) of the Staff Report describes several consumer protection measures for air districts to consider and include when developing programs, but neither the Staff Report nor the regulation limit air districts to those items.

Allowing the air districts flexibility to determine appropriate consumer protections ensures that they are seamlessly integrated into the pilot program, avoiding unnecessary complications with program implementation. Staff will review pilot program proposals to ensure that strong and effective consumer protections are considered and included.

Coordinate with Other Programs

16. Comment: The program complements the EFMP Plus-up financing and car sharing pilot programs in disadvantaged communities proposed by the AQIP funding plan. We recommend the Board coordinate implementation of the EFMP retire and replace program and these closely related pilot programs in disadvantaged communities. (TI/TU [Marin])

Agency Response: The proposed amendments provide that the districts implementing the pilot retire and replace program will have flexibility to target disadvantaged communities and to coordinate with the related programs operated in the districts.

The following comment was received during the 15-day Notice period. Although it does not address the regulation changes made available for comment, ARB responds to the comment as a courtesy.

Include Heavy Duty Vehicles and Equipment

17. Comment: This Fleet Modernization Program is only adding amendments for the older model vehicles, however, would it be able to include Diesel Truck Heavy Duty Equipment for scrapping? (Yolanda Chavez)

Agency Response: The EFMP program applies only to light-duty passenger vehicles. The commenter is referred to ARB's Carl Moyer Program (<http://www.arb.ca.gov/msprog/moyer/moyer.htm>), which funds replacement and repowering of heavy duty diesel trucks and equipment.

The comments below were received from Chase Johansen after the 15-day Notice period following the Board hearing. ARB is not required to respond to these comments, but does so as a courtesy.

18. Comment: The proposed changes still do not afford the public input via the regulatory processes outlined in the APA prior to ARB increasing disbursements of public monies. One workshop does not provide sufficient opportunity for public input. (Chase Johansen)

Agency Response: The process to increase the incentives for both Retirement-only or Retire and Replace will include at least two public meetings. For Retirement-Only, in addition to ARB's workshop, BAR will also hold a public meeting as part of its process for revising the Consumer Assistance Program application. For Retire and Replace, a minimum of two workshops will be held, one in each implementing air district. Any changes will not affect the overall amount of funding for EFMP but rather the relative distributions to participating consumers.

19. Comment: The correction of the regulatory reference [in section 2624(f)] does not sufficiently address the vagueness of what "another demonstration of functionality" other than a smog check or Consumer Assistance Program visual and operational check may consist of. Leaving this glaring lack of clarity could permit ARB to retire and replace vehicles that should have been rejected in order to boost participation numbers. Senate Bill 1275 (De Leon) requires "that vehicles eligible for retirement have sufficient remaining life. Demonstration of sufficient remaining life may include proof of current registration, passing a recent smog check

inspection, or passing another test similar to a smog check inspection.”
(Chase Johansen)

Agency Response: ARB added the provision in section 2624(f) specifically to reduce the number of vehicles with little or no remaining life from participating in the program. The example listed in the section is one of several, including those listed in SB 1275, that will be considered in implementing the revised program.

Support for Program

20. Comment: We want to thank staff for working with us on the EFMP program. And we encourage the Board’s adoption of the proposed amendments today. And the South Coast AQMD stands ready to move forward with implementation of the program. (SCAQMD)

Agency Response: ARB appreciates the input and cooperation received from its air district partners.

IV. Peer Review

Health and Safety Code Section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including ARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process. Here, ARB determined that the rulemaking at issue does not contain a scientific basis or scientific portion subject to peer review, and thus no peer review as set forth in Section 57004 was or needed to be performed.