

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 33. BUREAU OF AUTOMOTIVE REPAIR**

FINDING OF EMERGENCY

CONSUMER ASSISTANCE PROGRAM UPDATES

The Bureau of Automotive Repair (Bureau) finds that an emergency exists, as defined in Government Code section 11342.545. Accordingly, the Bureau finds that immediate action to amend the Board's regulations is required to avoid serious harm to the public peace, health, safety, and general welfare. A delay in implementing the new requirements will result in continued harm to the public.

Government Code section 11346.1(a)(2) requires that at least five (5) working days prior to submission of a proposed emergency regulation to the Office of Administrative Law (OAL), the adopting agency shall provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

After submission of the proposed emergency regulation, the OAL shall allow interested persons five (5) calendar days to submit comments, on the proposed emergency regulations, as set forth in Government Code section 11349.6.

BACKGROUND

In December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread to outside of China, impacting more than 75 countries including the United States. The most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. Most people (about 80%) recover from the disease without needing special treatment. However, around 1 out of every 6 people who gets COVID-19 becomes seriously ill and develops difficulty breathing. Older people, and those with underlying medical problems like high blood pressure, heart problems or diabetes, are more likely to develop serious illness.

On March 4, 2020, Governor Gavin Newsom (Governor) declared a State of Emergency based on COVID-19 (SOE).¹ According to the SOE, officials expect the number of cases in California, the United States, and worldwide to increase. Experts anticipate that while a high percentage of individuals affected by COVID-19 will experience flu-like symptoms, some will have more serious symptoms and require hospitalization,

¹ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

particularly individuals who are elderly, or already have underlying chronic health conditions. The Governor has declared it imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare for an increasing number of individuals requiring medical care and hospitalization. If COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in communities and within the healthcare delivery system.

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, signifying the worldwide spread of COVID-19.

On March 19, 2020, Governor Newsom imposed a statewide shelter-in-place order. This exempted from the requirement to shelter in place activity as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction, including housing construction.

Contents of this Emergency Rulemaking

The Bureau's Smog Check Program is designed to reduce emissions by identifying and repairing vehicles that exceed specific emissions standards as set by the California Air Resources Board. A vehicle that has failed its Smog Check inspection must be repaired and pass a subsequent Smog Check inspection in order to complete the Department of Motor Vehicles' (DMV's) registration renewal process.

In order to assist vehicle owners in complying with the provisions of the Smog Check Program, the Bureau is also charged with administering the Consumer Assistance Program (CAP) pursuant to Health and Safety Code (HSC) sections 44062.1 and 44062.3. CAP has two components: Vehicle Retirement (VR) and Repair Assistance (RA). Through VR, a vehicle owner can retire a failing vehicle for either \$1,000 or \$1,500, if they meet income eligibility requirements. Through RA, a low-income vehicle owner who meets CAP's eligibility requirements and chooses to repair a vehicle after it fails a biennial Smog Check inspection may receive up to \$500 toward emissions-related repairs at a STAR-certified test-and-repair station operating under an agreement with the Bureau. The goals of these programs are to reduce air pollution and assist vehicle owners whose vehicles fail the Smog Check inspection.

In this emergency proposal, the Bureau proposes amendments to the California Code of Regulations (CCR) sections related to the Bureau's Consumer Assistance Program (CAP). This emergency proposal affects CCR sections 3394.3 and 3394.4 by increasing repair assistance contribution limits to income-eligible vehicle owners with pre-approval

from the Bureau, by restructuring the consumer copay for repairs, by allowing participation in the CAP of a vehicle with vehicle registration expired up to 365 days, and by eliminating eligibility requirements pertaining to prior registration lapses. This emergency proposal also amends CCR section 3394.6 and the CAP application form incorporated by reference therein. Section 3394.6 is being revised to reflect an updated revision date for the form, and the form is being updated to reflect the Bureau's correct website, and to update the repair assistance amounts to the amounts established through this rulemaking.

Facts Supporting a Finding of Emergency

The Bureau has been aware of a decline in participation in its Consumer Assistance Program in the last decade; during the past seven years, utilization of the repair assistance option of CAP by low-income vehicle owners has decreased dramatically. There are fewer applicants, and a smaller percentage of those that do apply are approved. The participation rate among approved applicants dropped from 92% in Fiscal Year 2011/12 to 44% in Fiscal Year 2018/19. Further, between January 1994 and September 2019, the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Motor Vehicle Maintenance and Repair increased 101.5% compared to 74% for the overall Consumer Price Index. This means that a repair which cost \$450 in 1994, now costs over \$900.

Prior to the onset of the COVID-19 situation in the United States, the Bureau was in the process of proposing the changes in this emergency proposal. However, striking and acute changes in the employment environment in California, and the particular need to ensure critical workers are able to do their jobs, create a unique set of circumstances giving rise to this finding of emergency.

Since mid-March 2020, millions of Californians have lost their jobs. The significance of this number of claims cannot be overstated. As noted by the Governor's Office, in the four weeks preceding April 9, 2020:

“California has processed about 2.3 million unemployment insurance claims, which is more than the total number of claims filed in 2019. Just for the week ending on Saturday, April 4, 2020, the California Employment Development Department (EDD) processed 925,450 claims, which is a 2,418% increase over the same week last year.”²

Those fortunate enough to remain employed may face reduced work hours, furloughs, or other negative employment consequences caused by the ongoing effects of COVID-19. These stressors will put untold numbers of Californians into situations where they

² <https://www.gov.ca.gov/2020/04/09/governor-newsom-announces-additional-unemployment-benefits-for-workers-impacted-by-covid-19-as-unemployment-claims-reach-record-levels/>

are no longer able to pay for legally required vehicle repairs. The longer this situation persists, the greater the risk of vehicles falling out of operability and the less the capability of California's workforce to use their motor vehicles. Moreover, the pressing need for access to required repairs will persist after the immediate danger of COVID-19 passes. Unemployed Californians seeking to return to the work force may be unable to do so if they cannot access reliable and legal transportation. Alternatively, such individuals may be compelled to operate high-polluting vehicles in violation of law, or may be compelled to operate unregistered vehicles due to economic pressures.

Ensuring the maximum number of Californians have access to transportation will have systemic benefits to the health and welfare of the state going forward. More legally drivable cars means more participation in the workforce, which in turn means less long-term pressure on social welfare programs statewide. The sooner a Californian can return to work, the sooner the relief will come to California's unemployment insurance system.

At the same time, persons still employed and providing essential services must be provided access to timely subsidized vehicle repair where appropriate. The Bureau has already been aware of the need for improved assistance. The COVID-19 virus has brought that need into stark relief.

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) section 9882 authorizes the Bureau to "adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of" the Automotive Repair Act (BPC sections 9880 *et seq.*). Separately, Health and Safety Code Section 44002 grants the Department all the powers and authority granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

These grants together provide the Bureau the authority to regulate the Consumer Assistance Program.

The proposed regulation implements, interprets, and makes specific Health and Safety Code section 44062 which, among other things, allows the Department to increase its Repair Assistance contribution above its current maximum threshold if it determines the repairs are cost-effective.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action increases repair assistance contribution limits to income-eligible vehicle owners with pre-approval from the Bureau, restructures the consumer copay, allows participation in the Consumer Assistance Program (CAP) of a vehicle with vehicle registration expired up to 365 days, eliminates eligibility requirements pertaining to prior registration lapses, and updates the CAP application to reflect the Bureau's current website and the revised amounts receivable through repair assistance as established through this emergency rulemaking.

Anticipated Benefit of the Proposed Regulations

In addition to the immediate benefits noted above in this document, the Bureau has made an initial determination that the proposed regulatory action will have a positive impact on the health and welfare of California citizens to the extent it promotes compliance with laws and regulations.

Further, the Bureau has made an initial determination the proposed regulatory action will tend to reduce air pollution and have a positive effect on the environment.

The Bureau has also determined the proposed regulatory action will not affect worker safety.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Bureau has made the following initial determinations:

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

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

The Bureau anticipates that the proposed regulatory action will result in increased program expenditures for vehicle repairs. However, the implementation, administration, and enforcement of the proposed changes will be fully absorbed by existing Bureau personnel working within existing resources.

This proposal will result in no costs or savings in federal funding to the state.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

EFFECT ON HOUSING COSTS:

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE:

None.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

1. Chart showing percent change of the Consumer Price Index (CPI) (Motor Vehicle Maintenance and Repair) January 1994 through September 2019. Produced from the US Department of Labor, Bureau of Labor Statistics *Consumer Price Index - All Urban Consumers: Series ID CUUR0000SETD (Motor Vehicle Maintenance and Repair)*.
2. United States Department of Labor, Bureau of Labor Statistics: *Consumer Price Index - All Urban Consumers: Series ID CUUR0000SETD (Motor Vehicle Maintenance and Repair)*. Downloaded from the BLS web site <https://data.bls.gov/pdq/SurveyOutputServlet> on 10/31/19.
3. Bureau of Automotive Repair Cost Survey of Typical Repairs Needed to Correct Smog Check Failure (Data collected June 2017, Report updated November 2019)
4. California Air Resources Board Fact Sheet: Air Pollution and Health (December 2009)
5. California Air Resources Board Fact Sheet: Air Pollution Sources, Effects, and Controls (December 2009)

6. California Air Resources Board Fact Sheet: On Board Diagnostics II (October 28, 2015)
7. CAP Annual Supplemental Report to Legislature
8. Denial Reasons Related to Vehicle Registration
9. Governor's Proclamation of a State of Emergency in California, dated March 4, 2020. Printout from <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.
10. World Health Organization Informational Printout on Corona Virus from <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>, dated March 19, 2020.
11. World Health Organization Informational Printout on Corona Virus from <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, dated March 19, 2020.
12. Los Angeles Times news article, dated March 19, 2020, regarding Corona Virus death toll from <https://www.latimes.com/california/story/2020-03-17/california-death-toll-from-coronavirus-rises-to-11-amid-extraordinary-rules-to-slow-spread>, dated March 19, 2020.
13. Governor's Executive Order N-33-20, issued March 19, 2020. Printout from <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.
14. Publication of the Governor's Office regarding unemployment benefits for workers impacted by Corona Virus and numbers of workers seeking assistance, dated April 9, 2020, from <https://www.gov.ca.gov/2020/04/09/governor-newsom-announces-additional-unemployment-benefits-for-workers-impacted-by-covid-19-as-unemployment-claims-reach-record-levels/>.