



Air Resources Board



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Mail-Out #MSC 11-31

TO: All Interested Parties

SUBJECT: ADMINISTRATIVE CLARIFICATIONS FOR INCENTIVE PROGRAMS:
DIESEL PARTICULATE FILTERS THAT MUST BE REPLACED OR FOR
WHICH SALES HAVE BEEN SUSPENDED BY THE MANUFACTURER

Background

California Air Resources Board (ARB) awards funds through a variety of its incentive programs to encourage individuals and organizations to voluntarily install particulate-reducing retrofit devices on on-road and off-road diesel vehicles. The sources for such incentive funds include the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program), the Lower-Emission School Bus Program (School Bus Program), the Proposition 1B Goods Movement Emission Reduction Program (Goods Movement Program), the AB 118 Air Quality Improvement Program (AQIP), Providing Loan Assistance for California Equipment (PLACE) Program, and associated local match funds.

This mail-out clarifies administrative actions that should be taken if a retrofit manufacturer issues a notice requiring removal of a retrofit from a grantee's vehicle. Further, this mail-out clarifies available options for projects that have not yet been completed and for which sales and installations of the planned retrofit have become suspended as part of the manufacturer's notice. For the most part, the options listed below are based on existing incentive program guideline and contract provisions.

Scenario 1: The application to install the retrofit has been approved, but a contract to install the retrofit has not been executed.

Contracts not fully executed shall not proceed, but instead should be suspended or rewritten to cover any changes to the project.

The implementing agency should notify each applicant and work with the applicant to identify a solution. The implementing agency and applicant must suspend contract execution until the retrofit becomes available again, or choose an alternative retrofit system, and vehicle if necessary. If an alternative retrofit is selected, the contract for the project must reflect the retrofit that is ultimately installed.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

If no retrofit is selected for the project, the approval for the application must be withdrawn. If the application covers more than just a retrofit (e.g., includes a repower), the application must be withdrawn or reevaluated for eligibility (e.g., for the repower alone, without a retrofit).

Scenario 2: The contract for the retrofit has been executed, but the retrofit has not yet been installed.

The implementing agency should notify each grantee and work with the grantee to identify a solution that best fulfills the contract requirements within the contract's time frame. If the best solution is to select an alternative retrofit system and/or vehicle, the contract must be amended to reflect the retrofit actually installed. If the best solution is to allow the manufacturer some time to offer a suitable substitute filter, the contract may need to be amended to extend the project timeline. This can be done as long as the extended timeline is consistent with requirements under the incentive program guidelines, including preclusions from overlapping with applicable rule implementation compliance dates.

If there is no viable solution that ensures that the project still meets incentive program requirements, the contract must be cancelled, or the contract must be amended to remove the grant for the retrofit.

Scenario 3: The retrofit under contract has already been installed but the grantee has not yet been reimbursed by the implementing agency.

The implementing agency should reimburse the grantee for the expenses incurred, consistent with the payment requirements of the incentive program guidelines. The grantee should then be treated the same as other grantees under scenario four below.

Scenario 4: The retrofit under contract has been installed and reimbursement has been made by the implementing agency to the grantee, but the retrofit must now be removed.

The implementing agency should contact each grantee and work with the grantee to identify a solution that best fulfills the contract requirements within the contract's time frame. The contract with the grantee must contain provisions for non-performing projects, which should be followed while acknowledging that the cause of the non-performance is outside of the grantee's control.

If the administrative remedies available under the contract fail to adequately address the situation, the implementing agency should contact ARB and seek a case-by-case determination.

The following considerations apply to this scenario:

- The implementing agency must address any time period greater than 90 days for which the grantee is not able to achieve contracted emission reductions (e.g., due to removal of the retrofit and reinstallation of an upgraded retrofit by the manufacturer at a much later date, or due to the grantee deciding not to install a second retrofit after the manufacturer orders the removal of the first one). For example, in the Carl Moyer Program, the implementation guidelines allow actions that include granting a waiver without penalty, extending the contract's timeline, requiring the grantee to return an amount of grant funds in proportion to the loss in emission reductions, and recalculating the cost-effectiveness of the project.
- The implementing agency must address any change in the project specifications versus what is listed in the project's contract and reflected in the post-inspection. In most cases, this means that the contract will have to be amended and a new post-inspection conducted if the grantee replaces the removed retrofit with another verified retrofit. In the case of school buses, the California Highway Patrol (CHP) must inspect the buses after any modification and prior to transporting students.
- The implementing agency must address financial discrepancies between what was originally paid toward the project and what the grantee ultimately paid. For example, if the manufacturer refunds the purchase price to the grantee, who then purchases a more expensive - but eligible and cost-effective - retrofit, the implementing agency may cover this additional expense so long as it makes the appropriate contract amendments and receives a detailed invoice consistent with incentive guidelines, and the cumulative cost of the project meets guideline requirements including any limit to funding amounts. If the grantee purchases a less expensive retrofit, the district must require a refund of the cost difference.

Scenario 5: The retrofit was purchased through a voucher program (e.g., VIP)

Any unredeemed voucher for a retrofit for which sales have been suspended shall be immediately voided. The participant may reapply for a new voucher for another verified retrofit.

For retrofits already installed through a voucher program for which the voucher term is still in effect, ARB and the implementing agency shall identify the affected vehicles, contact their owners, and outline appropriate actions the owner must take. ARB will develop any necessary materials to send to each participant such as a template letter that includes detailed instructions.

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This clarification is effective immediately.

If you have any questions or need further clarification, appropriate contacts for each incentive program are listed on ARB's incentives program website at <http://www.arb.ca.gov/ba/fininfo.htm>. Air districts may also contact their appropriate ARB incentive program liaison.

For information regarding fleet rule compliance please refer to Regulatory Advisory Mail-Out #MSCD 11-29 which provides detailed information on what vehicle owners and operators should do next.

Sincerely,

/s/

Robert H. Cross, Chief
Mobile Source Control Division