

State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO
AIR RESOURCES BOARD VOLUNTARY ACCELERATED VEHICLE
RETIREMENT REGULATIONS

Agenda Item No. 02-1-5
Public Hearing Date: February 21, 2002

I. GENERAL

On February 21, 2002, the Air Resources Board (ARB or Board) conducted a public hearing to consider the adoption of amendments to sections 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609 and 2610, of title 13, California Code of Regulations (CCR), and the adoption of section 2611 and Appendices C and D, the ARB Voluntary Accelerated Vehicle Retirement (VAVR) regulations.

The Initial Statement of Reasons for the Proposed Amendments to the Voluntary Accelerated Vehicle Retirement (VAVR) Regulations (Staff Report) was prepared and made available to the public on November 30, 2001. This Final Statement of Reasons for Rulemaking (FSOR) updates the staff report by identifying and explaining the modifications that were made to the original proposal. The FSOR also summarizes the written and oral comments received during the 45-day comment period preceding the February 21, 2002 public hearing, at the hearing itself, and during the 15-day comment period following the hearing. The FSOR also contains the ARB's responses to those comments.

The amendments proposed in the 45-day comment period make two sets of changes to the VAVR regulations. They: (1) Amend the VAVR regulations to match the comparable Bureau of Automotive Repair (BAR) regulations (Title 16 CCR §3394.4. "Eligibility Requirements") in all respects, except for the requirements that to be eligible for scrappage under the VAVR regulations, a vehicle must be able to be driven in reverse and be continuously registered for 120 days prior to retirement; and, (2) Amend the VAVR regulations to allow recovery of non-emission-related and non-drive train parts from vehicles that have been submitted for scrappage. The amendments are described in detail in the Staff Report.

At the hearing, the Board adopted Resolution 02-4 approving the amendments with the stipulation that staff perform additional public outreach to explore alternatives to the 7-day waiting period specified in title 13 CCR section 2605 of the VAVR regulations and to modify the regulatory language in response to comments received in this public outreach as the staff deems appropriate. In addition, the Board requested that the Executive Officer report back to the Board on the results of this outreach and the final language of the amended regulations after it has been adopted.

In response to the Board's direction, staff held a workshop on March 20, 2002, in El Monte, California. The interested parties, including dismantlers, local air pollution control district representatives, classic car collectors and after-market parts manufacturers, attended the workshop. The participants unanimously agreed on a revised version of Section 2605. In summary, the proposed revision would extend the 7-day waiting period to 10 days, and would require that if any third party expressed an interest in a vehicle, the waiting period would be extended another 7 days to allow the party to inspect and possibly purchase the vehicle. In Resolution 02-4, the Board directed the Executive Officer to adopt the proposed regulations after making available for public comment all changes specifically directed by the Board and any other necessary changes to the regulatory language as originally proposed in the Staff Report released on November 30, 2001.

On June 25, 2002, a "Notice of Public Availability of Modified Text", together with the modified text of the regulation, was mailed to all parties identified in section 44(a), title 1, CCR. The Notice and attachments were also posted on the ARB's internet site for the rulemaking on June 25, 2002. This modified text was made available to the public for a 15-day comment period ending on July 12, 2002. Comments on the amended proposal were received during this 15-day comment period.

In preparing this regulatory proposal, ARB staff fulfilled the requirements of Health and Safety Code (HSC) section 44101. HSC section 44101 requires the ARB to adopt, by regulation, a statewide program that provides for the creation, exchange, use and retirement of light-duty vehicle mobile source emission reduction credits.

In preparing the amendments, the ARB staff considered the potential economic impacts on California businesses and individuals, and the fiscal impacts on State, local, and federal government. A detailed discussion of these impacts is included in the staff report, and the Economic Impact Statement (STD. Form 399).

The ARB has determined that this regulatory action will not result in a mandate to any local agency or school district, the costs of which are or are not reimbursable

by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code.

The ARB has determined that no alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by ARB.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

This section describes the modifications that were made to the originally proposed regulatory text contained in the staff report, and explains the reasons for the modifications.

Section 2605 Offering Vehicles to the Public

This section was re-written and replaced by a new Section 2605. This modification resulted when the Board responded to written comments received from interested parties during the 45-day notice as well as oral comments made at the Board hearing on February 21, 2002. In summary, the comments requested that the time period during which vehicles submitted for scrapping are held before they are scrapped to allow interested parties to examine and purchase them be extended.

Consequently, the Board directed staff to perform additional public outreach to explore alternatives to the 7-day waiting period specified in title 13 CCR section 2605 of the current VAVR regulations and to modify it in response to comments received. In response to the Board's direction, staff held a workshop on March 20, 2002, in El Monte, California. The interested parties, including dismantlers, local district representatives, classic car collectors and after-market parts manufacturers, attended the workshop. These participants unanimously agreed on a revised version of Section 2605 extending the 7-day waiting period to 10 days, and another 7 days if any interested party expressed an interest in a vehicle, to allow the party to inspect and possibly purchase the vehicle. Amended Section 2605 contains this extended waiting period.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Board received written comments during the 45-day comment period and written and oral comments at the February 21, 2002 hearing and written comments during the 15-day comment period. Below is a listing of the commenters, identifying the date and form of the comment. Following the list is a summary of each comment made regarding the VAVR regulation amendments,

together with an explanation of how the proposed amendments have been changed to accommodate the comment, or the reason for making no change.

A. Responses to Comments Received during the 45-day Public Comment Period and the Board Hearing

Date	Commenter	Form
December 20, 2001	Richard W. Tibben	Written
December 24, 2001	Senator K. Maurice Johannessen	Written
January 22, 2002	Bill Baum,	Written
January 22, 2002	Jon Owyang, Market-Based Solutions	Written
February 21, 2002	Frank Bohanan, SEMA	Written
February 21, 2002	Senator K. Maurice Johannessen	Oral
February 21, 2002	Bob Lucas, California Council for Environmental and Economic Balance	Oral
February 21, 2002	Leonard Trimlett	Oral
February 21, 2002	Glenn Boire, a member of the ACCC, the Association of California Car Clubs	Oral
February 21, 2002	Jack Wiltse, director of the Association of California Car Clubs	Oral
February 21, 2002	Frank Bohanan, SEMA	Oral
February 21, 2002	Roger Andriesse, President of the Shelby American Automobile Club	Oral

B. Responses to Comments Received during and the 15-day Public Comment Period

June 26, 2002	Brian Caudill (forwarded same letter from Joe Gunther in agreement)	Written
June 26, 2002	John Wilkiewicz	Written
June 26, 2002	John Morehead	Written
June 26, 2002	Craig C. Cyr	Written
June 26, 2002	Jess Weigel	Written
June 26, 2002	High Performance Distributors	Written
June 26, 2002	Ernest Aguilar	Written
June 26, 2002	Doug Burke	Written
June 26, 2002	Derek Adams	Written
June 26, 2002	Carter G. Hampton Sr.	Written
June 26, 2002	Tim Borden	Written
June 26, 2002	Bob Beck, So.Cal. Rodders Representative & Announcer, Goodguys Rod & Custom Assoc., President, So.Cal. Falcon Club. of the Falcon Club Of America, Past President of the Road Kings of Burbank, Member of NHRA Track Announcers Guild, Member of	Written

	the SEMA Action Network, Manager, Trade Shows, Isuzu Commercial Truck, GMCT	
June 26, 2002	Louis Coffrey	Written
June 27, 2002	Michael R. Monahan	Written
June 27, 2002	Jim Church	Written
June 27, 2002	Bob Severin	Written
June 27, 2002	Roy Bredahl	Written
June 27, 2002	William C. Millard	Written
June 27, 2002	Michael F. Hollander	Written
June 27, 2002	Niels Uni	Written
June 27, 2002	Tim Lyons/Sales Manager, Probe Industries	Written
June 28, 2002	Walter T. Foster	Written
June 29, 2002	Joe Gunther	Written
June 29, 2002	John & Nancy, J&J Marketing	Written
July 1, 2002	Daniel Yee	Written
July 2, 2002	Joseph D. (takeru07@hotmail.com)	Written
July 2, 2002	Antoine Assioun, Environmental Engineering Studies	Written
July 3, 2002	Frank Bohanan, SEMA Technical Consultant	Written
July 4, 2002	Glenn Williams	Written
July 4, 2002	safety_guy1@att.net	Written
July 12, 2002	Chad Hunt Morgan	Written
July 12, 2002	Linda Civitello-Joy, Executive Director, American Lung Association of San Francisco and San Mateo Counties	Written

1. **Comment:** The regulation should allow total recycling and resale of all parts from vehicles accepted for scrapping, including emission related and drive train parts. This is consistent with the intent of the statute. Recycling of all parts will make inexpensive replacement parts more available and will not cause increased emissions. (Senator K. Maurice Johannessen, Frank Bohanan, Bill Baum, Richard W. Tibben, Senator K. Maurice Johannessen, Leonard Trimlett, Glenn Boire, Jack Wiltse, Roger Andriesse)

Response: The staff disagrees with this comment and responds as follows. Recycling and resale of all parts from vehicles accepted for scrapping is not consistent with the intent of the statute, will cause increased emissions by keeping older, more high-polluting cars in use and will make inexpensive replacement parts only marginally more available.

Health and Safety Code section 44100 contains the declaration of the legislature's intent in this area. Sections 44100(b) and (c) state that emissions can be reduced by accelerating turnover of the onroad vehicle fleet by retiring high-emitting vehicles and bringing more low-emission vehicles on the road, and section 44100(e)(3) states that the scrapping program "should be sensitive to the concerns of car collectors and to

consumers for whom older vehicles provide affordable transportation.” (See also section 44120.) Moreover, the program must be designed to provide for “real, surplus, and quantifiable emissions reductions” (section 44100(e)(4)). Clearly, the legislative intent envisions a balancing of the interests of reduced emissions, affordable transportation and car collection. The proposed amendments strike such a balance by making sure that vehicles submitted for scrappage are made available to car collectors and the public and that non-emissions related parts can be recycled from vehicles that are accepted for scrappage.

To investigate the various options for parts recycling and resale, staff completed a fact-finding study examining the options for the program’s operation. For this effort, staff conducted several informal workshops with the various stakeholders and found that no clear consensus for a preferred parts recovery option exists. Based on the workshop results, staff prepared and, released for public comment, a preliminary staff report with recommendations to revise existing regulations and to present parts recovery options.

Interested parties submitted numerous comments regarding the recommendations contained in the staff report. ARB staff evaluated the public comments; and, as a result of the review, ARB staff concluded the best option was a revision to the ARB VAVR regulations to allow limited parts recovery. Specifically, ARB staff recommends that the ARB VAVR regulations be amended to allow parts recovery for non-emission-related and non-drive train parts. The staff believes that this approach strikes the balance between accelerating retirement of older, higher polluting vehicles and the interests of car collectors and consumers.

The advantages of the limited parts recycling contained in the proposed amendments include: compliance with Health and Safety Code, Section 44120, enhanced economic feasibility of mobile source emission reduction credit (MSERC) vehicle retirement programs, encouraging more dismantlers to participate in MSERC programs, thus, facilitating consumer convenience, and finally, encouraging voluntary enterprise operator participation which ensures that the enterprise operator can choose and participate if there is sufficient economic incentive for parts recycling.

The disadvantages of total parts recycling from scrapped vehicles include the fact that it would not result in real emission reductions because it would fail to maximize the turnover of the onroad vehicle fleet; the fact that it would make mobile source emission reduction credits difficult to quantify and it would call the credibility of the credits generated under MSERC programs in question. The staff rejects the recommendation to allow unlimited parts recovery for these reasons. This issue is discussed in more detail at pages 9 to 23 of the staff report, which are incorporated by reference here.

2. **Comment:** Extend the time period that vehicles submitted for scrapping are held for resale before they are scrapped. (Senator K. Maurice Johannessen, Frank Bohanan, Jon Owyang, Bob Lucas, Leonard Trimlett)

Response: The staff agrees with this comment and responds as follows. As the result of such comments, at the hearing on February 21, 2002, the Board directed staff to perform additional public outreach to explore alternatives to the 7-day waiting period specified in title 13 CCR section 2605 of the VAVR regulations and to modify the regulatory language in response to these comments as staff deemed necessary. In response to the Board's direction, staff held a workshop on March 20, 2002, in El Monte, California. The interested parties, including dismantlers, local district representatives, classic car collectors and after-market parts manufacturers, attended the workshop. These participants unanimously agreed on a revised version of Section 2605 extending the 7-day waiting period to 10 days, and if any interested party expressed an interest in a vehicle, the period would be extended another 7 days to allow the party to inspect and possibly purchase the vehicle. Amended Section 2605 contains the extended waiting period. These changes were proposed in the 15-day notice released on June 24, 2002. The staff believes that this approach strikes the balance between accelerating retirement of older, higher polluting vehicles and the interests of car collectors and consumers the statutes require.

3. **Comment:** The system for public notice of vehicles that are submitted for scrapping should be improved. (Senator K. Maurice Johannessen, Frank Bohanan)

Response: The staff objects to this comment pursuant to Government Code section 11346.9 because it is not specifically directed at the proposed amendments or the procedures followed by the ARB in proposing or adopting the amendments. Without waiving this objection, the staff responds as follows. In response to requests to improve the system for public notice of vehicles submitted for retirement, staff worked with participating dismantlers and the South Coast Air Quality Management district to initiate an "automatic old car notice" service powered by the ARB's public email list serve system for subscribers to instantly join and obtain a bi-monthly email list. Well-publicized in leading car collector magazines, the "automatic old car notice" provides a list of cars submitted for scrappage so that collectors can have ample opportunity to decide if they want to inspect and potentially purchase any of the vehicles. The regulations did not need to be amended to accommodate the concern expressed in the comment.

4. **Comment:** As an alternative to total parts recycling, allow total parts recycling for all pre-1973 vehicles and for post-1974 limit recycling to non-

emission-related and non-drive train parts. (Roger Andriesse)

Response: The staff disagrees with this comment and responds as follows. The staff believes that total parts recycling would not adequately advance the goal of promoting turnover of the fleet of older, higher-polluting vehicles because it would maximize opportunities for parts from scrapped cars to be used to keep the oldest, highest-polluting vehicles on the road. Also, please see the Response to Comment # 1, which is incorporated by reference here.

5. **Comment:** Rather than the proposed amendments to the vehicle eligibility criteria, ARB should instead consider using mileage-based vehicle eligibility criteria. (Senator K. Maurice Johannessen, Frank Bohanan)

Response: The staff disagrees with this comment and responds as follows. Staff analyzed and considered the use of mileage-based vehicle eligibility criteria as the sole vehicle eligibility requirement but concluded that existing odometer data is not sufficiently reliable to use as a vehicle specific eligibility requirement. Specifically, ARB staff researched a study performed by BAR, "Methodology for Calculating Vehicle Miles Traveled (VMT)", Smog Check Performance Evaluation, Report 2000-06, Engineering and Research Branch, Bureau of Automotive Repair, September 30, 2000, (VMT Report) to assess the reliability of vehicle specific Vehicle Information Database (VID) odometer data. ARB staff found that, although BAR uses VID odometer data to calculate average annual Vehicle Miles Traveled (VMT), the VID data set must be purged to eliminate inaccurate or misleading odometer entries. As example, BAR rejects an odometer reading when it is less than the odometer reading from the previous Smog Check, i.e., indicating that the odometer ran backwards. In its annual VMT report, BAR stated that out of approximately 10 million vehicle smog check records, it purged nearly 4 million records (40%) for one reason or another, including inaccurate odometer readings. Consequently, although BAR utilizes the purged VID odometer data to calculate a statistically reliable average annual VMT, ARB staff concluded that VID odometer data was not reliable enough in individual cases to determine vehicle specific vehicle miles traveled in specific vehicles that may be offered for scrappage. Therefore, ARB staff rejected this alternative vehicle eligibility proposal.

Another reason to reject an odometer-based approach is that vehicles in "Change of Ownership" areas which, compose approximately 15% of the fleet; are not subject to biennial Smog Check. Therefore, the VID contains no odometer readings for these vehicles and these vehicles would not qualify for the VAVR credit programs based on the mileage criteria. ARB staff concluded that it would be unfair to exclude this group from participation in these programs and rejects mileage criteria for this reason also.

Lastly, statutes require ARB regulations to be "harmonious" with Bureau of

Automotive Repair (BAR) VAVR regulations. (Health and Safety Code section 44102.) Using an odometer-based criterion would move the current ARB VAVR regulations even further from BAR's VAVR regulations (Title 16 CCR section 3394, Health and Safety Code sections 44094 and 44095) which do not employ a mileage-base approach, against the dictates of Health and Safety Code section 44102.

For the above reasons, staff rejected the use mileage-based vehicle eligibility as the sole vehicle eligibility requirement.

The matter is discussed in more detail at pages 7 and 8 of the Staff Report that is incorporated by reference here.

6. **Comment:** We support the recommendations made by staff relative to the vehicle registration eligibility requirements. (Frank Bohanan)

Response: The staff agrees with this comment. Please see Responses to Comments # 8 and # 16, which are incorporated by reference herein.

7. **Comment:** We support the recommendations made by staff and urge adoption of the regulatory package. (Bob Lucas)

Response: The staff agrees with this comment. Please see Responses to Comments # 1 through # 16, which are incorporated by reference herein.

8. **Comment:** We think that the 120-day continuous registration requirement could be shortened to 90 days without any damage to the integrity of the program. (Bob Lucas)

Response: The staff disagrees with this comment. The staff believes that a 120-day requirement is a better safeguard of the program's integrity. The current regulations allow planned non-operation status for up to 2 months and/or a registration lapse of up to 180 days within the last 24 months prior to retirement of a vehicle for scrappage. However, the vehicle must be registered as operational during the last 3 months of the 24-month period (two complete registration cycles) prior to scrappage. This provides some level of confidence that the vehicle is truly being driven on the road because to be registered, registration fees must be paid, the vehicle must pass the necessary smog inspection and, even more importantly, is currently insured. It is doubtful that consumers would expend funds to meet these requirements unless they truly intended to drive the vehicle, making the credits generated from the vehicle's scrappage real.

In order to simplify the regulations, staff proposed to replace the limits in registration lapse with a requirement that the vehicle be registered as an operating vehicle for at least the last 120 days prior to retirement. This

means, as a registered operating vehicle, the vehicle passes the most recently required smog inspection (if required for registration), the vehicle is insured and, all fees have been paid.

However, staff believes that while there is the risk that a vehicle may be imported into the local district and retired for more credit than would be possible under current regulations, this risk is minimal given the economics of MSERC programs, i.e., a vehicle would have to be imported to the district (at some cost), then held for the required 7-day waiting period (at some cost) just to be sold for \$500 to \$700 with very little or no profit margin. Staff believes that to shorten the 120-day continuous registration requirement to 90 days would increase the risk of importation to an unacceptable level; therefore, staff rejects the proposal to shorten the required length of registration period to 90 days.

The matter is discussed in more detail at pages 5 and 7 of the staff report, which are incorporated by reference here.

9. **Comment:** We think that it's important that we accurately calculate the emission reduction benefits of this program, particularly in light of the data coming from the BAR program. We think there's far more benefit than is being recognized. (Bob Lucas)

Response: The staff objects to this comment pursuant to Government Code section 11346.9 because it is not specifically directed at the proposed amendments or the procedures followed by the ARB in proposing or adopting the amendments. Without waiving this objection, the staff responds as follows. The staff agrees with this comment. With regard to updating Appendix B, Emission Reduction Credit Table, staff recently preformed the calculations with both current data as well as the latest version of the Emission Inventory Model Program to provide comparison with previous and updated models. Staff plans to propose additional regulatory activity that would update Appendix B of the regulations; however, the task is beyond the scope, purpose and intent of the current regulatory activity.

Comments From 15-Day Notice:

10. **Comment:** We support the proposed amendments to Section 2605 Offering Vehicles to the Public which extends the 7-day waiting period to 10 days, and if any interested party expresses an interest in a vehicle during this period, provides an additional 7 days to allow the party to inspect and possibly purchase the vehicle. (John Wilkiewicz, John Morehead, Joe Gunther, Brian Caudill, Craig C. Cyr, Jess Weigel, Ernest Aguilar, Doug Burke, Derek Adams, Chad Hunt Morgan, Glenn Williams, Carter G. Hampton Sr., Tim

Borden, Bob Severin, Roy Bredahl, William C. Millard, Michael F. Hollander, Walter T. Foster, Daniel Yee, Michael R. Monahan, Niels Uni, Frank Bohanan, Bob Beck, John & Nancy, Louis Coffrey, Tim Lyons)

Response: The staff agrees with this comment. Please see Response to Comment # 2, which is incorporated by reference here.

11. **Comment:** Section 2605 Offering Vehicle to the Public should not be amended. (Linda Civitello-Joy)

Response: The staff disagrees with this comment. Please see Responses to Comments #'s 2 and 16, which are incorporated by reference here.

12. **Comment:** We support the proposed enhancements to the system for public notice of vehicles submitted for scrapping. (John Wilkiewicz, John Morehead, Joe Gunther, Brian Caudill, Craig C. Cyr, Jess Weigel, Ernest Aguilar, Doug Burke, Derek Adams, Chad Hunt Morgan, Glenn Williams, Carter G. Hampton Sr., Tim Borden, Bob Severin, Roy Bredahl, William C. Millard, Michael F. Hollander, Walter T. Foster, Daniel Yee, Niels Uni, Frank Bohanan, Tim Lyons)

Response: The staff agrees with this comment. Please see Response to Comment # 3, which is incorporated by reference here.

13. **Comment:** Dismantlers should be able to sell vehicles and parts without the permission of the previous owner. (John Wilkiewicz, John Morehead, Joe Gunther, Brian Caudill, Craig C. Cyr, Jess Weigel, Ernest Aguilar, Doug Burke, Derek Adams, Chad Hunt Morgan, Glenn Williams, Carter G. Hampton Sr., Tim Borden, Bob Severin, Roy Bredahl, William C. Millard, Michael F. Hollander, Michael R. Monahan, Walter T. Foster, Daniel Yee, Frank Bohanan, John & Nancy, Tim Lyons)

Response: The staff agrees with this comment. The requirement of obtaining a waiver from a vehicle's previous owner was discussed at the VAVR 7-Day Waiting Period Workshop on March 20, 2002, in El Monte, California. With the unanimous consensus of those present, staff agreed to eliminate the waiver allowing a former owner to dictate to the future owner what must be done to the car. Several participants declared that the waiver is unconstitutional and against fair business practices and staff accepts this conclusion thereby rejecting the suggestion that dismantlers should not be able to sell vehicles and parts without the permission of the previous owner.

14. **Comment:** Dismantlers should not be able to sell vehicles and parts without the permission of the previous owner. (Antoine Assioun)

Response: The staff disagrees with this comment. The requirement of obtaining a waiver from a vehicle's previous owner was discussed at the VAVR 7-Day Waiting Period Workshop on March 20, 2002, in El Monte, California. With the unanimous consensus of those present, staff agreed to eliminate the waiver allowing a former owner to dictate to the future owner what must be done to the car. Several participants declared that the waiver is unconstitutional and against fair business practices and staff accepts this conclusion thereby rejecting the suggestion that dismantlers should not be able to sell vehicles and parts without the permission of the previous owner.

15. **Comment:** Brakes should be deleted from the definition of "drive train parts".
(Frank Bohanan)

Response: The staff objects to this comment pursuant to Government Code section 11346.9 because it is not specifically directed at the proposed amendments or the procedures followed by the ARB in proposing or adopting the amendments. Without waiving these objections, the staff responds as follows. ARB staff included brakes in the category of drive train parts in addition to emission-related parts because worn or damaged recycled parts from retired vehicles may actually cause emissions to increase in a second vehicle in comparison to the replacement with a new or re-manufactured part. Also, the sale of worn parts such as brakes to repair vehicles that do not qualify for the VAVR program without being "fixed up", presents a safety issue and has the potential to produce emission reduction credits that are not surplus. This would fail to adhere to Health and Safety Code §44121 "The state board shall develop standards for the certification and use of emission reduction credits to ensure that the credits are real, surplus, and quantifiable."

Furthermore, once a vehicle has been retired in a VAVR program, there is no way to ensure that resold drive train parts including brakes are not used to keep another high polluter on the road or to "fix up" a vehicle that would have been retired through natural attrition. In either case, no real emission reductions occur when worn parts such as brakes are recycled because upon vehicle retirement, the emissions are "*transferred*" to another vehicle marginally passing Smog Check, thus keeping the second vehicle on the road longer than would otherwise be the case.

Finally, the allowance of recovery for parts that prolong the life of other polluting vehicles may cause MSERC programs to be perceived by the public as illegitimate and ultimately has the effect of causing the lack of credibility of the credits generated under MSERC programs. Therefore, brakes are included in parts restricted from recovery in MSERC vehicles because this facilitates continued operation of a vehicle that would otherwise be retired; thus, degrading air quality.

16. **Comment:** Section 2603 Vehicle Eligibility should not be amended to harmonize the ARB VAVR program with the Bureau of Automotive Repair VAVR program. (Linda Civitello-Joy)

Response: The staff objects to this comment pursuant to Government Code section 11346.9 because it is not specifically directed at the proposed amendments or the procedures followed by the ARB in proposing or adopting the amendments. Without waiving these objections, the staff responds as follows. The staff disagrees with this comment. Regardless of whether the Bureau of Automotive Repairs (BAR) program is in existence or not, the underlying reason for harmonizing the regulations lies in the statutes. Notwithstanding that the two VAVR programs serve different purposes, the Health and Safety Code requires that the two programs operate in “harmony.” Specifically, Section 44102 states:

“(a) The state board, the Department of Motor Vehicles, and the department shall harmonize the requirements (emphasis added) and implementation of this program with the motor vehicle inspection program and other programs contained in this chapter, particularly the provisions relating to gross polluters in Article 8 (commencing with Section 44080) and the repair or removal of high polluters in Article 9 (commencing with Section 44090).

(b) Insofar as practicable, these programs shall be seamless to the participants and the public (emphasis added).”

Furthermore, in the workshops and in letters received by the Board, many stakeholders emphasized that the previous ARB VAVR regulations contained many requirements above and beyond both the DMV Vehicle Code as well as the BAR vehicle retirement regulations. Therefore staff rejects the suggestion to retain the previous eligibility requirements.