

**TITLE 16. BUREAU OF AUTOMOTIVE REPAIR
PROPOSED REGULATIONS**

**SMOG CHECK LICENSING;
DISCIPLINARY GUIDELINES; PROBATIONARY REGISTRATION/LICENSE**

Legend: Deleted text is indicated by ~~strikethrough~~.
Added text is indicated by underlining.
Omitted text is indicated by * * * *.

- (1) Amend Section 3340.1 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations to read as follows:

§ 3340.1. Definitions.

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“Advanced emission specialist technician” means an individual licensed by the bureau, prior to August 1, 2012, to inspect, diagnose, adjust, repair, and certify the emissions control systems on vehicles subject the Smog Check Program at Smog Check stations in all areas of the state.

“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.

“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 ~~p~~Program conducted in any area of the state which is not classified as an enhanced vehicle inspection and maintenance program area.

“Basic area technician” means an individual licensed by the bureau, prior to August 1, 2012, to inspect, diagnose, adjust, repair, and certify the emissions control systems on vehicles subject the Smog Check Program at Smog Check stations in areas of the state designated as basic vehicle inspection and maintenance program areas

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“Emissions inspection system” or “EIS” means a tamper-resistant instrument which meets the requirements of subdivision (b) of ~~s~~Section 44036 of the Health and Safety Code and which is certified by the bureau for use in the California Smog Check ~~p~~Program.

“Enhanced area” or “Enhanced vehicle inspection and maintenance program area” means the ~~Smog~~ Check ~~p~~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.

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“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 sSmog eCheck 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.

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

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

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“Smog eCheck pProgram” or “program” means the motor vehicles inspection program conducted pursuant to sSection 44005 of the Health and Safety Code, and as hereby described in this article.

“Smog Check repair-only station” or “repair-only station” means a station licensed by the bureau to diagnose and repair vehicles in the Smog Check Program.

“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 sSmog eCheck stations in all areas of the state.

“Smog eCheck station” or “station” means a sSmog eCheck test-only station, ~~or a sSmog eCheck test-and-repair station,~~ or a Smog Check repair-only station licensed by the bureau in the sSmog eCheck pProgram.

“Smog eCheck technician” or “technician” means an individual who holds a sSmog eCheck repair technician and/or inspector licenses pursuant to sSection 3340.28 of this article.

“Smog eCheck test-and-repair station” or “test-and-repair station” means a sSmog eCheck station licensed by the bureau to test, inspect, diagnose and repair vehicles in the sSmog eCheck pProgram.

“Smog eCheck test-only station” or “test-only station” means a sSmog eCheck station licensed by the bureau to test and inspect vehicles in the sSmog eCheck pProgram.

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

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“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 sSmog eCheck technicians on a real time basis.

“Vehicle Inspection Report” or “VIR” means an official sSmog eCheck inspection report that is printed from an emissions inspection system and given to the registered vehicle owner(s) or their legal representative.

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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) Amend Section 3340.10 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3340.10. Licensing of Smog Check Stations.

A registered automotive repair dealer may be licensed as either a sSmog eCheck test-only station, a Smog Check test-and-repair station, or a Smog Check repair-only station in accordance with the following:

(a) Application. An applicant for an initial or renewal license shall submit an application to the bureau on form R-12 (01/11) “Application for Smog Check Station License,” which is hereby incorporated by reference, along with the fee required in subsection (b). An application to redesignate a license to another license type at any time shall be considered an application for an initial license.

(b) Fees. Fees are established as follows:

(1) Initial license fee -\$100.00.

(2) Renewal license fee if submitted on or before the date of license expiration -\$100.00.

(3) Delinquency fee if a renewal license fee is submitted after the date of license expiration - \$50.00, which shall be assessed in addition to the \$100.00 renewal license fee.

(c) Term of License. A station license shall expire one year from the last day of the month in which the license was issued unless renewed, suspended, rescinded, or terminated by operation of law. The bureau may advance the expiration date to correspond with the automotive repair dealer's registration expiration date. A licensee whose license has expired shall immediately cease to inspect, test, diagnose or repair vehicles or issue certificates as part of the sSmog eCheck pProgram.

(d) Inspection. An inspection of the applicant's facility shall be made by a representative of the bureau. A license may be issued only for an applicant that meets the qualifications prescribed in this article.

(e) Replacement License. In determining whether a fee is required for a replacement license, the definitions given in section 3306(c)(1) and (2) of this chapter shall apply.

(1) In the event of a change of name or address of a licensee, a new application shall be submitted to the bureau and no fee will be required.

(2) In the event of a change of ownership of a licensed business, a new application and a license fee of \$100.00 shall be submitted to the bureau.

(3) In the event a license is lost, destroyed, or mutilated, application shall be made to the bureau for a duplicate license. The person to whom the license was issued shall furnish satisfactory proof of licensure. Upon receipt of application, the bureau shall issue a duplicate license for the unexpired term of the license. Any lost license that is later found shall be returned to the bureau.

(f) No person shall operate a sSmog eCheck station unless a license to do so has been issued by the department.

(g) The redesignation of a Smog Check station license from one license type to another license type pursuant to this section shall not deprive the director of the right to proceed with any investigation or administrative disciplinary proceeding against the Smog Check station or to render a decision invalidating or revoking the license as redesignated.

(h) If a Smog Check station license is subject to an order of suspension, a probationary order, or any other administrative disciplinary actions at the time of redesignation from one license type to another license type pursuant to this section, the order of suspension, probationary order, or other administrative disciplinary action shall be applied to the redesignated license.

Note: Authority cited: Sections 44002 and 44034, Health and Safety Code; and Sections 163.5 and 9882, Business and Professions Code. Reference: Sections 44030, 44033 and 44034, Health and Safety Code.

(3) Amend Section 3340.28 of Article 5.5, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3340.28. Licenses and Qualification for Smog Check Inspectors and Repair Technicians.

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(e) Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

(f) The redesignation of a Basic Area Technician license or an Advanced Emission Specialist Technician license to a Smog Check Inspector license, Smog Check Repair Technician license, or both, shall not deprive the director of the right to proceed with any investigation or administrative disciplinary proceeding against the Smog Check Technician license or to render a decision invalidating or revoking the license(s) as redesignated.

(g) If a Basic Area Technician license or an Advanced Emission Specialist Technician license is subject to an order of suspension, a probationary order, or any other administrative disciplinary actions at the time of renewal and redesignation as a Smog Check Inspector, Smog Check

Repair Technician, or both, the order of suspension, probationary order, or other administrative disciplinary action shall be applied to the redesignated Smog Check Technician license.

(fh) An applicant for renewal of a Smog Check Repair Technician license who does not possess certification pursuant to subsection (c)(1)(D) of this section must provide proof, satisfactory to the bureau, of successful completion of the bureau specified diagnostic and repair training within the last five years.

Note: Authority cited: Sections 44002, 44014 and 44045.5, Health and Safety Code; and Section 9882, Business and Professions Code. Reference: Section 44014, 44031.5(e) and 44045.5, Health and Safety Code.

- (4) Amend Section 3395.4 of Article 12, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§ 3395.4. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearings, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled "Guidelines for Disciplinary Penalties and Terms of Probation" [~~May, 1997~~ August 2013] which are hereby incorporated by reference. The "Guidelines for Disciplinary Penalties and Terms of Probation" are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation. ~~--- for example: the presence of mitigating factors; the age of the case; evidentiary problems.~~

Note: Authority cited: Section 9882, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 11400.20, 11400.21 and 11425.50(e), Government Code.

- (5) Adopt Section 3395.5 of Article 12, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:

§3395.5. Probationary Registration or License

(a) Should the director deny an application for a standard registration or license pursuant to Sections 480, 9884.7, and 9889.1 through 9889.4 of the Business and Professions Code and 44072.1 of the Health and Safety Code, the director may offer the applicant a probationary registration or license subject to terms and conditions deemed appropriate by the director, pursuant to Section 9884.21 of the Business and Professions Code, by doing the following:

(1) Notify the applicant that the application for a standard registration or license is denied. Notification will be made, and the opportunity for hearing provided for, as required under Section 485 of the Business and Professions Code and the Administrative Procedures Act.

(2) Offer the applicant a probationary registration or license subject to terms and conditions.

(b) The applicant, when offered a probationary registration or license subject to terms and conditions, will have sixty (60) days from the date of service of the notice of denial of the application for a standard registration or license to do either of the following:

(1) Indicate acceptance, in writing, of the probationary registration or license and all specified terms and conditions.

(2) Reject the offer of a probationary registration or license subject to terms and conditions and request a hearing on the denial of the application for a standard registration or license.

(c) If the applicant rejects the offer of a probationary registration or license subject to terms and conditions, and does not request a hearing on the denial of the application for a standard registration or license within sixty (60) days, the applicant's right to each shall be deemed waived.

(d) When an applicant accepts the offer of a probationary registration or license subject to terms and conditions within sixty (60) days, any previous or subsequent requests for hearing on the denial of the application for a standard registration or license shall be considered withdrawn.

(e) Upon the bureau's timely receipt of written acceptance of the probationary registration or license subject to terms and conditions, the probationary registration or license will be issued subject to terms and conditions, as determined by the director, for up to three (3) years. The standard terms and conditions of probation, as specified by the bureau in the "Guidelines for Disciplinary Penalties and Terms of Probation," shall include, but not be limited to the following:

(1) Supervision requirements.

(2) Compliance and quarterly reporting requirements.

(f) During the probationary period, the probationary registration or license subject to terms and conditions shall be renewed in accordance with the requirements specified in the Automotive Repair Act and the Code for the applicable standard registration or license.

(g) Within sixty (60) days of the expiration of the probationary registration or license subject to terms and conditions, the applicant shall submit a new application and fees to obtain a standard registration or license. The director may consider any violation of the terms and conditions of the probationary registration or license and/or any administrative disciplinary action against the probationary registration or license as cause for denial of the new application for the standard registration or license.

(h) The expiration of the probationary registration or license shall not deprive the director to proceed with any investigation or administrative disciplinary proceeding against the probationary registrant or licensee or to render a decision invalidating or revoking the probationary registration or license.

Note: Authority Cited: Sections 9882 and 9884.19, Business and Professions Code.
Reference: Sections 475, 476, 477, 478, 480, 481, 482, 484, 485, 486, 487, 488, 489 and 9884.21, Business and Professions Code.