TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING

Exhaust System Certificate of Compliance Fee

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs (DCA), Bureau of Automotive Repair (Bureau) is proposing to take the action described in the Informative Digest. No public hearing has been scheduled. Any interested person, or his or her duly authorized representative, may request, in writing, a public hearing pursuant to subdivision (a) of Section 11346.8 of the Government Code. A request for hearing must be received by the Bureau contact person designated below not less than 15 days prior to the close of the written comment period.

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 November 30, 2009. 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 27150.2 of the Vehicle Code and Section 9882 of the Business and Professions 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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau of Automotive Repair, within the Department of Consumer Affairs, is the state agency charged with administration and implementation of the Smog Check Program (Program).

The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light trucks, by requiring that these vehicles meet specific emissions standards.

BACKGROUND:

Health and Safety Code section 44014 (a) (2) requires the Bureau to provide neutral testing centers (Referee station) for vehicle owners disputing the results of their Smog Check inspection or otherwise needing assistance in completing the inspection process. Typically, referee stations offer specialized inspection services that are beyond the scope of a typical Smog Check station. These facilities are located throughout California.

Existing law requires the Referee to perform services directly related to the Smog Check Program. These services include the following:

- the clearance of citations received for excessive vehicular exhaust noise, pursuant to VC section 27150.2;
- the issuance of repair cost waivers and economic hardship extensions pursuant to Health and Safety Code (HSC) sections 44017 and 44017.1; and
- the inspection of specially constructed vehicles, pursuant to HSC section 44017.4.

This regulatory action specifies and sets the fee for the Referee test of vehicular exhaust system noise citations only. Specifically, VC section 27150.2 requires the Referee to provide testing and certification for vehicles that receive a citation from law enforcement for violation of VC section 27150 or 27151. VC section 27150.2 (d) requires the Referee to charge a fee to recover the costs incurred by the Bureau in providing exhaust system noise citation testing and certification.

The Bureau conducted a cost analysis and calculated the cost incurred by the Referee for providing exhaust system noise certification to be about $108 per vehicle. Based on this analysis, the Bureau proposes vehicle owners pay a $108 fee for the exhaust system noise certificate of compliance. Currently, the Referee provides the inspection and certification at no cost to the vehicle owner.

II. Conclusion.

The Bureau finds that the proposed action to add Section 3340.36.1 to Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations is necessary in order to meet the requirements of VC section 27150.2 and charge vehicle owners the costs of providing exhaust system noise certification.

CURRENT REGULATION:

There is no current regulation which establishes a fee for an exhaust noise system certificate of compliance.

EFFECT OF REGULATORY ACTION:

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

This proposal would set a fee for the exhaust system certificate of compliance issued pursuant to Vehicle Code (VC) Section 27150.2. The proposed action will add Section 3340.36.1 to Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations. Section 3340.36.1 will read as follows:

> The fee for an exhaust system certificate of compliance, issued pursuant to section 27150.2 of the Vehicle Code shall be one hundred eight dollars ($108).

FISCAL IMPACT ESTIMATES

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

> BAR anticipates recovering costs associated with the inspection and certification of vehicles requiring clearance of citations for excessive vehicular exhaust noise.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

> None.

LOCAL MANDATE:

> None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17561 REQUIRES REIMBURSEMENT:

> None.

BUSINESS IMPACT:

The Bureau 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 following studies/relevant data were relied upon in making the above determination:

The proposed action will set the fee which vehicle owners would pay to the Referee for the noise citation inspection. The fact that this regulatory action only recovers the costs of the inspection from vehicle owners supports how this regulation does not impact businesses.

The proposed action is directed only at vehicle owners who have received a citation for violation of VC section 27150 or 27151 and seek a certificate of compliance from a referee station. Businesses are not the focus of this proposed action. Businesses will only be affected if they own a vehicle that is cited and they seek a certificate of compliance.

IMPACT ON JOBS/NEW BUSINESSES:

The Bureau has determined that this regulatory proposal 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 cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, other than the Business Impact described above, and that are known to the Bureau are:

Vehicle Owner Impact

For Fiscal Year 2007-08, vehicle owners sought the clearance of exhaust system noise citations for 4,639 vehicles. At a cost of $108 per inspection, vehicle owners would have incurred $503,000 to have their vehicles inspected.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Bureau has determined that the proposed regulations would affect small businesses in the same manner it would affect a private person. If the small business owns a vehicle that receives a citation in violation of VC section 27150 or 27151, the small business would incur the same $108 fee to obtain a certificate of clearance.

CONSIDERATION OF ALTERNATIVES

The Bureau 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

The Bureau 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 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:

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The backup contact person is:

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WEB SITE ACCESS

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