STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2012-1227-01	2013-0405-02S	

For use by Office of Administrative Law (OAL) only

2013 APR -5 PM 1:59

OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED IN THE OFFICE OF THE SECRETARY OF STATE

2013 MAY 17 PM 2:37

DEBRA BOWEN SECRETARY OF STATE

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Consumer Affairs / Bureau of Automotive Repair

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY
ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER: 2013, 2-Z

PUBLICATION DATE: 1/11/2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Referee Services and Repair Cost Waiver Limit

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 3340.4

AMEND: 3340.1 and 3340.43

REPEAL:

TITLE(S): 16

3. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
☐ Emergency (Gov. Code, §11346.1(b))
☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
☐ Emergency Readopt (Gov. Code, §11346.1(h))
☐ File & Print
☐ Other (Specify)
☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
n/a

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
☒ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
☐ Effective on filing with Secretary of State
☐ §100 Changes Without Regulatory Effect
☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
☒ Department of Finance (Form STD. 399) (SAM §6660)
☐ Fair Political Practices Commission
☐ State Fire Marshal
☐ Other (Specify)

per agency request

7. CONTACT PERSON: Vince Somma | TELEPHONE NUMBER: (916) 403-8560 | FAX NUMBER (Optional): (916) 464-3424 | E-MAIL ADDRESS (Optional): vincent.somma@dca.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Denise Brown | DATE: 4-4-13

TYPED NAME AND TITLE OF SIGNATORY
DENISE BROWN, Director, Department of Consumer Affairs

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 17 2013

Office of Administrative Law

BUREAU OF AUTOMOTIVE REPAIR

ORDER OF ADOPTION

REFEREE SERVICES AND REPAIR COST WAIVER

(1) Amend Section 3340.1 of Title 16 of the California Code of Regulations as follows:

§ 3340.1. Definitions.

"Acceleration Simulation Mode" or "ASM" means a type of vehicle emissions test conducted with the test vehicle on a chassis dynamometer to simulate on-road acceleration operating conditions.

"After repairs test" means a test performed on a vehicle after repairs have been made to that vehicle as a result of failing an inspection at a smog check station.

"Alternative fuel retrofit system" means an aftermarket system certified by the California Air Resources Board to be installed on a vehicle to operate on an alternate fuel, in lieu of the fuel type specified by the original vehicle manufacturer.

"ARD-exempt heavy-duty station" means a smog check test-and-repair station or a smog check test-only station that only tests and/or repairs commercial vehicles which have a gross vehicle weight rating of 10,000 pounds or greater.

"Basic area" or "Basic vehicle inspection and maintenance program area" means the smog check program conducted in any area of the state which is not classified as an enhanced vehicle inspection and maintenance program area.

"BAR-97 Emissions Inspection System" or "EIS" means tamper-resistant test equipment meeting the requirements of subsection (a) of section 3340.17 of the California Code of Regulations and is certified by the bureau for use in the Smog Check Program. The EIS collects and measures emissions data, and where applicable OBD data, then transmits inspection results to the Vehicle Information Database.

"Bureau" or "BAR" means the Bureau of Automotive Repair.

"Chassis dynamometer" is a treadmill-like device for a vehicle that is used to simulate on-road acceleration operating conditions.

"Clean piping," for the purposes of Health and Safety Code section 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

"Comparative Failure Rate" or "CFR" means that the station's failure rate, under the Gold Shield Program, must be comparable to the test-only station failure rate for all non-directed vehicles of the same model-year. The station's failure rate, using initial tests, by model-year, of non-directed vehicles is applied to an industry-wide failure rate for test-only stations, calculated quarterly by smog check program area, using initial tests, by model-year, of non-

directed vehicles inspected, and includes an allowable deviation to compensate for the random distribution of passing and failing vehicles based upon a 95 percent confidence level. This paragraph shall remain in effect through December 31, 2012.

"Consumer Assistance Program" or "CAP" means a program of the Bureau of Automotive Repair that provides eligible motor vehicle owners the options of Repair Assistance and Vehicle Retirement.

"Dismantler" means an automobile dismantler, as defined in Section 220 of the Vehicle Code and licensed pursuant to Section 11500 of the Vehicle Code, who has contracted with the Bureau to retire vehicles from operation.

"Engine change" means the installation of an engine in a vehicle that is different from the vehicle manufacturer original configuration as certified by the United States Environmental Protection Agency or California Air Resources Board.

"Enhanced area" or "Enhanced vehicle inspection and maintenance program area" means the smog check program conducted in any part of an urbanized area of the state which is classified by the Environmental Protection Agency as a serious, severe or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm.

"Excessive Test Deviation Rate" occurs under any of the following circumstances in a calendar quarter:

(1) The rate for which the ignition timing test is not performed exceeds the statewide average for similar vehicles where 90% of similar vehicles received the test.

(2) The rate for which the fuel cap test is not performed exceeds the statewide average for similar vehicles where 90% of similar vehicles received the test.

(3) The rate for which the low pressure fuel evaporative test is not performed exceeds the statewide average for similar vehicles where 90% of similar vehicles received the test.

(4) The rate for which the OBDII inspection is not performed exceeds the statewide average for similar vehicles where 90% of similar vehicles received the test.

(5) The rate for which inspections are aborted exceeds 125% of the statewide average for similar vehicles on test equipment of the same manufacturer.

(6) The rate for which inspections are restarted exceeds 125% of the statewide average for similar vehicles.

(7) The rate for which vehicles are initially inspected with the maximum allowable number of OBDII readiness monitors unset, as specified in Section 3340.42.2 (b), exceeds 125% of the statewide average for similar vehicles.

"Follow-up Pass Rate" (FPR) means a performance measure that evaluates whether vehicles previously certified by each station or technician are passing, in their current cycle, at higher than expected rates. Expected rates are calculated by averaging passing rates for similar vehicles, and then adjusting the rates to account for an individual vehicle's odometer reading,

the type of emissions inspection (ASM or TSI) performed in the current inspection cycle on the vehicle, the amount of time since the last certification for the vehicle, and the initial test results in the previous inspection cycle. An FPR score is assigned to both licensed smog check stations and technicians, and is based on the current inspection cycle test results of vehicles that were previously certified by stations and technicians. An FPR score ranges from zero to one, with zero representing the lowest possible score and one representing the highest possible score. FPR data reports are updated in January and July each year. Stations and technicians with insufficient inspection histories from which to calculate an FPR score will not receive an FPR score.

"Gaseous fuel" means fuel composed of propane, liquefied or compressed natural gas.

"Gear Shift Incident" means an inspection where data from the VID indicates the technician did not follow the gear selection procedure specified in the Smog Check Manual that is incorporated by reference in Section 3340.45.

"Gold Shield station" means a registered Automotive Repair Dealer who is also a smog check test-and-repair station which has been certified by the department and meets all the requirements specified in Article 10 of these regulations. This paragraph shall remain in effect through December 31, 2012.

"Heavy duty vehicle" means a vehicle with a manufacturer's gross vehicle weight rating of 8501 pounds or more.

"Household" means a family of persons or any group of two or more unrelated persons that reside together and share common living expenses.

"Implementation area" means a geographical area, in which a local district has requested implementation of a biennial inspection program pursuant to section 44003 of the Health and Safety Code.

"Initial test" means the first Smog Check inspection of a vehicle done in official test mode or pre-test mode and performed within one hundred eighty (180) days prior to a registration renewal date or a change of ownership date for that vehicle. An initial test does not include tests that are aborted before completion or tests done in the training or manual modes of the EIS.

"Non-directed vehicle" means a vehicle that was not required to be inspected at a station pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code.

"OBD Inspection System" or "OIS" consists of an OBD Data Acquisition Device or (DAD) working in conjunction with commercial off-the-shelf computer, bar code scanner, data entry device, and printer. The DAD is the test equipment that meets the requirements of subsection (b) of section 3340.17 of the California Code of Regulations and is certified by the bureau for use in the Smog Check Program. The DAD facilitates OBD data transfer between the inspected vehicle and the OIS computer. The OIS computer relays inspection information to and from the DAD to the Vehicle Information Database (VID).

"Repair Assistance" means a component of the Consumer Assistance Program (CAP) that provides financial assistance for emissions-related repairs to help eligible motor vehicle

owners bring their vehicles into compliance with the requirements of the Smog Check Program.

"Repair-Only station" means a station licensed by the bureau to diagnose and repair vehicles in the smog check program.

"Revivable Junk Receipt" means a receipt showing proof that the vehicle is recorded and titled as "junked" by the Department of Motor Vehicles.

"Similar Vehicle Failure Rate" or "SVFR" means a calendar quarter comparison of the initial test failure rate of vehicles at an individual station to the initial test failure rate for similar vehicles inspected statewide, taking into account the vehicle odometer reading, time since passing the last inspection, and initial test results in the previous cycle. Vehicles for which data is not available to adequately establish an initial test failure rate will not be used in the SVFR calculation. This paragraph shall become effective July 1, 2012.

"Similar vehicles" means vehicles with the same Vehicle Lookup Table Row ID, or at a minimum, vehicles with the same model-year, make, and engine displacement.

"Smog Check Inspector" or "Inspector" means an individual licensed by the bureau to inspect, and certify the emissions control systems on vehicles subject to the Smog Check Program in all areas of the state.

"Smog check program" or "program" means the motor vehicles inspection program conducted pursuant to section 44005 of the Health and Safety Code, and as hereby described in this article.

"Smog Check Referee" or "Referee" means a facility under contract with BAR to provide independent evaluations of vehicles and services to accommodate vehicles with unusual inspection circumstances.

"Smog Check Repair Technician" or "Repair Technician" means an individual licensed by the bureau to diagnose, adjust, and repair the emissions control systems on vehicles subject to the Smog Check Program at smog check stations in all areas of the state.

"Smog check station" or "station" means a smog check test-only station or smog check test-and-repair station licensed by the bureau in the smog check program.

"Smog check technician" or "technician" means an individual who holds a smog check repair technician and/or inspector licenses pursuant to section 3340.28 of this article.

"Smog check test-and-repair station" or "test-and-repair station" means a smog check station licensed by the bureau to test, inspect, diagnose and repair vehicles in the smog check program.

"Smog check test-only station" or "test-only station" means a smog check station licensed by the bureau to test and inspect vehicles in the smog check program.

"STAR" means a voluntary certification program that applies to a registered Automotive Repair Dealer that is also a licensed smog check test-and-repair station or a test-only station that meets all requirements specified in Article 10 of these regulations.

"Technician Information Table" means the bureau's electronic list of licensed technicians authorized to perform official Smog Check inspections at a specific station.

"Test Deviation" occurs under any of the following conditions:

(1) The station fails to inspect ignition timing on a vehicle that should receive this test.

(2) The station fails to perform the fuel cap test on a vehicle that should receive this test.

(3) The station fails to perform the low pressure fuel evaporative test on a vehicle that should receive this test.

(4) The station fails to perform an OBDII inspection on a vehicle that should receive an OBDII inspection.

(5) The station aborts an inspection.

(6) The station restarts an inspection.

(7) The station performs an initial inspection on a vehicle with the maximum allowable number of OBDII readiness monitors unset, as specified in Section 3340.42.2 (b).

"Two-Speed Idle" or "TSI" means a type of vehicle emissions test conducted with the vehicle transmission in neutral or park while the engine is run at two different engine speeds.

"Vehicle Information Database" or "VID" means a centralized computer database and computer network, which is readily accessible by all licensed smog check technicians on a real time basis.

"Vehicle Inspection Report" or "VIR" means an official smog check inspection report that is printed from an OIS or EIS and given to the registered vehicle owner(s) or their legal representative.

"Vehicle Retirement" means a component of the Consumer Assistance Program (CAP) that provides payments to eligible motor vehicle owners who choose to voluntarily retire their vehicles from operation rather than make emissions-related repairs to bring the vehicles into compliance with the requirements of the Smog Check Program.

"VLT Row ID" means the vehicle lookup table row identification number that identifies a vehicle using information about its body type, model-year, make, model, engine displacement, and transmission type.

Note: Authority cited: Sections 44001.5, 44002, 44072.10, 44091 and 44095, Health and Safety Code; and Section 9882, Business and Professions Code. Reference: Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2, 44014.5, 44017, 44017.1, 44030, 44036, 44037.1, 44056, 44062.1, 44070, 44072.10, 44092, 44093, 44094 and 44103, Health and Safety Code; Sections 220 and 11500, Vehicle Code; and Section 11505, Government Code.

(2) Adopt Section 3340.4 to Title 16 of the California Code of Regulations to read as follows:

§ 3340.4. Smog Check Referee Services.

(a) Referee services include, but are not limited to, the following:

(1) The issuance of repair cost waivers and economic hardship extensions pursuant to Sections 44017 and 44017.1 of the Health and Safety Code.

(2) The inspection of a vehicle in which the vehicle owner disputes the results of a previous smog check inspection and is seeking an independent evaluation.

(3) The inspection of vehicular exhaust systems in accordance with Section 27150.2 of the Vehicle Code.

(4) Inspection of vehicles equipped with engine or emission control configurations that do not match an original equipment manufacturers' United States Environmental Protection Agency or California Air Resources Board emission control certification standard. These vehicles include, but are not limited to, the following:

(A) Vehicles equipped with an engine change as defined in Section 3340.1.

(B) Direct import vehicle as defined in Section 39024.6 of the Health and Safety Code.

(C) Vehicles equipped with an alternative fuel retrofit system as defined in Section 3340.1.

(D) Specially constructed vehicles, including vehicles covered by the provisions described in Section 44017.4 of the Health and Safety Code.

(5) The inspection of a vehicle in which the physical or operational design or the vehicle's condition presents unusual inspection circumstances and/or inspection incompatibilities.

(6) The inspection of a vehicle in which a law enforcement agency has requested a referee inspection.

(7) Issuance of a limited parts exemption.

(8) The inspection of a government vehicle that is exempt from annual registration renewal, or is part of a fleet that is licensed pursuant to the provisions of Section 44020 of the Health and Safety Code.

(9) The inspection of vehicles in which the bureau has requested a referee inspection.

(b) As applicable, the referee shall affix a tamper resistant label to the vehicle. At a minimum, the label shall identify the engine and emission control systems requirements applicable to the vehicle in which the label is installed. Once a label is affixed, a vehicle with an engine change, a direct import vehicle, a vehicle with an alternative fuel retrofit system, or a specially constructed vehicle, excluding vehicles registered pursuant to Section 9565 of the Vehicle Code, may have subsequent smog check inspections performed at a licensed Smog Check station.

Note: Authority cited: Sections 44014, 44015, and 44036, Health and Safety Code; and Section 9882, Business and Professions Code. Reference: Sections 44036, 44017, 44017.1, 44017.4, and 44020, Health and Safety Code and Sections 9565 and 27150.2, Vehicle Code.

(3) Amend Section 3340.43 to Title 16 of the California Code of Regulations to read as follows:

§ 3340.43. ~~Smoke Test Failure;~~ Repair Cost Limit.

(a) Beginning July 1, 2013, and in accordance with Health and Safety Code 44017 (c), a vehicle owner shall qualify for a repair cost waiver only after an expenditure of not less than $650 in smog check related repairs. The bureau shall revise the maximum repair cost limit based on adjustments to the Consumer Price Index (CPI), as published by the Bureau of Labor Statistics. The expenditure amount shall be increased biennially, only if the CPI results in an adjustment of at least $25 since the last CPI adjustment. The revised repair cost limit shall be rounded to the nearest $5.

(b) Repairs covered by a vehicle manufacturer emissions warranty shall not apply toward the repair cost limit. Additionally, a vehicle owner shall not qualify for a repair cost waiver if the vehicle is in need of repairs that are covered by a manufacturer's emissions warranty.

(c) Pursuant to subdivision (e) of section 44017 of the Health and Safety Code, the owner of a motor vehicle that has failed the visible smoke test required by subsection (f) of Section 3340.42 and section 44012.1 of the Health and Safety Code, shall only be eligible for the repair cost waiver specified in subdivision (a) of section 44017 if all of the following conditions are met:

~~(a)~~(1) The motor vehicle owner has a household income greater than the limit specified in subsection (b) of Section 3394.6, but less than or equal to two hundred fifty percent (250%) of the federal Poverty Guidelines, as published by the United States Department of Health and Human Services.

~~(b)~~(2) The motor vehicle owner's household income has been verified in accordance with subsection (b) of Section 3394.6.

~~(c)~~(3) The motor vehicle owner is not receiving any form of public assistance from any agency.

~~(d)~~(4) The motor vehicle's required emissions control equipment is not missing and has not been rendered partially inoperative or inoperative as a result of tampering.

Note: Authority cited: Sections 44002, 44015, and 44017, Health and Safety Code, and Section 9882, Business and Professions Code. Reference: Sections 44017 and 44062.1, Health and Safety Code.

Patrick Dorais, Deputy Chief
Bureau of Automotive Repair