

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

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NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING

STAR Program
SPECIFICALLY

**Inspection-Based Performance Standards;
Removal of the Gold Shield Certification Program;
and Application for STAR certification**

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:

SOUTHERN CALIFORNIA

Friday, June 10, 2011 at 10:00am
Bureau of Automotive Repair
Conference/Training Room
1180 Durfee Avenue, Suite 120
South El Monte, CA 91733

NORTHERN CALIFORNIA

Monday, June 13, 2011 at 10:00am
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd., S-102
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 Tuesday, June 14, 2011**, 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 44001.5, 44010.5, 44012, 44014, 44014.2, 44014.5, 44015, 44024.5, 44036 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations and Article 10 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). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles, SUVs, and trucks by requiring these vehicles to meet specific emissions standards as a condition of vehicle registration.

BACKGROUND:

AB 2289 (Eng, Chapter 258, Statutes of 2010) requires BAR to establish inspection-based performance standards that stations would be required to meet in order to be eligible to issue certificates of compliance or non-compliance to likely high-emitting and gross-polluting vehicles pursuant to Health and Safety Code (H&S) section 44010.5 and 44014.7, respectively.

The direction of vehicles most likely to fail their Smog Check inspection is done as part of State Implementation Plan (SIP) to help California achieve federal Clean Air Act requirements. Further, vehicles failing an inspection as a Gross Polluter, meaning they had exceptionally high exhaust emissions readings, are also required to receive a certificate of compliance at a STAR certified station.

Prior to the passage of AB 2289, all Test-Only and Gold Shield stations were eligible to test likely high-emitting and gross-polluting vehicles. AB 2289 made significant changes to statute and required all Test-Only and Test-and-Repair stations to meet the same inspection-based performance standards; developed by BAR, before they could test likely high-emitting and gross polluting vehicles. In addition, BAR requires Test-and-Repair stations meeting inspection-based performance standards to perform state subsidized repairs as part of the Consumer Assistance Program (CAP). Additionally, Test-Only stations are required to meet the same eligibility requirements as a condition of testing likely high-emitting and gross polluting vehicles.

The existing Gold Shield performance criteria include repair-based standards that cannot be applied to Test-Only stations. The new certification program, referred to as the STAR program, relies solely on inspection-based performance standards. Some current inspection-based

performance standards currently in use have been revised to improve accuracy in determining whether or not a station or technician is properly inspecting vehicles. These regulations will help improve the effectiveness of the Program by incentivizing the proper inspection of vehicles.

In order to become STAR certified, a Smog Check station cannot surpass the specified test deviations, in a calendar quarter, for the following short term standards:

1. Failure to inspect ignition timing.
2. Failure to perform the fuel cap integrity test.
3. Failure to perform the Low Pressure Fuel Evaporative Test.
4. Failure to perform the OBDII test.
5. Passing OBDII systems with the maximum number of unset readiness monitors allowed.
6. Restarting tests to provide a second chance at passing an inspection.
7. Aborting tests to provide a second chance at passing an inspection.

These short term measures identify parts of the Smog Check inspection that are either not being performed or not being performed correctly. Some vehicles are not compatible with all parts of the Smog Check inspection, due in part to vehicle design. As a result, these measures were designed to only identify a deviation if a majority of similar vehicles in the fleet received the same part of the inspection and the technician failed to perform the test.

Additionally, this proposal creates the Similar Vehicle Failure Rate (SVFR). The SVFR requires that a station failure rate must be greater than or equal to 75% of the failure rate for similar vehicles.

The STAR program also includes a long-term measure called the Follow-up Pass Rate (FPR). The FPR scores reflect the probability that vehicles inspected by each station or technician pass at a higher rate than average in the vehicle's next inspection cycle.

Finally, BAR will evaluate the enforcement history of stations. Station owners applying for certification cannot have been subject to any citations in the past year; administrative actions in the past three years; been convicted of a crime substantially related to their duties as an ARD, Smog Check station, or a Smog Check technician in the past three years; been liable in a civil suit related to their duties as an ARD, a Smog Check station, or a Smog Check technician in the past three years; or had their STAR certification invalidated within the last six months.

CURRENT REGULATION:

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, is summarized as follows:

1. Section 3340.1 specifies definitions used in the Smog Check Program.
2. Section 3340.16 specifies Test-Only station requirements and conflict of interest rules for consumer referrals.
3. Section 3340.16.5 specifies Test-and-Repair station requirements and conflict of interest rules for consumer referrals.
4. Section 3340.41 describes inspection, test and repair requirements.

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 10, is summarized as follows:

1. Section 3392.1 describes the Gold Shield program.
2. Section 3392.2 specifies the responsibilities of a Gold Shield station.
3. Section 3392.3 specifies the eligibility for the Gold Shield program.
4. Section 3392.5 specifies the causes for invalidation of Gold Shield station certification.
5. Section 3392.6 specifies the Gold Shield Program hearing and determination.

Adopt regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 10, is summarized as follows:

1. Section 3392.2.1 specifies the required services of a STAR station.
2. Section 3392.3.1 specifies the eligibility for the STAR certification.
3. Section 3392.4 specifies the STAR Program evaluation criteria.
4. Section 3392.5.1 specifies the causes for invalidation of STAR station certification.
5. Section 3392.6.1 specifies the STAR Program hearing and determination.

EFFECT OF REGULATORY ACTION:

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

- I. **Inspection-Based Performance Standards:** AB 2289 requires BAR to establish inspection-based performance standards that stations would be required to meet in order to issue certificates to likely-high emitting and gross-polluting vehicles pursuant to H&S sections 44010.5 and 44014.7, respectively. This voluntary program will be referred to as the STAR program. The new program will be available to any Test-and-Repair and

Test-Only station meeting eligibility criteria established in regulation. The STAR program is based on some criteria currently applied to certified Gold Shield Test-and-Repair stations, with the addition of new criteria intended to improve the identification of higher-performing stations.

- II. **Removal of the Gold Shield Certification Program:** As part of the implementation of the inspection-based performance standards, BAR must revise the current Gold Shield regulations to provide a sunset date for the program. The Gold Shield program will sunset on December 31, 2012 and be replaced with the STAR program commencing January 1, 2013. The current Gold Shield program provides for the voluntary certification of licensed Smog Check Test-and-Repair stations. These certified stations are permitted to test likely high-emitting vehicles for their biennial Smog Check inspection and gross-polluting vehicles pursuant to H&S sections 44010.5 and 44014.7, respectively.
- III. **Incorporate the STAR Application:** Due to the implementation of inspection-based performance standards, BAR developed a new application for the STAR certification program. This application will be incorporated by reference into regulation.

The proposed action will make the following changes to existing regulation:

1. Amend Section 3340.1 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
 - a. Add definition for Acceleration Simulation Mode (ASM) test.

The ASM test is not new to the Smog Check Program, but the definition was not included in prior regulatory packages. It is necessary to define an ASM test to provide the public clear and concise regulations.
 - b. Add definition for chassis dynamometer since this term is used in the definition of ASM.

Although a chassis dynamometer is not a new component to the Smog Check Program the definition was never defined in regulation. It is necessary to define a chassis dynamometer to provide the public clear and concise regulations.
 - c. Amend the definition of clean piping.

The definition was reworded to provide a more accurate description of what the act of clean piping entails. This change makes it easier for the public to understand the term.
 - d. Amend the existing Comparative Failure Rate (CFR) definition.

This revision adds a sunset date of December 31, 2012 for the CFR definition, which is used in determining Gold Shield eligibility.

- e. Add a definition for Excessive Test Deviation Rate.

This term is necessary to define because it will be used to identify higher-performing stations. This metric is designed to measure improper inspection behavior. BAR measures the rate at which a station exceeds the maximum level of improper inspections for several elements of a Smog Check. If a station surpasses a specified number of test deviations the station is not eligible for STAR certification or, if already certified, it may be grounds for BAR to invalidate the station's certification.

- f. Add a definition for Follow-up Pass Rate (FPR).

The FPR is like the Similar Vehicle Failure Rate (SVFR), but rather than examining the expected versus achieved failure rates as a function of who is inspecting the vehicles today, it groups the data based upon who last certified the vehicles. In short, vehicles certified improperly in the past inspection cycle are more likely to fail in the current cycle than vehicles that were properly certified. BAR created the FPR as a long-term performance measure for identifying higher-performing stations.

- g. Add a definition for Gear Shift incident.

Shifting a vehicle transmission into the wrong gear during an ASM test is a quick way to improperly pass vehicles undergoing Smog Check inspections. By having a vehicle transmission in the correct gear during an emissions test, vehicles are more likely to receive a proper inspection. BAR created this performance measure for the purpose of identifying higher-performing stations. ASM inspection procedures, including proper gear selection for automatic and manual transmission vehicles, are included in the Smog Check Inspection Procedures Manual, which is incorporated by reference in California Code of Regulations (CCR) section 3340.45 of Title 16.

- h. Amend the definition of Gold Shield station.

Due to the passage of AB 2289, it is necessary to sunset the current Gold Shield certification program and replace it with the proposed STAR certification program.

- i. Add definition for Similar Vehicle Failure Rate (SVFR), which will become effective July 1, 2012.

The new SVFR will be used to predict whether a station is failing vehicles at a reasonable rate when compared to results from similar vehicles inspected at other

stations. BAR created this performance measure for the purpose of identifying higher-performing stations.

- j. Add a definition for Similar Vehicles to clarify the term included in the definitions of SVFR and FPR.

A similar vehicle means a vehicle with the same VLT Row ID. If sufficient data for a certain vehicle is not available, it will be compared to vehicles with similar model year, make, model, engine displacement, transmission type and body type. This term has been added to provide the public clear and concise regulations.

- k. Add a definition for the STAR program.
BAR is developing in this regulation a new certification program that relies on inspection-based performance standards mandated by AB 2289. It is necessary to define the program to provide the public clear and concise regulations. This new voluntary certification program, which will be open to all Smog Check Test-Only and Test-and-Repair stations, will be called the "STAR program."
- l. Add the definition of Technician Information Table.

The Technician Information Table already exists as a function of the emissions inspection system (EIS), which is used to perform Smog Check inspections. The information in this table will be used to determine whether a particular technician is employed to perform Smog Check inspections at a specific station. BAR will use this information in calculating the station FPR score. Adding this definition provides the Smog Check stations and technicians clear and concise regulations.

- m. Add a definition for Test Deviation.

Test deviations are an indicator of improper inspections and, as such, have been included as a measure of performance. This term is necessary to define because it will be used to identify higher-performing stations.

- n. Amend the definition of Test-Only station.

This proposed change updates the definition to provide the public with a more accurate and recognizable description of a Test-Only station.

- o. Add the definition of the Two-Speed Idle (TSI) test.

While the TSI test is not new to the Smog Check Program, it was never defined in regulation. A definition will make certain that the term is used consistently throughout regulations. Adding this definition provides stations and technicians clear and concise regulations.

- p. Add the definition of VLT Row ID.

VLT Row ID is a term used in the definitions for SVFR and FPR. This definition is necessary because it is a specialized term only used in relation to the Smog Check Program.

2. Amend Section 3340.16 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Amend subsection (e) to add a sunset date.

Recent amendments to H&S section 44014.5 changed a provision in law that made it illegal for a Test-Only station to refer a vehicle owner to a particular ARD or provider of repair services. This section of regulation will sunset on December 31, 2012 once the new STAR performance standards become operative.

- b. Add subsection (f).

This subsection will become effective after the sunset date of subsection (e). This subsection was added due to recent amendments to H&S section 44014.5. AB 2289 removed certain “conflict of interest” language preventing ownership of Test-Only and Test-and-Repair stations within a certain proximity. Changes to this section harmonize with statutory requirements.

This change creates a new subsection (f) in regulation.

- c. Amend subsection (g).

This section limits a Test-Only station from having any financial interest in a Test-and-Repair station within 50 statute miles of each other. Due to recent amendments to H&S section 44014.5, this limitation is no longer valid and therefore must sunset on December 31, 2012.

This amendment also renumbers subsection (f) to (g).

- d. Add subsection (h).

As a result of AB 2289, H&S section 44014.5 was amended to restrict a Test-Only station from referring a vehicle owner to a repair facility in which the Test-Only has a financial interest. This section incorporates these changes and specifies in detail what a financial interest entails.

3. Amend Section 3340.16.5 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Amend subsection (b)(3) to replace loaded mode with ASM.

This change is necessary to use consistent terminology for a term that is defined in 3340.1.

- b. Amend subsection (d), to add a sunset date.

Recent amendments to H&S section 44014.5 changed a provision in law that made it illegal for a Test-and-Repair station to refer a vehicle owner to a particular Test-Only station for testing and certification of a vehicle that has been identified as a likely high-emitter. This section of regulation will sunset on December 31, 2012 once the new STAR performance standards become operative.

- c. Add subsection (e).

H&S section 44014.5 was recently amended to restrict a Test-Only station from referring a vehicle owner to a repair facility in which the Test-Only has a financial interest. AB 2289 did not specifically address, but left open for interpretation, the relationship of a Test-and-Repair station, which is not STAR certified, from referring a vehicle to a particular STAR station. As a result, this regulation specifies that a Test-and-Repair station cannot refer a likely high-emitting vehicle to a particular STAR station in which it has a financial interest. This section incorporates these changes and specifies in detail what a financial interest entails.

- d. Amend subsection (e).

This section limits a Test-and-Repair station from having any financial interest in a Test-Only station within 50 statute miles of each other. Due to recent amendments to H&S section 44014.5, this limitation is no longer valid and therefore must sunset on December 31, 2012.

This amendment also renumbers subsection (e) to (f).

- 4. Amend Section 3340.41 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Amend subsection (e) to add a sunset date.

This requires BAR to sunset the current Gold Shield program on December 31, 2012 in favor of the STAR program which only uses inspection-based performance standards.

- b. Add subsection (f).

Due to recent statute changes pursuant to AB 2289, BAR was mandated to develop inspection-based performance standards that would apply to both licensed Test-Only and Test-and-Repair stations. As a result, the new STAR program requires likely high-emitting and gross polluting vehicles to receive an inspection at STAR certified stations.

5. Amend Section 3392.1 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
 - a. Due to recent statute changes pursuant to AB 2289, BAR was mandated to develop inspection-based performance standards. This requires BAR to sunset the current Gold Shield program on December 31, 2012.

6. Amend Section 3392.2 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
 - a. Due to recent statute changes pursuant to AB 2289, BAR was mandated to develop inspection-based performance standards. This requires BAR to sunset the current Gold Shield program on December 31, 2012.

7. Add Section 3392.2.1 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
 - a. As of January 1, 2013, the Gold Shield program will be replaced with the STAR program. Specific changes are as follows:
 - i. The title of the section has been changed for the purpose of providing clarity.
 - ii. As applicable, the required services of STAR certified stations include the following:
 1. Certify Gross Polluters;
 2. Certify likely high-emitting vehicles;
 3. STAR certified stations located outside of an Enhanced Area may certify a vehicle registered in an Enhanced Area if the vehicle is owned by a motor vehicle dealer;
 4. Offer CAP services;
 5. Perform repair work in a good and workmanlike manner;
 6. Allow BAR staff reasonable access.
 - iii. Since both Test-Only and Test-and-Repair stations are eligible to become STAR certified, the requirements assigned to them need to be changed to emphasize their distinction. Specifically, Test-and-Repair stations meeting the performance standards established under this voluntary certification program are required to offer state-subsidized repairs under the Consumer Assistance Program to vehicles failing a biennial Smog Check inspection pursuant to Health and Safety Code section 44062.1; while Test-Only stations cannot because they are licensed only to perform inspections on vehicles.

- iv. Other minor changes were made to improve the clarity of portions of this section.
8. Amend Section 3392.3 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
- a. Due to recent statute changes pursuant to AB 2289, BAR was mandated to develop inspection-based performance standards. This requires BAR to sunset the current Gold Shield program on December 31, 2012.
9. Add Section 3392.3.1 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:
- a. This section defines eligibility requirements for stations seeking STAR certification and incorporates by reference the STAR Station Certification Application form (STAR-1 07/1/2012). At the end of December 31, 2012, the current Gold Shield program will sunset. To assure that the transition to the new STAR program is seamless, this section permits current Gold Shield certified stations, as well as any other station seeking to participate in the STAR program to apply and become certified up to six months prior to the STAR program becoming operational on January 1, 2013. This means stations can apply and become certified beginning as early as July 1, 2012 for the STAR program that becomes operational on January 1, 2013.
 - b. Since AB 2289 requires the BAR to develop a certification program based solely on inspection-based performance standards, all repair-related requirements currently applicable to the Gold Shield program will be eliminated under the STAR program. BAR will use new inspection-based performance standards, some of which are derived from the current Gold Shield eligibility criteria, to determine station eligibility for the STAR program. The following are requirements of the STAR program:
 - i. Similar Vehicle Failure Rate (SVFR)

The SVFR is used to predict whether a station is failing vehicles at a reasonable rate when compared to inspection results for similar vehicles inspected at other stations statewide. At present, BAR uses the CFR which examines model year and whether a vehicle was required to have an inspection pursuant to H&S section 44010.5 to determine expected versus achieved failure rates. The proposed SVFR definition incorporates additional vehicle specific characteristics, such as make, model, and vehicle mileage, to produce a more accurate measure of performance. To be eligible for the STAR program, a station's SVFR in the most recent calendar quarter shall be greater than or equal to 75% of the state-wide failure rate in the Smog Check inspection industry.

ii. Gear Shift Incidents

Shifting a vehicle transmission into the wrong gear during an ASM test can be a quick way to falsely pass a vehicles Smog Check inspection. By having a vehicle transmission in the correct gear during an emissions test, vehicles are more likely to receive a proper inspection.

iii. Excessive Test Deviation Rate (Ignition Timing Test, Fuel Cap Integrity Test, Low-Pressure Fuel Evaporative Test (LPFET), On-Board Diagnostics (OBDII) Test, OBDII Readiness Monitors, ASM Inspection Restarts, and Inspection Aborts)

This metric is designed to measure potentially problematic inspection behavior. BAR measures the rate at which a station exceeds the maximum level of improper inspections for each of these required elements of a Smog Check. The Excessive Test Deviation Rate is counted for each of the following occurrences:

1. The rate at which the ignition timing test is not performed on vehicles for which it should be performed exceeds the statewide average for similar vehicles.
2. The rate at which the fuel cap integrity test is not performed on vehicles for which it should be performed exceeds the statewide average for similar vehicles.
3. The rate at which the low pressure fuel evaporative test is not performed on vehicles for which it should be performed exceeds the statewide average for similar vehicles.
4. The rate at which inspections are aborted exceeds 125% of the statewide average for similar vehicles.
5. The rate at which inspections are restarted exceeds 125% of the statewide average for similar vehicles.
6. The rate at which the maximum number of allowable OBDII readiness monitors are unset exceeds 125% of the statewide average for similar vehicles.
7. The rate at which the OBDII inspection is not performed on vehicles for which it should be performed exceeds the statewide average for similar vehicles.

iv. Follow-up Pass Rate (FPR)

Identifies which STAR certified stations must employ higher performing technicians. Currently, there are no limitations as to whom a station can employ for the purpose of inspecting and repairing the highest-polluting vehicles. Stations are solely responsible for the behavior of their technicians. This change ensures that technicians will also be responsible for their long-term performance. Stations will be responsible for maintaining their FPR score; this can be accomplished by hiring the most competent technicians that repeatedly perform proper inspections. STAR certified stations that have low FPR scores will not be allowed to hire new technicians or technicians without FPR scores (generally caused by low test volume). STAR certified stations with higher FPR performance will be able to hire new technicians and technicians that have not received an FPR score.

FPR scores will be available upon adoption of this regulation. This will provide stations and technicians sufficient time to improve an FPR score by modifying behavior prior to the actual application of this performance measure.

v. Citations, Probation, Crimes, and Discipline

Stations are ineligible for the STAR program if the station or technician has been issued any citations by BAR that took effect within the last year. Similarly, the station or technician may not have any administrative actions that became effective within the last three years. Stations and technicians may not have been convicted of a crime or be liable in a civil suit, as related to their duties as an ARD, a Smog Check station, or a Smog Check technician, that became effective within the last three years.

vi. Compliance with all licensure, license posting, estimate, repair order, invoice, and record-keeping requirements.

BAR requires STAR stations meet these requirements as a means of providing consumer protection.

vii. Possession of all required manuals, publications, tools, equipment, and verification of their proper working order.

BAR requires STAR stations have and maintain these items to make sure the station is equipped to handle vehicle repairs. Ultimately, this requirement helps ensure consumer protection.

viii. STAR certified stations must display a STAR sign.

Consumers with a likely high-emitting or gross polluting vehicle must receive an inspection at a STAR certified station. This requirement

necessitates BAR developing signage to help the public identify Smog Check stations that are eligible to provide STAR services.

- ix. STAR stations cannot have had a STAR certification invalidated within the last six months.

This requirement is necessary in order to ensure the protection of consumers from potentially fraudulent Smog Check inspections. Requiring stations to wait six months before reapplying will incentivize stations to work more diligently and carefully at performing inspections correctly. This condition reduces BAR workload associated with stations bouncing in and out of the program.

10. Add Section 3392.4 to Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Establish an effective date of January 1, 2013 for the STAR program.
- b. This section addresses the STAR certification program evaluation. Specifically, this section does the following:
 - i. STAR certified stations must continue to meet the STAR performance measures on a quarterly basis. This requirement will help ensure stations continue to operate at a high standard and likely high-emitting vehicles are inspected properly.
 - ii. This section allows BAR to physically inspect STAR certified stations for compliance with station requirements. This inspection will allow BAR to monitor station performance to ensure they continue to operate at a high standard.
 - iii. AB 2289 requires that BAR provide an individual technician and station their STAR score prior to the program being implemented. The scores will be made available on BAR's Web site and provide businesses and individuals an easily accessible medium for viewing their performance in relation to the STAR program. To view a STAR score an individual must know the station's or the technician's license number. Additionally, stations and technicians will have ample time to improve their behavior prior to the January 1, 2013 operational date of the STAR program.

11. Amend Section 3392.5 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. Amend this section by adding a sunset date of December 31, 2012 for this Gold Shield program requirement. This change is necessary because AB 2289 requires BAR to develop a certification program that relies strictly on inspection-based

performance standards. The new STAR program will become operational on January 1, 2013.

12. Add Section 3392.5.1 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. This section becomes effective January 1, 2013 and specifies causes for invalidation of a STAR certification to ensure that stations and technicians are performing at an acceptable standard. The following are causes for invalidation:
 - i. The station, technician, or manager is subject to any disciplinary action or citation;
 - ii. The station's ARD registration or Smog Check license becomes delinquent;
 - iii. BAR disciplines the ARD registration or Smog Check station license, or the license of any technician employed by the station;
 - iv. The station does not meet for two consecutive calendar quarters the standard for any one of the following performance measures: SVFR; Gear Shift Incident; Excessive Test Deviation Rate;
 - v. The station employs a technician with an Follow-up Pass Rate (FPR) score below 0.1;
 - vi. The station's FPR score is less than 0.1 and the station employs a technician with no FPR score;
 - vii. The station's FPR score is less than 0.4 and the station hires a technician with no FPR score;
 - viii. The station hires a technician with an FPR score less than 0.4;
 - ix. The station is unable to provide the services required of a STAR station;
 - x. A station located in a basic or change of ownership area that issues a certificate of compliance to an Enhanced Area vehicle without the required ASM test. Vehicles purchased by a motor vehicle dealer with the intent of offering the vehicle for sale upon the dealer's premises are the exception to this rule.
- b. A station may give BAR at least ten days notice to withdraw from the STAR program.

13. Amend Section 3392.6 of Article 10 of Chapter 1 of Division 33 of Title 16 of the

California Code of Regulations, as follows:

- a. Amend this section by adding a sunset date of December 31, 2012 for this Gold Shield program requirement. This change is necessary because AB 2289 requires BAR to develop a certification program that relies solely on inspection-based performance standards. The new STAR program will become operational on January 1, 2013.

14. Add Section 3392.6.1 of Article 10 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

- a. This section was added due to the creation of the STAR certification program, which becomes effective January 1, 2013. AB 2289 mandates a specific appeal process and describes the amount of time given for STAR hearings and determinations.

Incorporation by Reference

CCR section 3394.3.1 incorporates the STAR Station Certification Application form (STAR-1 07/1/2012). This form will be used by Smog Check stations that are applying to become STAR certified.

The incorporation by reference of these applications is appropriate since publishing these documents in the California Code of Regulations would be cumbersome, unduly expensive, impractical and unnecessary. If anyone should wish to examine the revised applications, they are available upon request from BAR. The revised applications will also be available for review throughout this rulemaking process and will be available on BAR's Web site at www.smogcheck.ca.gov.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

No cost or savings to state agencies and in federal funding to the state.

The proposed STAR program is a voluntary program authorized pursuant to AB 2289 (Eng, Chapter 258, Statutes of 2010). The purpose of the legislation is to help ensure likely high-emitting vehicles receive a biennial Smog Check inspection at higher-performing stations. These changes are intended to improve the effectiveness of the Smog Check Program and help improve California air quality.

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:

BAR 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 proposed regulation creates a new certification program referred to as the STAR program. This program does not require participation and there are no costs associated with becoming STAR certified.

IMPACT ON JOBS/NEW BUSINESSES:

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The proposed STAR station inspection-based performance standards regulation will incentivize Smog Check stations and technicians to perform proper inspections (and repairs) of vehicles. The incentive allows Smog Check stations that meet certain performance criteria to perform inspections on likely-high emitting and gross polluting vehicles.

Consumers will benefit in a number of different ways from the proposed regulation. As more vehicles with emissions related problems are properly repaired, consumers will benefit from reduced repair bills due to problems being detected early before the repairs become more costly. Additionally, consumers are expected to benefit from improved vehicle fuel economy and improved air quality from improved smog check performance by stations and technicians inspecting likely high-polluting vehicles.

STAR stations will be required to post a STAR program sign similar to the current Gold Shield sign. BAR has informally contacted a variety of sign manufacturers and determined the average cost is likely to be approximately \$60 per STAR certified station. In addition, STAR stations performing proper repairs on vehicles failing a Smog Check inspection may benefit through increased revenue.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The proposed STAR certification is a voluntary program and does not prevent any station from performing Smog Check inspections.

CONSIDERATION OF ALTERNATIVES

BAR 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

BAR 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:

Garrett Torgerson
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-1109
Fax No.: (916) 255-4290
E-mail: garrett.torgerson@dca.ca.gov

WEB SITE ACCESS

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

