

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING**

CONSUMER ASSISTANCE PROGRAM UPDATES

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 below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, to be considered by the Bureau, must be received by the Bureau at its office no later than **5:00 p.m. on Tuesday, August 3, 2021**, or must be received by the Bureau at the hearing, if a hearing is held.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Health and Safety Code sections 44001.3, 44001.5, 44002, 44062.3, 44091, and 44094, and Business and Professions Code section 9882 and to implement, interpret, or make specific sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2, 44014.7, 44015, 44017, 44017.1, 44037.1, 44062.1, 44062.3, 44091, 44092, 44093, 44094, 44095, and 44125 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to California Code of Regulations Title 16, Division 33, Chapter 1, Article 11.

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, and eliminates eligibility requirements pertaining to prior registration lapses.

Background

Air Pollution negatively impacts public health in California. Large quantities of air pollution come from mobile sources, including cars and light duty trucks. The Smog Check Program was implemented in 1984 to reduce pollution caused by vehicle malfunction and emission control equipment tampering. The Bureau of Automotive Repair (Bureau), within the Department of Consumer Affairs (Department), is the state agency charged with the administration and implementation of the Smog Check Program.

The 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 (ARB). 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 Program (VR) and Repair Assistance Program (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 station¹ 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.

Addressing the needs of low-income vehicle owners is essential to the success of the Smog Check Program. Failure to address those needs can undermine the success of the Smog Check Program and the effort to enforce vehicle registration laws. Without assistance, many low-income vehicle owners are unable to afford to repair or replace vehicles that fail the Smog Check inspection and as a result, often continue to drive their polluting vehicle with either expired registration tags or registration tags obtained with a fraudulent smog certificate, both of which reduce the pollution control benefits of the Smog Check Program.

By assisting low-income vehicle owners repair their vehicles to pass the Smog Check inspection, RA fills a gap left by the vehicle retirement programs operated by CAP and local Air Pollution Control Districts (APCD).

¹A STAR-certified test-and-repair station is a station that meets emission testing performance standards per Title 16 of the California Code of Regulations, section 3392.3.1. The STAR Program was established by Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010) and implemented by the Bureau in January 2013.

Many vehicle owners do not benefit from retirement programs because they have neither the credit nor the income to replace their vehicle, even if they retire their vehicle and receive \$1,500 from the VR program. Although the APCD's retire-and-replace programs can provide qualifying individuals additional funds (above \$1,500) for vehicle purchases, they cannot always make up for an individual's lack of income or poor credit.

RA helps low-income vehicle owners by making relatively low-cost repairs to vehicles that fail the Smog Check inspection. Many failing vehicles are mechanically sound and can be cost-effectively repaired for far less than the cost of replacing a vehicle. Proper repairs can result in a significant reduction in harmful vehicle emissions and allow owners to register their vehicles with DMV with valid Smog Check certifications.

Contribution Amount Set by Statute and Regulation

The RA program was created in 1994 by Senate Bill 198 (Kopp, Chapter 28, Statutes of 1994), which set the repair assistance contribution at \$450.

HSC section 44062.1(f) allows the Department to increase its RA contribution above \$450 if it determines the repairs related to failure, including failure of a visible smoke test, are cost-effective. In the year 2000, the RA contribution was increased to \$500, by regulation in order to increase participation. This increase was sufficient to account for inflation between 1994 and 2000; however, it has not been increased since that time.

Impact of Inflation on Repair Costs

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.

Reduction in RA Program Participation

During the past seven years, utilization of RA 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 (FY) 2011-12 to 44% in FY 2018-19.

Improving Program Effectiveness and Increasing Participation

The RA program is no longer effectively serving its intended purpose. The decrease in participation is related to the current program contribution amount, vehicle owner copay structure, and eligibility requirements. The proposed regulation changes are intended to remedy the problems causing reduced participation and keep this important program active and effective.

Proposed Regulation Changes

- Increase the RA contribution above the current limit of \$500, allowing an additional contribution of up to \$400 for 1976-1995 vehicles and up to \$700 for 1996 and newer vehicles when needed to facilitate higher cost repairs. The maximum contribution for 1995 and older vehicles will be \$900. The maximum contribution for 1996 and newer vehicles will be \$1,200.
- Require that the Bureau concurs that repairs in excess of \$500 are necessary to pass the Smog Check inspection and are cost effective.
- List the reasons why Repair Assistance shall not be awarded.
- Establish what the STAR test-and-repair station may charge for diagnosis, which shall include a Smog Check inspection to confirm the current condition of the vehicle.
- Require STAR test-and-repair stations to perform a Smog Check inspection to confirm the effectiveness of the repairs at no charge to the consumer, and if the vehicle passes the inspection, the consumer shall pay for the certificate of compliance.
- Set the vehicle owner's copay to a minimum of 20% of the cost of diagnosis and repair.
- Modify applicant eligibility requirements to allow participation of vehicles with registration expired up to 365 days.
- Remove applicant eligibility requirements relating to lapses in vehicle registration during the two years preceding the current vehicle registration expiration date.
- Amend the CAP application currently incorporated by reference to reflect the changes elsewhere in this package.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

BAR 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 and reduces the pollution from vehicles being driven in California.

BENEFITS OF THE REGULATION TO THE STATE'S ENVIRONMENT:

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

BENEFITS OF THE REGULATION TO WORKER SAFETY:

BAR has determined the proposed regulatory action will not affect worker safety.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, BAR 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.

DOCUMENTS INCORPORATED BY REFERENCE

Consumer Assistance Program Application: CAP/APP (Rev. 04/2020). The changes in the application incorporated by reference are necessary to reflect changes elsewhere in this package or to correct outdated references, and are as follows:

- (1) Delete "\$500" and insert "\$1,200" under the "Repair Assistance" checkbox on page 1 of the form. This reflects the change made under proposed section 3394.3(c)(2) and will notify parties filling out the form of the appropriate maximum amount.
- (2) Insert the phrase "model year 1996 or newer." This reflects the change made under proposed section 3394.3(c)(2) and will notify parties filling out the form of the appropriate eligibility conditions.
- (3) Insert the sentence "Income-eligible vehicle owners of model year 1976 through 1995 vehicles may receive up to \$900 in emission-related repairs." This reflects the change made under proposed section 3394.3(c)(1) and will inform parties filling out the form of the correct maximum eligibility for those vehicles.
- (4) Correct the Bureau website listed on the form from "www.smogcheck.ca.gov" to "www.bar.ca.gov." This change is made to correct an outdated reference to a website no longer in operation.
- (5) Correct the revision date on the bottom of the form to reflect the revision date listed in proposed section 3394.6.

DISCLOSURES REGARDING THE PROPOSED ACTION

MANDATED BY FEDERAL LAW OR REGULATIONS:

No.

LOCAL MANDATE:

None.

FISCAL IMPACT ESTIMATES

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 program expenditures of \$5,086,000 in 2021-22 and 2022-23 for vehicle repairs. However, the implementation, administration, and enforcement of the proposed changes are not anticipated to increase workload or costs.

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Bureau has determined that this regulatory proposal will have a minimal impact, if any, on the creation of jobs or new businesses or the elimination of jobs or existing businesses in the State of California. The Bureau anticipates that revenues may increase at some STAR test-and-repair stations as a result of this proposal. The anticipated benefits to California residents' health and welfare, worker safety, and the environment are described above.

The proposed regulations would result in program expenditures of \$5,086,000 in FY 2021-22 and 2022-23, which is an increase of \$4,079,040 from 2019-20. These expenditures would require a \$2,300,000 augmentation of the repair assistance schedule of the High Polluter Repair or Removal Account.

The increased costs stem from a proposed baseline adjustment to the Bureau's \$500 contribution toward repairs based on changes to the Consumer Price Index for Motor Vehicle Maintenance and Repair, an additional increase in the State's contribution

toward repairs of 1996 and newer vehicles, the modification to certain consumer eligibility requirements, and a change to the structure of the required consumer copayment.

These changes will ultimately increase consumer demand for repair assistance and increase average per-vehicle repair expenditures. Pre-approval requirements for repairs over \$500 included in this proposal will help limit unnecessary expenditures and help promote cost-effective repairs. Factors contributing to the fiscal impact of this regulation are detailed below:

I. Increase the Maximum State Contribution to \$900 for Model Year 1976-1995 Vehicles

Fiscal Impact: This will increase CAP's average cost to repair a 1995 and older vehicle and will also increase the number of vehicles repaired under CAP.

When combined with a 20% consumer copay, the \$900 contribution will allow STAR-certified Smog Check test-and-repair stations to perform up to \$1,125 in diagnosis and repairs, when pre-approved by the Bureau.

HSC section 44094(b)(1) authorizes the Bureau to provide up to \$450 in financial assistance to qualified consumers toward emissions-related repairs of a vehicle. HSC section 44062.1(f) authorizes the Bureau to raise the contribution to qualified consumers above \$450 if it determines the expenditure is cost-effective. In 2000, the Bureau adopted regulations to increase the State contribution amount from \$450 to \$500 as a means of counteracting inflation's impact on the Smog Check industry's ability to make cost-effective vehicle emissions repairs.

The Bureau has determined that cost-effective emissions repairs are significantly more than the \$500 currently authorized by regulation. The Bureau proposes adjusting the amount of the contribution to reflect increases in the Consumer Price Index (CPI) for Motor Vehicle Maintenance and Repair as published by the United States Department of Labor, Bureau of Labor Statistics in October 2019. All repairs above \$500 will require pre-approval by Bureau personnel in order to ensure that the additional repair expenditures are cost-effective.

In this regulatory proposal, the Bureau proposes to use the CPI for Motor Vehicle Maintenance and Repair rather than the broader CPI covering all items. The CPI for Motor Vehicle Maintenance and Repair has increased more rapidly than the broader CPI and is a more accurate reflection of the cost a typical consumer is likely to incur for emissions repairs to a vehicle. The CPI for Motor Vehicle Maintenance and Repair includes a number of parts and services, such as the inspection, adjustment, or repair of ignition systems, fuel systems, and other systems that a vehicle may need repaired following a failed Smog Check inspection. This contrasts with the overall CPI for all items, that account for the cost of all goods and services, including those unrelated to automotive repair.

As noted in Attachment 2 to the Initial Statement of Reasons, the CPI for Motor Vehicle Maintenance and Repair has increased by 101.51% between January 1994 and September 2019. Several factors account for the high rate of inflation for motor vehicle maintenance and repair, including the increased complexity of automotive components, the increased cost of equipment necessary to properly test and diagnose a vehicle, and the time required to train technicians to properly diagnose and repair a vehicle. See Attachment 2 to the Initial Statement of Reasons: CPI for Motor Vehicle Maintenance and Repair -- Percentage Increase 1994-2019.

The Bureau used the following formula to determine the present-day value of the \$450 maximum allowable State contribution toward emissions repairs established pursuant to statute: base contribution + (CPI for MVMR x base contribution). This equates to: $\$450 + (101.51\% \times \$450) = \$906.795$.

II. Increase the Maximum State Contribution to \$1,200 for Model Year 1996 and Newer Vehicles

Fiscal Impact: This will increase CAP's average cost to repair a 1996 and newer vehicle and will also increase the number of vehicles repaired under CAP.

When combined with a 20% consumer copay, the \$1,200 contribution will allow STAR-certified Smog Check test-and-repair stations to perform up to \$1,500 in diagnosis and repairs, when pre-approved by the Bureau.

Unlike pre-1996 vehicles, 1996 and newer vehicles come equipped with a second generation on-board diagnostic system (OBDII). This system includes a greater number of sensors and computer modules than prior on-board diagnostic systems. When operating properly, OBDII vehicles produce significantly lower levels of pollution than non-OBDII vehicles. However, the diagnosis and repair of emission failures on these vehicles is more complex and more expensive. Not all of the increased expense is accounted for in the CPI for Motor Vehicle Maintenance and Repair.

In 2017, the Bureau conducted a cost survey of emission related repairs on 1996 and newer vehicles that showed diagnostic and repair costs exceeded \$1,125 for 18% of vehicles requiring only catalytic converter replacement and 52% of vehicles requiring both catalytic converter replacement and other emission repairs. The survey also showed that the majority of transmission and mechanical repairs also exceeded \$1,125. See Attachment 3 to the Initial Statement of Reasons: Bureau of Automotive Repair Cost Survey of Typical Repairs Needed to Correct Smog Check Failure (June 2017).

This proposal also: (1) accounts for the inclusion of repairs that were not previously considered emission-related when the \$450 contribution was set, (2) accounts for California specific emission repair cost increases not fully included in the nationwide CPI for Motor Vehicle Maintenance and Repair, and (3) provides flexibility to make additional cost-effective repairs.

- With continual advancements to OBDII systems, emission repair has expanded to include costly repairs that were not considered emission related when the original \$450 contribution was set by statute such as transmissions and some hybrid vehicle components.
- Some increases to California emission repair costs are not accounted for by the nationwide CPI for Motor Vehicle Maintenance and Repair. For example, California imposes more stringent durability and testing requirements on aftermarket OBDII catalytic converters than other states which can contribute to higher repair costs.
- There are circumstances where emission reductions with a \$1,200 contribution exceed what could be accomplished with the base contribution of \$900.

The higher contribution amount will most beneficial and cost-effective when multiple repairs are required. For example, when repairing a vehicle with a defective catalytic converter and an engine misfire, repairing both conditions provides far more effective and long-lasting emission reductions than repairing only one part and not the other. (This is because engine misfires destroy catalytic converters, and catalytic converter replacement, though normally very effective in reducing emissions, will not produce durable emission reductions in the presence of an engine misfire.)

III. Require BAR Pre-Approval for Repairs over \$500

Fiscal Impact: This will help limit CAP's average cost to repair a vehicle and promote cost-effective repairs on CAP participant vehicles.

Under this proposal all repairs requiring a contribution over \$500 will require pre-approval to ensure that the repair is cost-effective. The Bureau will review proposed repairs over \$500 to:

- Ensure the cause of failure is properly diagnosed by verifying that STAR-certified Smog Check test-and-repair stations are either following the emission diagnosis and repair procedures found in the vehicle manufacturer's recommended procedures or industry-standard reference manuals and periodicals published by nationally recognized repair information providers, as required by Title 16, California Code of Regulations (CCR) Section 3340.41(d).
- Ensure the vehicle has no major mechanical problems that would shorten vehicle life.
- Prevent the use of state funds on repairs that are unlikely to significantly reduce vehicle emissions.

IV. Modify the Consumer Copay Structure

Fiscal Impact: This will increase the number of vehicles repaired under CAP.

This proposal modifies the structure of the consumer copay. It would eliminate the current requirement of consumers having to pay all vehicle inspection and diagnostic

costs associated with the program. Approved applicants and STAR-certified Smog Check test-and-repair stations have reported that pre-repair diagnostic costs have been a barrier to consumer participation in CAP. Low-income consumers are often unwilling to pay for a diagnosis when they have no information regarding the final cost to repair their vehicle.

This proposal changes the copay structure so that the consumer would pay 20% of the repair cost and CAP would pay the remaining 80% of the repair cost, up to the maximum contribution amount under the regulation.

Under the proposed regulation, a participant whose vehicle failed the Smog Check test would initially pay 20% of the diagnostic cost and CAP would pay the remaining 80%, thereby reducing the consumer's pre-repair costs.

After a STAR-certified Smog Check test-and-repair station diagnoses the vehicle and recommends repairs, the consumer would have the opportunity to evaluate the advisability of approving further repairs. If the consumer decided not to perform the recommended repairs, they would still only be responsible for 20% of the diagnostic cost.

When a participant decides to proceed with the recommended repairs and CAP approves any repairs exceeding \$500, the consumer would pay 20% of the repair cost and CAP would pay the remaining 80% of the repair cost, up to the maximum contribution amount under the regulation. The consumer would be responsible for any costs that exceed the maximum contribution amount.

This copay restructure proposal more closely aligns with the requirements of HSC section 44094(b)(1), that allows the program to pay up to 80% of the total cost of repair, as determined by the Bureau. It helps reduce the consumer's pre-repair costs that have been a barrier to program participation.

V. Modify Registration-Based Consumer Eligibility Requirements

Impact: This will increase the number of vehicles repaired under CAP.

Consumers are currently ineligible for repair assistance if they have a vehicle registration that is expired more than 120 days, or had a lapse in registration over 120 days during the two years preceding their application to the program. This proposal eliminates a barrier to the program that prevented over 4,000 applicants from participating in FY 2018-19.

In addition, the proposed action is not expected to expand or reduce existing business.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

BAR is not aware of any cost increase that a representative private person or business would necessarily incur in as a result of this proposal. Repair costs may decrease for persons participating in this program.

BUSINESS REPORTING REQUIREMENTS

None.

EFFECT ON SMALL BUSINESS

These proposed regulations will likely increase revenue for STAR Test and Repair stations, which are typically small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), BAR must determine that no reasonable alternative to this proposed regulatory action it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements in writing relevant to the above determinations.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Holly O'Connor
Bureau of Automotive Repair
10949 North Mather Blvd.
Rancho Cordova, CA 95670
Telephone: (916) 403-8627
E-mail: Holly.OConnor@dca.ca.gov

The backup contact person is:

Lucy Sarkisyan
Bureau of Automotive Repair
10949 North Mather Blvd.
Rancho Cordova, CA 95670
Telephone: (916) 403-8560
E-mail: Lusine.Sarkisyan@dca.ca.gov

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all information upon which the proposal is based, may be obtained upon request from the Bureau of Automotive Repair at 10949 North Mather Boulevard, Rancho Cordova, California 95670.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested hearing and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Holly O'Connor at the address indicated above. The Bureau will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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 which is available for public inspection by contacting the person named above.

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 above, or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at https://bar.ca.gov/About_BAR/Regulatory_Actions.aspx