

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATE(S): No hearing has been scheduled for the proposed action.

SUBJECT MATTER OF THE PROPOSED REGULATIONS: STAR PROGRAM UPDATES

SECTIONS AFFECTED: California Code of Regulations Title 16, Division 33, Chapter 1:

Article 5.5:
Amend Sections 3340.1, 3340.16, 3340.16.5, and 3340.41;

Article 10:
Repeal Sections 3392.1, 3392.2, 3392.3, 3392.4, 3392.5, and 3392.6;

Amend and Renumber Sections 3392.2.1, 3392.3.1, 3392.5.1, and 3392.6.1;

Add Section 3392.5.

PROBLEM STATEMENT

The Bureau of Automotive Repair (Bureau) is the state agency charged with the administration and implementation of the Smog Check Program. In accordance with Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010), the Bureau began implementing the STAR program on January 1, 2013. It replaced the previous Gold Shield Program, which sunsetted on December 31, 2012, to offer voluntary certification to Smog Check stations that must adhere to high inspection-based performance standards.

This regulatory action proposes important changes regarding the performance measures and disciplinary procedures applicable to STAR stations, in addition to removing outdated Gold Shield Program regulatory provisions. These proposed changes are necessary to close loopholes in the STAR program's certification requirements through which poorly performing Smog Check stations and inspectors have been able to obtain and maintain STAR certification.

PURPOSE

To specify amendments that are necessary in order for the Bureau to efficiently and effectively enforce and administer the STAR program.

I. CHANGES THROUGHOUT

A. Capitalize “Smog Check” – minor grammatical change.

This change is non-substantive because it is a grammatical change as part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations section 100(a)(4). “Smog Check” refers to the “Smog Check Program,” which is a term defined in California Code of Regulations section 3340.1.

B. Capitalize “Bureau” – minor grammatical change.

This change is non-substantive because it is a grammatical change as part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations section 100(a)(4). “Bureau” is a term defined in California Code of Regulations section 3340.1 and inconsistent capitalization may result in confusion or misinterpretation.

C. Change capitalized “Section” to lowercase “section” – minor grammatical change.

This change is non-substantive because it is a grammatical change as part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations section 100(a)(4).

D. Where applicable, replace the term “technician” with “inspector.”

Use of the term “inspector” instead of “technician” is consistent with the Bureau’s current licensing structure. Adopted in 2012, the current structure allows technicians to choose a license that best represents the services they provide – inspection or repair, or both. This replaced an outdated “one-size-fits-all” licensing structure, which specified technician license designations based on areas of the state where Basic two-speed idles tests or Enhanced loaded-mode tests are administered. The term “inspector” was used to differentiate those who inspect vehicles from those who repair them. This proposed change is necessary to harmonize with that change and to achieve consistency between the two definitions.

E. Where applicable, replace the term “test” with “inspection.”

Use of the term “inspection” instead of “test.” The term “test” is a component of the overall “inspection” and it is necessary to differentiate a test from an inspection. An inspection consists of multiple tests and as such, it is necessary to achieve consistency and establish clarity between the two definitions.

F. Renumber and reorganize sections within Article 10 as follows:

Old Number	New Number	Title
3392.1	Repealed	Gold Shield Program (Repealed)
3392.2	Repealed	Responsibilities of Smog Check Stations Certified as Gold Shield (Repealed)
3392.2.1	3392.1	Required Services and Equipment of STAR Stations*
3392.3	Repealed	Eligibility for Gold Shield Certification Quality Assurance (Repealed)
3392.3.1	3392.2	Eligibility/Performance Standards for STAR Certification
3392.4	Repealed	STAR program Evaluations
3392.5	Repealed	Causes for Invalidation of Gold Shield Station Certification (Repealed)
3392.5.1	3392.3	Causes for Suspension of STAR Station Certification*
3392.6	Repealed	Gold Shield Program Hearing and Determination (Repealed)
3392.6.1	3392.4	STAR program Hearing and Decision*
n/a	3392.5	Consequences of STAR program Suspension or Withdrawal (New section)

* new proposed title

This renumbering is non-substantive and accounts for the deleted Gold Shield sections and simplifies the section numbering format of this Article. The changes are necessary to avoid confusion due to the deleted sections.

G. Update authority and reference sections as follows:

<i>Section</i>	<i>Added Authority</i>	<i>Added Reference</i>
3340.16. Test-Only Station Requirements	44014.2 44014.5	44014.2 44014.6
3340.16.5. Test and Repair Station Requirements	44014.2 44014.5	44014.6
3340.41. Inspection, Test, and Repair Requirements	44014.2 44014.5	44014.5 44014.6
3392.1. Required Services and Equipment of STAR Stations	44014.5	44014.5 44014.6
3392.2. Eligibility/Performance Standards for STAR Certification	44014.5	44014.5 44014.6
3392.3. Causes for Suspension of STAR Station Certification	44014.5	44014.5 44014.6 124 (BPC)
3392.4 STAR program Hearing and Decision	44014.5	44014.5 44014.6

These changes ensure all sections pertaining to STAR program requirements and administration cite Health and Safety Code sections 44014.2, 44014.5, and 44014.6 as authority and/or reference. The additions are necessary to capture all appropriate authority and reference sections.

Health and Safety Code section 44014.2 pertains to the Bureau's voluntary certification program, currently known as the STAR program. Health and Safety Code section 44014.2(a) directs the Bureau to establish inspection-based performance standards for certification programs, consistent with section 44014.6, to issue smog certificates to directed and gross polluting vehicles. Health and Safety Code section 44014.2(b) directs the Bureau to adopt regulations providing for the inspection and repair of vehicles by licensed stations.

Health and Safety Code section 44014.5 pertains to test-only Smog Check stations, which conduct smog inspections but do not perform repairs of emissions system malfunctions. Section 44014.5(d) directs the Bureau to establish inspection-based performance standards for STAR-certified test-only stations, consistent with section 44014.6. It also outlines the procedures by which the certification allowing the station to test directed and gross polluting vehicles will be suspended for failure to meet these standards. The procedures include notice prior to suspension, an informal hearing conducted by the Bureau (to which the formal hearing requirements of the Administrative Procedure Act do not apply), and the

ability to appeal the informal decision to an administrative law judge.

Health and Safety Code section 44014.6 requires the Bureau to apply the same inspection-based performance standards to all stations participating in the STAR program (both test-and-repair and test-only). The section 44014.6 reference to Test-Only stations incorporates all of section 44014.5(d), which includes the administrative procedures to suspend the station's STAR certification. Since section 44014.6 requires the inspection standards applicable to the STAR program to be "based on the same criteria," the ability and process to suspend certification applies equally to participating test-only and test-and-repair stations.

This interpretation of Health and Safety Code section 44014.6 reflects the Legislature's intent with respect to AB 2289, a bill the Bureau co-sponsored along with the Air Resources Board. The intent of AB 2289 was to regulate test-and-repair and test-only stations equally.

Remove reference citations of Government Code section 11505, and Vehicle Codes sections 220 and 11500 and remove authority citations of Health and Safety Code sections 44013, 44016, 44030, 44036, and 44091. The deletions are necessary to capture all appropriate authority and reference sections.

- a. The Bureau proposes to remove the citation to Government Code section 11505 in CCR section 3340.1 because relates to the service of an accusation or statement of issues for discipline or denial, respectively. It is included in the existing Note to 16 CCR 3340.1 'Definitions'. Section 11505 does not currently relate to any of the definitions and is unrelated to this proposal.
- b. The Bureau proposes to remove the citation to Vehicle Code sections 220 and 11500 in CCR section 3340.1 because it defines auto dismantler and the auto dismantler license requirement respectively. These sections are included in the existing Note to 16 CCR 3340.1 'Definitions'. These sections do not relate to any of the definitions and are unrelated to this proposal.
- c. The Bureau proposes to remove the citation to Health and Safety Code section 44013 in CCR section 3340.16 because it makes no reference to regulatory authority. It instead allows for the 'prescription' of standards and procedures. It is reference and should be removed as authority.
- d. The Bureau proposes to remove the citation to Health and Safety Code sections 44016, 44030, 44036 in CCR sections 3340.16 and 3340.41 because they make no reference specifically to regulation and do not establish authority, but instead refer to the development of standards, specifications, and procedures.

- e. The Bureau proposes to remove the citation to Health and Safety Code section 44091 in CCR section 3340.1 because it does not establish direct Bureau authority to pass regulations, but instead describes the use of certain monies. It is not related to the current regulation or proposed regulation.
- II. AMEND ARTICLE 5.5 (MOTOR VEHICLE INSPECTION PROGRAM), SECTIONS 3340.1, 3340.16, 3340.16.5, AND 3340.41.

A. Amend Section 3340.1. Definitions.

- I. Move the definition of “Basic area.”

Current text is not in proper alphabetical order. Moving the definition of “Basic area” corrects this for easy identification of the definition. The text itself is not being amended, merely re-ordered.

- II. Revise definition of “BAR-97 Emissions Inspection System” or “EIS.”

The existing “OBD” is being replaced with “On-Board Diagnostics (OBD).” “OBD” is a widely used and commonly understood acronym for “On-Board Diagnostics” and “OBD” appears throughout the text of Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations. “OBD” first appears in Article 5.5 in the definition of “BAR-97 Emissions Inspection System” or “EIS” and spelling out the actual term with its acronym in parenthesis is necessary to clarify what “OBD” references. This clarification should reduce potential confusion and make the regulations easier to comprehend.

- III. Add the word “to” to the definition of “Basic area technician.”

This is a minor typo and adding the word “to” makes the regulation more clear and easy to understand. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- IV. Revise definition of “Clean piping.”

The phrase “for the purposes of Health and Safety Code section 44072.10(c)(1)” is being deleted because it is superfluous and may hinder comprehension of the definition. Section 44072.10(c)(1) states that clean piping, as defined by the department, amounts to the fraudulent inspection of vehicles. The regulation, via this

statutory authority, defines clean piping. The statutory reference is sufficiently clear to refer a reader to BAR regulations. Including a redundant statutory citation in the regulations may cause confusion regarding how and where clean piping is defined. This revision is necessary to clarify the statutory and regulatory language, eliminate duplication and redundancy, and makes the definition more concise and easier to understand.

V. Add definitions of “clean gassing” and “clean plugging.”

These additions are necessary to define in regulation other practices like “clean piping” that will result in disciplinary action. Health and Safety Code section 44072.10(c)(2) and (3) prohibit tampering with a vehicle emission control system or test analyzer system and tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection. Each practice involves tampering with a vehicle, a vehicle’s emission control system and/or test analyzer systems with the intent to fraudulently issue a certificate of compliance. Pursuant to Health and Safety Code section 44072.10(c)(4), a Smog Check licensee is prohibited from intentionally or willfully violating any regulation implementing Chapter 5 of the Health and Safety Code. The revisions clarify prohibited conduct, implement Health and Safety Code section 44072.10(c)(2) and (3) and are necessary to protect the integrity of emissions testing, safeguard the environment, and protect public health.

“The proposed definitions of “clean gassing” and “clean plugging” were determined by the Bureau to be consistent with known methods of generating inaccurate inspection results based upon cases investigated by or reported to the Bureau. The terms “clean gassing” and “clean plugging” are commonly used in the industries within the Bureau’s jurisdiction.”

VI. Delete definition of “Comparative Failure Rate.”

The Comparative Failure Rate performance measure was part of the now defunct Gold Shield Program and is no longer used. The amendment is necessary to avoid confusion due to the termination of the Gold Shield Program. As the paragraph sunsetted at the end of 2012 pursuant to its own text, removal is now appropriate.

VII. Add definition of “Directed vehicle.”

The Bureau’s Smog Check Program regulations define “non-

directed vehicle” and mentions directed vehicles throughout. This definition was added to clearly differentiate between directed and non-directed vehicles for Smog Check purposes. The revision will help ensure that potentially high polluting and non-compliant vehicles (e.g.: older vehicles, newer vehicles with the greatest likelihood of failing their next Smog Check, etc.) are inspected at a STAR station that meets higher Smog Check performance standards and is necessary to improve compliance with the Smog Check and STAR programs and to clarify and make the existing and proposed regulations easier to comply with and comprehend.

VIII. Add definition of “Equipment Platform.”

BAR proposes the addition of test deviation criteria (fully described below) providing that excessive use of the wrong equipment platform can result in failure to qualify for or maintain STAR certification. Defining “equipment platform” is necessary to provide clarity to those criteria. It is anticipated that defining “equipment platform” will make the proposed definition of “excessive test deviation rate” and the dictates of proposed section 3392.2, subdivision (a)(1)(C) easier to comprehend and comply with. In addition, “equipment platform” is the common industry term for the equipment used in performing a Smog Check.

IX. Within the definition for “Excessive Test Deviation Rate”:

- a. In criterion (3), add a “-” in “low-pressure.” This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).
- b. In criterion (4), replace the word “inspection” with the word “test.” The word test is used throughout the “Excessive Deviation Rate” definition, including on item (4). This is necessary to demonstrate the use of consistent terminology to describe Smog Check test items, and to differentiate the test items from the greater Smog Check inspection. This will provide clarity to the regulations and makes them easier to comprehend.
- c. In criterion (5), replace the word “test” with “inspection.” This is necessary to demonstrate the use of consistent terminology to describe Smog Check inspection, and to differentiate between test items from the greater Smog Check inspection. This will provide clarity to the regulations

and makes them easier to comprehend.

- d. In criterion (7), delete criterion providing Excessive Test Deviation Rate can occur when “[t]he 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.”

Most 1996 and newer vehicles have standardized computer systems (also known as On-Board Diagnostic Systems, or OBDII) that continually monitor the electronic sensors of engines and emission control systems while the vehicle is being driven to ensure they are working as designed.

A readiness monitor is a test the OBDII system runs to ensure each emission control component is working properly. The OBDII system runs one test (readiness monitor) for each vehicle emission control component. When a test is complete, the relevant component is said to have a “ready” – or “set” – monitor. Until it is complete, the relevant component is said to have a “not ready” – or “unset” – monitor. The OBDII system cannot report on a component’s emission control status until its monitor is ready.

The more unset monitors there are, the less is known about how well a vehicle’s emission control components are working. If enough monitors are unset, the vehicle is considered unsuitable for an emission inspection.

The existing regulations implementing the Smog Check Program require that no vehicle coming in for an inspection at a Smog Check station can have more than one readiness monitor unset. See the California Code of Regulations section 3340.42.2(c)(9). This provision effectively requires all readiness monitors of a vehicle to be set to perform the inspection in order to avoid running afoul of this measure. If a station proceeds with the inspection of a vehicle with one unset monitor, that inspection is counted against the station’s Excessive Test Deviation Rate. Given the incentive to not inspect vehicles unless all monitors are set, it may be too difficult for stations to comply with STAR program requirements or improve test deviation scores. It also may be unnecessarily burdensome for consumers to find a station to run an inspection.

With the deletion of this criterion, stations can use discretion based on their direct experience with the vehicle to decide if all monitors need to be set to run the inspection. The deletion in question is necessary to make it less difficult for stations to comply with the STAR program requirements and to make it easier for consumers to find a station to perform an inspection.

- e. In criterion (7), add a criterion providing Excessive Test Deviation occurs when “[t]he rate for which inspections are performed using the incorrect equipment platform exceeds 125% of the statewide average for similar vehicles.” After review of equipment platform selection data for all of the Smog Check stations, this standard was chosen as being easily achievable by stations conscientiously following prescribed test procedures.

This change adds a performance measure evaluating whether stations have been using the correct piece of equipment to perform inspections.

The OBD Inspection System (OIS) Smog Check inspection provides faster and more reliable inspections of many newer vehicles within California’s fleet, however, not all vehicles can be inspected using the new equipment. Inspectors must determine which inspection platform is correct for each vehicle, based upon vehicle age, fuel type, and original new vehicle certification.

Since the rollout of the new equipment, over 5,000 inspections have been performed on the wrong equipment platform. To incentivize proper selection of the appropriate equipment platform as well as to help educate the industry on which platform is appropriate for vehicles, BAR is proposing to add “incorrect equipment platform” to the existing STAR performance measures.

- X. Within the definition of “Follow-up Pass Rate,” amend the text describing the type of inspection performed in the current inspection cycle by deleting “emissions,” “(ASM or TSI),” the parentheses around FPR, and “licensed.”

The Follow-Up Pass Rate is a statistical measure that determines whether vehicles certified by stations and inspectors in the previous inspection cycles are failing in the current cycle at a rate higher

than expected. If so, this indicates inferior inspection performance when the vehicles were last certified. Existing language, which was drafted prior to the implementation of OIS testing, does not explicitly include OIS tests in the Follow-Up Pass Rate. This change aligns the regulations with the intended practice for the Follow-Up Pass Rate.

For consistency within the regulation, delete the “()” around FPR and add quotations. Delete “licensed” before “Smog Check stations” because, as defined, all Smog Check stations must be licensed.

- XI. Within the definition “Gaseous fuel” add “natural gas.”

This is necessary to clarify that it is in fact “liquified natural gas” that the regulation is referring to.

- XII. Within the definition of “Gear Shift Incident,” add “of this Chapter” after section 3340.45.

This amendment is necessary to clarify that this definition is referring to section 3340.45 of Chapter 1 of Division 33, Title 16 of the California Code of Regulations.

- XIII. Delete definition of “Gold Shield station.”

As noted above, the Gold Shield Program is now defunct, rendering this definition obsolete. The deletion is necessary to provide clarity and avoid confusion with existing sections due to the termination of the Gold Shield Program. As the paragraph sunsetted at the end of 2012 pursuant to its own text, removal is now appropriate.

- XIV. Within the definition of “Heavy duty,” add a “-” between “heavy-duty” and add a comma in “8,501.” These changes are non-substantive because they are part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XV. Add the definition of “‘Inspector’ or ‘Smog Check inspector’” and delete the definition of “‘Smog Check Inspector’ or ‘Inspector’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

From the original definition, remove the,” after “to inspect” and change “inspector” to lowercase. These changes are non-substantive because they are part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XVI. Add definition of “Inspector Information Table.” Delete definition of “Technician Information Table.”

These changes reflect use of the term “inspector” as opposed to “technician,” for reasons described in section I.C. above. The changes are necessary to provide clarity and consistency with BAR’s recent licensing restructure.

- XVII. Within the definition of “Non-directed vehicle,” add “because it either does not have an elevated likelihood of smog check failure or is not selected at random.”

This change is necessary to clarify why a vehicle is not required to be inspected at a STAR-certified station.

- XVIII. In the definition of “OBD Inspection System,” delete “or.”

This is a syntax change to reflect that the acronym “DAD” refers to “Data Acquisition Device.” This is necessary for consistency within the regulation.

- XIX. Add the definition of “On-Board Diagnostics” or “OBD.”

The regulations refer to OBD throughout and adding this definition explains what OBD means. Although this term has been in use by the California Air Resources Board since 1988, and this definition comports with their and industry usage, it is necessary for clarity and convenience to define the term used throughout these regulations.

- XX. Add the definition of “On-Board Diagnostics II” or “OBDII.”

The regulations refer to OBDII throughout and adding this definition explains what OBDII means. Although this term has been in use by the California Air Resources Board since at least 1996, and this definition comports with their and industry usage, it is necessary for clarity and convenience to define the term used throughout these regulations.

- XXI. Add the definition of “‘Program’ or ‘Smog Check Program’” and delete the definition of “‘Smog Check Program’ or ‘program’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

From the original definition, capitalize “P” in Program. Throughout the regulations Smog Check Program is capitalized and should be capitalized here for consistency.

- XXII. Add the definition of “‘Referee’ or ‘Smog Check Referee’” and delete the definition of “‘Smog Check Referee’ or ‘Referee’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

From the original definition, change “to accommodate” to “for” for easier reading and comprehension. Add “or as required by the Bureau.” Per Health and Safety code section 44014.5(h)(3) the Bureau may require a vehicle to go to a referee station under other circumstances other than unusual inspections.

- XXIII. Add the definition of “‘Repair-only station’ or ‘Smog Check repair-only station’” and delete the definition of or “‘Smog Check repair-only station’ or ‘Repair-only station’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XXIV. Add the definition of “‘Repair technician’ or ‘Smog Check repair technician’” and delete the definition of “‘Smog Check Repair Technician’ or ‘Repair Technician’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within

the meaning of Title 1, CCR section 100(a)(4).

From the original definition, change “repair technician” to lowercase. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XXV. Within the definition of “Similar Vehicle Failure Rate,” delete “[t]his paragraph shall become effective July 1, 2012.”

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion is necessary to avoid confusion with existing sections.

- XXVI. Delete definition of “Smog Check technician.”

This change is proposed to align the terminology to the current licensing structure as described above. The old term “Smog check technician” encompassed both inspection and repair, while the current licensing structure licenses these functions separately. The change is necessary to provide clarity and consistency with BAR’s recent licensing restructure.

- XXVII. Within the definition of “STAR,” replace “a registered Automotive Repair Dealer that is also a licensed” with “an automotive repair dealer that is also licensed as either a...” Add “Smog Check” before test-only station. Replace “Article 10 of these regulations” with “this Chapter.”

These minor wording changes help to clarify that all stations must be registered as automotive repair dealers (ARD), and some stations may additionally choose to be licensed to provide a specific service, for example Smog Check test-and-repair. The wording changes are necessary to clarify that all stations must be registered as an ARD, which is separate from station licensure.

The wording “this Chapter” improves clarity because it is more precise than “Article 10.”

- XXVIII. Add the definition of “‘Station’ or ‘Smog Check station’” and delete the definition of “‘Smog Check station’ or ‘station’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within

the meaning of Title 1, CCR section 100(a)(4).

- XXIX. Add the definition of “‘Test-and-repair station’ or ‘Smog Check test-and-repair station’” and delete the definition of “‘Smog Check test-and-repair station’ or ‘test-and-repair station’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

From the original definition, add a ,” after “diagnose.” This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XXX. Within the definition of “Test Deviation”:

- a. In criterion (1), (2), (3) and (4), the phrase “should receive” will be replaced with the word “requires.”

These tests are mandatory per the Smog Check Manual for certain vehicles and the term “requires” helps to underscore that point, as opposed to the phrase “should receive,” which may be misconstrued as making these tests optional. The revisions are necessary to clarify the definition of “Test Deviation” and make the regulations easier to comply with and comprehend.

- b. In criterion (4), delete the phrase “an OBDII inspection” and replace the word “inspection” with the word “test.”

The term OBDII is already used in criteria (4) and its repetition at the end of the sentence makes the sentence stilted and, as a result, potentially difficult to comprehend. Removing the repetitive term clarifies the definition of “Test Deviation” and make the regulations easier to comply with and comprehend.

The word test is used throughout the “Test Deviation” definition, including in item (4). The use of consistent terminology to describe Smog Check test items, and to differentiate the test items from the greater Smog Check inspection, provides clarity to the regulations and makes them easier to comprehend.

- c. In criteria (5) and (6), update the phrase “an inspection” with “a Smog Check inspection.”

The revision specifically identifies the test that the text is referring to. The proposed revision clarifies the definition of “Test Deviation” and makes the regulations more concise and easier to comply with and comprehend.

- d. In criteria 7, delete criterion providing test deviation can occur when “[t]he 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)” and add criterion providing Test Deviation occurs when “[t]he station performs a Smog Check inspection using the incorrect equipment platform.”

The Smog Check Program readiness monitor requirements were tightened in 2015, such that effectively all readiness monitors of a vehicle need to be set to perform the inspection. With this change, no vehicle coming in for a Smog Check at a STAR station can have more than one readiness monitor unset. It may be too difficult for stations to comply with this requirement if they can effectively only test vehicles with no unset monitors.

With the deletion of this criterion, stations can use discretion based on their direct experience with the vehicle to decide if all monitors need to be set to run the inspection. The deletion is necessary to allow stations to effectively test vehicles.

The language change adds a performance measure evaluating whether stations have been using the correct piece of equipment to perform inspections.

Since the addition of OIS inspections and equipment to the Smog Check Program in late 2014, over 5,000 inspections have been performed on the wrong equipment platform. To incentivize better selection of the appropriate equipment platform as well as to help educate the industry on which platform is appropriate for vehicles, BAR is proposing to add “incorrect equipment platform” to the existing STAR performance measures. This addition is necessary to ensure inspectors perform inspections on the correct equipment platform.

The allowed rate of 125% of average for similar vehicles was chosen because it is easily attainable for competent inspectors conscientiously inspecting vehicles. At the same time, it will easily identify stations choosing to use the incorrect platform because the appropriate platform is unavailable (broken, not purchased by the station) or the inspection on the incorrect platform might provide a more favorable inspection result.

- XXXI. Add the definition of “‘Test-only station’ or ‘Smog Check test-only station’” and delete the definition of “‘Smog Check test-only station’ or ‘test-only station’.”

This is a non-substantive change intended to re-alphabetize the definition by providing the more commonly used term first. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- XXXII. Within the definition of “Vehicle Information Database” delete “licensed.”

All Smog Check stations must be licensed, so including the word “licensed” before “Smog Check station” is not necessary.

- XXXIII. Add definition of “Vehicle Lookup Table.”

This definition was added to promote clarity in the regulations, as the regulations currently reference this table. While the table is internally kept by the Bureau as a continuous compilation of published data (by outside sources) for ease of use in testing older (non-OBD-II) vehicles, it is available on request.

- XXXIV. Within the definition of “VLT Row ID,” capitalize “vehicle lookup table.”

This minor grammatical change is appropriate since this term is a proper noun referring to a lookup table that is also defined in these proposed regulations. This change is necessary for grammatical and clarity purposes.

B. Amend Section 3340.16. Test-Only Station Requirements.

- I. In subsection (b) replace “which” with “that.”

This change is non-substantive because it is part of an effort to

“[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- II. In current subsection (c), delete “work.”

This change maintains consistency with other regulation sections. The change is necessary for this subsection to be consistent with other regulation sections.

- III. Delete existing subsections (d) and (f), which both describe test-only station requirements that were “[e]ffective through December 31, 2012.”

BAR proposes to delete expired requirements to clean up its regulations. The requirements of existing subsections (d) and (f) expired in 2012. Eliminating expired regulatory requirements is necessary to improve clarity, reduce confusion and make the regulations easier to comprehend and comply with.

- IV. Renumber subsection (e) to (d) and subsection (g) to (e).

This section renumbering is necessary given the above section deletions. This is a non-substantive change in an effort to renumber the regulation as necessary.

- V. In current subsection (e), delete the phrase “[e]ffective January 1, 2013” and capitalize “no.”

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion of the phrase “[e]ffective January 1, 2013,” and the capitalization of the word “no,” which will be the first word in the revised regulation, are necessary to make the regulations more concise and easier to read and comprehend.

- VI. Amend current subsection (g) as follows:

- a. Delete “that provides repair services, which is.”

All automotive repair dealers provide repair services, so there is no reason to have this included.

C. Amend Section 3340.16.5. Test-and-Repair Station Requirements.

- I. Delete existing subsections (c) and (e), which both describe test-and-repair station requirements that were “[e]ffective through December 31, 2012.”

BAR proposes to delete expired requirements to clean up its regulations. The requirements of existing subsections (c) and (e) expired in 2012. Eliminating expired regulatory requirements is necessary to improve clarity, reduce confusion, and make the regulations easier to comprehend and comply with.

- II. Renumber existing subsection (d) to (c).

This renumbering is necessary given the proposed deletion of existing subsection (c).

- III. In proposed subsection (c), delete the phrase “[e]ffective January 1, 2013,” and capitalize “a”, and change “may” to “shall”.

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion of the phrase “[e]ffective January 1, 2013,” and the capitalization of the word “a,” which will be the first word in the revised regulation, are necessary to make the regulations more concise and easier to read and comprehend.

“May” is permissive, while “shall” is mandatory. This change is necessary to improve clarity, reduce confusion, and make the regulations easier to comprehend and comply with. In this instance, per section 44014.5(c) of the Health and Safety Code, it is mandatory that a Smog Check test-and-repair station not refer a consumer to a STAR-certified station in which the owner of the test-and-repair station has a financial interest.

- IV. Throughout this section, add a “-” in “STAR-certified.” This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

D. Amend Section 3340.41. Inspection, Test, and Repair Requirements.

- I. Throughout section 3340.41, replace “BAR-97 Emissions Inspection System or the OBD Inspection System” with “EIS or OIS.” EIS means BAR-97 Emissions Inspection System and OIS means OBD Inspection System. Using the acronyms make the regulation more concise.
- II. In subsection (a):
 - a. Replace “licensed station” with “Smog Check station” to clarify that the regulation is referring to a Smog Check station. The

word “licensed” is not necessary, because “Smog Check station” already refers to a “licensed” Smog Check station.

- b. Replace “[t]he report shall be attached” with “by attaching it” to make the regulation more clear, concise, and easy to read.
- III. In subsection (b) rearrange the sentence structure. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).
 - IV. In subsection (c), rearrange the sentence structure for the reason described above in subsection (b), and remove the word “knowingly.” The Smog Check Manual, incorporated into regulation by reference, states in section 1.1.1, “Each inspector is responsible for the accuracy of the test.” There is no distinction based upon whether inaccuracies were knowingly entered/committed or accidentally entered/committed. Because the goal is correct data being entered to deliver correct readings and thus protect the environment, no incorrect or false data can be permitted, and putting the responsibility on the person entering the data ensures conscientious entries. Removing the word “knowingly” addresses this inconsistency. Removing “knowingly” also emphasizes the expectation the licensee must exercise due diligence in verifying the accuracy of all information entered during the inspection. Removing “knowingly” will also eliminate an unnecessary and potentially confusing word and is necessary to make the regulations easier to comprehend and comply with.
 - V. In subsection (d):
 - a. Add “test-and-repair and repair-only” to clarify that this section does not apply to licensed Smog Check test-only stations as they are not authorized to engage in any repairs. This clarification is necessary to ensure that Smog Check test-only stations do not engage in any automotive repairs.
 - b. Replacing “smog check technician” with “repair technician” aligns with the definitions in section 3340.1.
 - VI. In subsection (e):
 - a. Delete “[e]ffective January 1, 2013,” and capitalize the word “a”, and change “may” to “shall”.

BAR proposes to delete effective dates that are no longer

relevant to clean up its regulations. The deletion of the phrase “[e]ffective January 1, 2013,” and the capitalization of the word “a,” which will be the first word in the revised regulation, are necessary to make the regulations more concise and easier to read and comprehend.

“May” is permissive, while “shall” is mandatory. This change is necessary to improve clarity, reduce confusion, and make the regulations easier to comprehend and comply with. In this instance, per section 44010.5(b)(2) of the Health and Safety Code, it is mandatory that a Smog Check test-and-repair station not perform an initial inspection, except for a pre-test, unless the station is certified as a STAR station.

- b. Delete “official.” A pre-test may or may not be “official,” so deleting this is necessary to clarify that it may not necessarily be an “official” pre-test.
- c. Change “an” to “a.” This change is necessary due to the deletion of “official.” This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

III. WITHIN ARTICLE 10 (GOLD SHIELD PROGRAM), DELETE SECTIONS 3392.1 AND 3392.2, AMEND SECTION 3392.2.1, DELETE SECTION 3392.3, AMEND SECTIONS 3392.3.1, DELETE SECTIONS 3392.4 AND 3392.5, AMEND SECTION 3392.5.1, DELETE SECTION 3392.6, AMEND SECTION 3392.6.1, AND ADD SECTION 3392.5, AS DESCRIBED BELOW.

A. Amend Article 10. “GOLD SHIELD PROGRAM” to “STAR PROGRAM.”

In accordance with Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010), the Bureau began implementing the STAR program on January 1, 2013. It replaced the previous Gold Shield Program, which was sunset on December 31, 2012.

This article pertains to the previous voluntary certification program called Gold Shield, which was replaced by the STAR program effective January 1, 2013. Deleting these outdated sections is necessary to avoid confusion given the replacement of the Gold Shield Program by the STAR program.

B. Delete sections 3392.1 Gold Shield Program and 3392.2 Responsibilities of Smog Check stations certified as Gold Shield.

These sections pertain to the previous voluntary certification program called Gold Shield, which was replaced by the STAR program effective January 1, 2013. Deleting these outdated sections is necessary to avoid confusion given the replacement of the Gold Shield Program by the STAR program.

C. Amend section 3392.2.1 Required Services of STAR Stations.

- I. Renumber to section 3392.1¹ and retitle to “Required Services *and Equipment* of STAR Stations” (Emphasis added).

The Bureau has revised and added provisions to this section that clarify STAR station equipment requirements, described below. The retitling is necessary to accurately convey the contents of the renumbered section 3392.1 and make the regulations easier to reference, comprehend and comply with.

- II. Delete “This section shall become effective January 1, 2013.”

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion of the sentence is necessary to make the regulations more concise and easier to read and comprehend.

- III. Amend subsection (a) as follows:

- a. Add a “-” in “STAR-certified.” This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).
- b. In subdivision (a)(2), revise the existing text to the following:

The testing and certification of vehicles requiring inspection pursuant to sections 44010.5 or 44014.7 of the Health and Safety Code, regardless of the station’s program area location.

This change is necessary to clarify the requirements of the regulation and make it easier to read and comprehend. The intent of the regulation is to require that all STAR stations provide the appropriate Smog Check inspection services

¹ As discussed in ISOR section I.G. above

necessary to inspect any vehicle subject to the Smog Check Program, pursuant to Health and Safety Code section 44010.5² or 44014.7³, not simply vehicles located within the Smog Check Program area in which the station is located. The existing language has proven to be confusing and in need of clarification. The language has been simplified and streamlined and equipment will now be addressed in new subsections (c) and (d).

- c. In subdivision (a)(3), delete “For,” delete the first comma in the subdivision, and add “are authorized to” after the deleted comma.

These changes are non-substantive because they are part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4) and make the regulation easier to read and comprehend.

Also, in subdivision (a)(3) change “may” to “shall”. “May” is permissive, while “shall” is mandatory. This change is necessary to improve clarity, reduce confusion, and make the regulations easier to comprehend and comply with. In this instance, per section 44010.5 of the Health and Safety Code, it is mandatory that STAR stations do not issue a certificate of compliance to a vehicle that is owned by an entity other than a motor vehicle dealer licensed by the Department of Motor Vehicles.

- d. Amend subsection (b)(1) to state “STAR-certified test-and-repair stations operating under the terms and conditions of an agreement executed pursuant to section 3394.2 of the California Code of Regulations and section 44014.2(c) of the Health and Safety Code shall offer repair assistance services included in the agreement as a component of the Consumer Assistance Program established pursuant to Article 11 of this Chapter. This paragraph shall apply to those STAR-certified stations located in basic and enhanced areas.”

² Pertains to inspection of state fleet vehicles.

³ Requires that at least 2 percent of the vehicles in enhanced program areas subject to inspection receive their certificate of compliance from a test-only facility.

The Bureau is adding references to section 3394.2 of the California Code of Regulations and section 44014.2(c) of the Health and Safety Code because they establish that an agreement must be made for participating stations. The Bureau wants to make a clean representation that there are multiple services in the agreement that may be offered as an alternative to only providing repairs.

- e. Add subsection (c), which describes the requirement that all STAR stations must maintain the equipment necessary to test all vehicles subject to the Smog Check Program (*i.e.* older (model year 1976-1999) and newer (model year 2000 and newer) vehicles).

The Smog Check Manual, incorporated into regulations by reference, requires that all STAR stations be able to inspect all vehicles subject to the Smog Check Program. This accomplished two things. The first was to reduce confusion for consumers who aren't sure which stations can inspect their vehicles. With the advent of OIS inspections, stations are allowed to choose which clientele best suits their business needs. For instance, if they only want to inspect newer vehicles, they are not required to maintain BAR-97 equipment. Requiring all STAR stations to maintain all equipment provides a network of stations capable of inspecting all vehicles. The second intent was to ensure that stations capable of inspecting all vehicles were geographically distributed. The popularity of the STAR Program ensures that all vehicles located within Enhanced Areas have easy access to inspections.

The shortcoming with the existing regulatory language, however, was that it provided no requirements that limited equipment downtime. Nothing prevents a station from avoiding the intent of this section by refusing to repair their equipment and then turning away customers who need those particular services.

The proposed 10 calendar day calibration schedule ensures that equipment possessed by STAR stations is actually functional or that it is repaired in a reasonable amount of time. The standard under which the equipment must be calibrated is contained in Section 2 of the BAR-97 Emission Inspection System Specification incorporated by reference in section 3340.17 of this Chapter.

Section (c)(3) provides an exception to the equipment

requirement for special STAR stations operating in Basic and Change-of-Ownership (COO) Program areas that provide STAR inspection services only for dealerships in those program areas. For these stations, the equipment requirement of concern is for the dynamometer, which is used only for Acceleration Simulation Mode (ASM) inspections. ASM inspections are only required in Enhanced areas. Similar vehicles in Basic and COO Areas only require a Two-Speed Idle (TSI) test, which doesn't need a dynamometer. Because most Basic and COO stations do not typically have dynamometers, STAR-directed Enhanced Area vehicles traded in to a Basic or COO dealer would have to be shipped to an Enhanced Area STAR station for inspection before the vehicle could be sold in the Basic and COO areas. With this exception, these STAR-directed vehicles can be inspected by STAR stations in the Basic and COO areas using procedures appropriate to the program area in which the vehicle is to be sold.

- f. Add subsection (d), which provides if the requirements of subsection (c) are not met, the station shall be restricted from testing directed and gross polluting vehicles until BAR has verified the deficiencies are corrected.
This provision is necessary to protect consumers. It ensures that unless identified deficiencies are corrected, stations that are not properly equipped to test directed vehicles should not hold out those services. This is necessary to minimize unnecessary travel and expense for consumers.

J. Delete section 3392.3 Eligibility for Gold Shield Certification; Quality Assurance.

This change addresses the fact the Gold Shield Program is no longer in effect. The deletion is necessary to prevent confusion given the replacement of the Gold Shield Program by the STAR program.

K. Amend section 3392.3.1 Eligibility/Performance Standards for STAR Certification.

- a. Renumber to section 3392.2⁴ and retitle to "Eligibility *Standards* for STAR *Station* Certification" (Emphasis added).

⁴ As discussed in ISOR section I.G. above.

The revision clarifies that the regulation's requirements pertain to eligibility standards only and not performance standards and that it pertains to Smog Check "stations" that are seeking initial STAR certification. The retitling is necessary to clearly and accurately convey the contents of the renumbered section 3392.2 and will make the regulations easier to reference and comprehend.

b. Amend Subsection (a) as follows:

- i. Delete "licensed." All Smog Check stations must be licensed, so including the word "licensed" before "Smog Check station" is not necessary.
- ii. Delete "[a]pplications for the STAR program that begins January 1, 2013 may be submitted beginning July 1, 2012" from subsection (a).

The 2012 initial application submission date is no longer relevant to the initial STAR certification. The deletion of the sentence is necessary to make the regulations more concise and easier to read and comprehend.

- iii. Change subsection (a) to unincorporate the STAR certification Application and add the application requirements in regulation.

Unincorporating the application and adding the application requirements in regulatory text would permit the Bureau to make non-substantive application updates as needed without having to go through the formal regulatory process, including non-substantive formatting changes and the addition of detailed instructions, to enhance ease of use for applicants.

- iv. Add subdivisions (a)(1)-(8). This information was previously captured on an enrollment form incorporated into the regulation, however any update to the form, such as a change in official state letterhead, would force a regulatory change to update the form. This change provides for capturing the same relevant information while allowing flexibility for letterhead changes such as would be required when

new governor is elected to office.

1. Subdivision (a)(1) is necessary to identify the station type and ownership type.
2. Subdivision (a)(2) is necessary to indicate the identity and contact information of the station.
3. Subdivisions (a)(3)-(6) are necessary for determining the fitness of any partner, corporate officer, trustee, member, manager, inspector or technician with regard to their licensure and crimes or punishable acts related to the Smog Check Program.
4. Subdivision (a)(7) is necessary to confirm that the station will not allow any inspector or technician to perform inspections or repairs if their Follow-up pass rate score drops below 0.10.
5. Subdivision (a)(8) is necessary for identification of the station's sole proprietor, partners, corporate officers, or members.

c. Add subsection (b) as follows:

- i. Add subsection (b) to show what eligibility/performance standards must be met for STAR certification.
- ii. The remainder of this section will be renumbered for the inclusion of the proposed subdivision (b). The revision is necessary to allow for insertion of the new text, and the reorganization of the existing performance measures, in a manner that is clear, concise and easy to reference.

d. Add proposed subdivision (b)(1) as follows:

- i. This inclusion is to clarify that stations must perform enough inspections in the most recent calendar quarter to allow for calculation of the performance measures.

Existing STAR regulations are not clear as to whether

stations can receive an initial STAR certification without any short-term performance data. The proposed subdivision (b)(1) clarifies that stations must perform a sufficient number of inspections to permit the gathering of data in order to determine whether a station has met the performance measures necessary for initial STAR certification. These changes are necessary to prevent stations with no prior performance data from obtaining STAR certification and to clarify the inspection data requirements for calculating initial STAR certification performance measures.

- ii. In proposed subdivision (b)(1)(A), lower the minimum required Similar Vehicle Failure Rate for STAR certification from 75% to 50%.

Smog Check Program inspections are “graded” on a curve; that is, an inspector’s score is based on the distribution of scores across all inspectors in the state. Since the STAR program was rolled out, some inspectors appear to have started artificially inflating their failure rate, thus making it more difficult for honest operators to pass the 75% threshold. For example, the Bureau has direct evidence of certain inspectors regularly performing fraudulent passing inspections immediately after performing a failing inspection on the same vehicle. The only plausible reason for this is to inflate a station’s similar vehicle failure rate. The minimum failure rate was lowered to reduce the likelihood that a licensed Smog Check inspector would be removed due to other inspectors artificially inflating their failure rates. The rate of 50% was picked as a replacement by examining the distribution of similar vehicle failure rates, paying special attention to the scores of known trusted operators and ensuring their scores fell comfortably within the new limit. This new limit is necessary to protect legitimate operators from the artificial inflation of failure rates but at the same time, ensuring inspectors that overly lenient inspections are not acceptable, thus protecting the integrity of the STAR program for the benefit of the environment.

- e. Amend proposed subdivision (b)(2) as follows:

- i. Amend subdivision (b)(2) to read: “The station shall maintain FPR scores as follows:.”

This is necessary because it sets up the station’s score requirements which will be listed after this section.

- ii. The intent of the STAR regulations is to ensure the inspectors that perform the inspections at a STAR station continue to meet the STAR performance criteria. The existing language went beyond inspection requirements and dictated who was able to perform vehicle repairs at STAR stations. By referring to inspectors in the Inspector Information Table, the proposed language allows for inspectors with lower FPR scores to perform repairs on vehicles at STAR stations. This not only creates more easily enforceable language, but it also allows that a low FPR score is not necessarily indicative of a technician’s ability to properly repair vehicles. This, in turn, provides alternative employment opportunities for inspectors who fail to achieve an acceptable FPR score.
- iii. Throughout subdivision (b)(2), add a zero in the hundredth’s decimal of “0.4.” This change is necessary to improve consistency by ensuring the number of digits for performance scores is consistent with that for scores reported on the STAR Web page.

- f. Delete current subdivision (a)(4)(A).

The deleted subsection specifies when a station is deemed to employ a technician, which is no longer necessary due to the removal of the word “employ” in the new subdivision (b)(2).

- g. Add subdivision (b)(2)(A).

This is being moved and reworded from current subdivision (b)(4). This is necessary due to the reorganization of the section in a manner that is clear, concise, and easy to reference.

- h. Amend proposed subdivision (b)(2)(B).

- i. Delete “a station employs, for the purpose of performing smog check inspections and/or smog check repairs.”

With the rewording of proposed subdivision (b)(2), this language is not necessary, because of the removal of the word “employ.”

- ii. Delete the word “licensed.”

All Smog Check inspectors must be licensed, so including the word “licensed” before “Smog Check inspector” is not necessary.

- iii. Delete “or the station did not receive an FPR score in the most recently completed reporting period.”

The existing STAR criteria allow stations with no FPR score to have inspectors with no FPR score in their Inspector Information Table and still qualify for the STAR program. This has become a loophole for operators with no performance history to open a new shop with new inspectors and subsequently defraud consumers, for example, by engaging in clean-piping.

Currently, shops that have an inspector with low performance scores in the Inspector Information Table can simply remove that inspector from the Table, withdraw from the STAR program, and later reenter the program under the same certification. Removal of this language is necessary to close this loophole and to protect the integrity of the STAR program.

- i. Amend proposed subdivision (b)(3), as follows:
 - i. Add “or any licensed Smog Check inspector maintained in the Inspector Information Table by the station.” This addition clarifies that having inspectors cited for specifically stated Smog Check violations in a station’s Inspector Information Table will affect a station’s eligibility for the STAR program. This change is necessary to improve clarity and ensure the integrity of the STAR program.
 - ii. Split the content of proposed subdivision (b)(3) into

new subdivisions (b)(3)(A) and (b)(3)(B) and modify wording and punctuation accordingly.

This restructure of the subdivision is necessary to clarify that a citation must meet two distinct requirements for a station to be ineligible for STAR certification. Specifically, the citation must be: (1) “final” as specified in the new (b)(3)(B) and (2) as specified in the new (b)(3)(A), the citation must be for a violation of the specified sections of Health and Safety Code and California Code of Regulations.

Separating the two distinct requirements clearly indicates to readers that a citation must meet both requirements in order to preclude a station from eligibility for initial STAR certification. Separating the two requirements makes each of them easier to reference, read and comprehend.

iii. Amend renumbered subdivision (b)(3)(A) as follows:

Modify the language describing the limitations period applicable to disqualifying citations from “the preceding one-year period from the effective date of the citation” to “within the one-year period preceding the date of application to the STAR program, and”

While the intended meaning of this provision has not changed, the proposed wording change improves clarity and is necessary to avoid confusion. The revised language clearly establishes that the applicant cannot have received a citation that became final and non-appealable within the preceding year from the date of application.

iv. Amend renumbered subdivision (b)(3)(B) as follows:

1. Add “was issued” to the beginning of the text and a “.” at the end of the sentence.

The additional language is necessary because it gives meaning to the second part of the STAR certification ineligibility criteria contained in subdivision (a)(3). Without this additional language, subdivision (b)(3)(A) is stilted and difficult to read and comprehend.

2. Add Health and Safety Code section 44035, subdivision (b) and California Code of Regulations Title 16, section 3340.15, subdivision (b) to the list of citations that precludes STAR certification eligibility.

The proposed addition of Health and Safety Code section 44035, subdivision (b) will preclude issuance of a STAR certification to a Smog Check station receiving a citation within the last year for refusing BAR access to the station to examine property, station equipment, repair orders, emissions equipment maintenance records and any emission inspection items. Health and Safety Code section 44001, subdivision (b)(5)(E) requires the Bureau to administer a Smog Check Program that includes a vigorous and effective enforcement program utilizing performance monitoring of stations and technicians. The proposed revision helps ensure that stations comply with Bureau inspection requests and closes a loophole wherein a citation for refusing BAR station access is not grounds for denial of STAR certification. The revision is necessary to ensure the effectiveness of the Bureau's Smog Check enforcement inspection and enforcement activities and will help protect the integrity of the Smog Check and STAR programs.

The proposed addition of California Code of Regulations Title 16, section 3340.15, subdivision (b) will preclude issuance of a STAR certification to a Smog Check station receiving a citation within the last year for failing to have a licensed Smog check inspector and/or repair technician present during all hours the station is open for business, for testing and/or repairing vehicles by unlicensed inspectors and/or technicians or the performance of testing or repairs that are inconsistent with the inspector's or technician's license classification. The proposed revision will help ensure compliance with California Code of Regulations Title 16, section 3340.15, subdivision (b) and closes a loophole wherein a citation for any of these violations is not grounds for denial of STAR certification. The revision is necessary to help ensure compliance with section 3340.15, subdivision (b) and to protect the integrity of the Smog

Check and STAR programs.

j. Amend proposed subdivision (b)(4), as follows:

- i. Revise “manager” to “responsible managing employee.”

“Responsible managing employee” is a commonly understood term in the Smog Check industry used to describe the manager of a location and applies to the person(s) responsible for the daily operation of a Smog Check station. The Bureau proposes to replace the term “manager” with the broader term “responsible managing employee” as the latter encompasses all those who fulfill a managerial role and are therefore subject to the enforcement jurisdiction of the Bureau. This change is necessary to ensure the regulations cover all employees having responsibility for the daily activities at the Smog Check station and not just those with the title “manager.”

- ii. Delete “licensed.” All Smog Check stations must be licensed, so including the word “licensed” before “Smog Check station” is not necessary.
- iii. Add “repair” and “or inspector(s), or other employee of the station” and delete “employed by the station.”

This change addresses a recent license restructure, which, on August 1, 2012, separated the Smog Check technician license into two separate licenses, an inspector license for inspecting vehicles and a technician license for repairing vehicles. This proposed change furthers the Bureau’s ability to maintain STAR program standards by ensuring that stations that are conferred STAR status, and the individuals that own, manage and work at them, have a history of complying with Smog Check Program requirements. This amendment is necessary because it will help ensure attainment of the higher levels of compliance expected from STAR stations and will help maintain the integrity of the STAR program.

- iv. Add “subject to or have been” and delete “No station

owner, officer, manager, licensed Smog Check technician or other employee of the station may currently be subject to an order of suspension or a probationary order.”

The proposed wording improves clarity because it is more precise and removes duplicative text.

- v. Add “that became effective within the three-year period preceding the date of application to the STAR program” and delete “within the preceding three-year period from the effective date of the action.”

The proposed change of wording is non-substantive and improves clarity, reduces confusion and makes the regulations easier to comprehend.

- k. Amend proposed subdivision (b)(5) as follows:

- i. Change “may” to “shall” and split the content of proposed subdivision (b)(5) into new subdivisions (b)(5)(A), (b)(5)(B), and (b)(5)(C) and modify wording and punctuation accordingly.

“May” is permissive, while “shall” is mandatory. This change is necessary to improve clarity, reduce confusion, and make the regulations easier to comprehend and comply with. In this instance, per section 44072.1 of the Health and Safety Code, it is mandatory that Smog Check repair technicians and inspectors not have violated subdivisions (A)-(C).

The proposed revised subdivision (b)(5) identifies the parties to whom the disqualifying factors apply that are separately described in subdivisions (A – C). Subdivision (A) describes the specific disqualifying criminal convictions, subdivision (B) describes liability in civil proceedings and subdivision (C) describes probationary periods resulting from criminal or civil proceedings.

Dividing the text of the existing paragraph into smaller subdivisions, and the insertion of updated punctuation is necessary to make the information and prohibitions easier to reference and comprehend.

Adding “shall not have any of the following apply:” to the end of the text before subdivisions (A-C) makes clear that a violation of A, B, or C will disqualify the applicant, not all three combined.

Adding an “and” after subdivision B further clarifies that the language is intended to indicate that *none* are permitted.

- ii. Revise the list of parties whose criminal conviction, civil liability, or probationary order may render a station ineligible for initial STAR program certification.

This revision is necessary to ensure that a “substantially related” criminal conviction or civil liability against any person acting as an owner, or that is involved in the daily operation of the business, will preclude the station from STAR eligibility. The owner, whether it be a member, officer, partner, or the like, is responsible for setting the policies of the station. Current law, including Business and Professions Code section 480 allows the Bureau to use substantially related acts and convictions in its licensing inquiries, and 16 CCR 3395.2 establishes substantial relationship requirements for licensing. Applying this standard to an enumerated list of parties serves the same public protection interest by ensuring bad actors are prevented from participation. Further, the Bureau’s enforcement staff have encountered multiple instances where members or officers of a corporate entity control the business despite their title.

The term “manager” is replaced by the term “responsible managing employee,” which encompasses all those who fulfill a managerial role and are therefore responsible for the daily operation of the business. These two changes are necessary to ensure the regulations encompass any person, regardless of title, who directly or indirectly controls or conducts the business.

- I. In proposed subdivision (b)(6), add a “-” to “license-posting.”

This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or

punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- m. In proposed subdivision (b)(7) add the phrase “per Article 7 of this Chapter.”

This change is being added to clarify the specific invoice and record-keeping practices required by BAR. This change is necessary to ensure clarity.

- n. Amend proposed subdivision (b)(9) as follows:

- i. Add the phrase “including EIS and OIS equipment.”

Pursuant to proposed section 3392.1(a)(2), California Code of Regulations, Title 16, STAR stations must perform inspections on all types of vehicles subject to the Smog Check Program. Existing 16 CCR section 3392.3.1(a)(11) requires STAR-certified stations to possess the equipment to test these same vehicles. In light of the addition of OIS inspections and equipment to the Smog Check Program in 2015, this change clarifies that both EIS and OIS equipment is required for STAR stations. This amendment is necessary to ensure that STAR stations possess the equipment required to perform the inspection using the EIS and OIS equipment.

- ii. Delete “and a verification of their working order.” There is not a procedure requiring that stations verify that the equipment is in proper working order, nor is one necessary. Where possible, the equipment will automatically detect malfunctions (e.g. the gas bench falls out of calibration or the dynamometer stops loading accurately). In other cases, the failure is obvious, such as the printer stops printing. The inclusion of this “verification” language is unnecessary.

- o. Amend renumbered subdivision (b)(10) as follows:

- i. Add a “-” to “STAR-certified. This change is non-substantive because it is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4).

- ii. In subdivision (A), delete “dimensions of the.” This does not change the meaning of the regulation and just removes unnecessarily wordy text.
- iii. Replace subdivision (C) with “The sign shall display the content the Bureau provides.” This change is being made to structure the language for consistency with subdivision (10)(A)-(C); there is no change to the requirement itself because the previous language also stated that BAR would provide the content of the sign. HSC 44033 authorizes BAR to specify the content of Smog Check signs.

The Bureau is removing the term “camera-ready” because camera-ready is not clearly defined and is no longer a term of general use. The new language maintains that the Bureau is providing the content but in updated terms.

p. Amend renumbered subdivision (b)(11) as follows:

- i. Revise the phrase “The station may not have had its STAR certification invalidated within the last six months” to “The station shall not have withdrawn its STAR certification within the six month period preceding the date of application.”

This change accounts for situations in which stations withdraw their certification prior to suspension of the certification in order to avoid the suspension. Additionally, if a station has previously been “invalidated” or suspended, such scenario is addressed under other criteria for STAR eligibility. This amendment is necessary to prevent licensees from manipulating the system and avoiding discipline and to avoid duplication within the regulations. Changing “the last six months” to “within the six month period preceding the date of application” also clarifies that the range of time described by the regulation is based on the date of application, and not some other date.

- q. Amend proposed subsection (c) by restructuring the content of the subsection and modifying the language describing the Bureau’s determination of eligibility from “the station meets the eligibility requirements for certification or the application is deficient” to “the station’s application for certification is approved, denied, or deficient.”

It is BAR’s practice, when it receives an incomplete application, to notify the applicant and provide an opportunity to correct the deficiency. However, the existing regulation may be interpreted as meaning that submission of an incomplete application will result in the issuance of an ineligibility determination rather than the issuance of a notice of deficiency that can be corrected. This change is necessary to clarify that application deficiencies may be cured, to ensure that the regulations reflect BAR’s practices, and to make the regulations easier to read and comprehend.

The change also specifies the station will be notified by US Mail or email of the result of their application. These methods of notification are consistent with 3392.3(b) and ensure consistency and equitability in all notifications to the stations.

- r. Add subsection (d), which states that applications from Smog Check stations that are deemed ineligible because they do not meet the performance measures set forth in the revised section 3392.2, subdivision (b)(1), that are resubmitted prior to the next publication of STAR quarterly data, will not be processed by the Bureau.

This change addresses a problem in which some applicants for STAR certification, upon receiving a determination of ineligibility, continue to submit multiple applications, even when there has been no change in their performance scores. Multiple reviews of the same information needlessly tie up staff resources. The proposed change addresses this problem by making clear what must take place prior to resubmittal of an application and how often applications containing the same information can be submitted. This is necessary to save staff time and BAR resources from having to process repeated ineligible applications.

L. Delete Section 3392.4 STAR Program Evaluations.

- a. Delete “[t]his section shall become effective January 1, 2013.”

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion of the sentence is necessary to make the regulations more concise and easier to read and comprehend.

- b. Delete the existing subdivisions (a) and (c).

Subsection (a) is not necessary because it is implied that stations shall meet the criteria of other sections of the regulations. Deleting this section makes the regulation more concise and removes unnecessary text.

Deleting subsection (c) makes the STAR regulations more concise and removes unnecessary text. It is not necessary to state in regulation that the STAR program evaluation may be viewed on the Bureau’s website, the stations are made aware of this when an evaluation is conducted.

- c. Move the current subsection (b) as follows:

- i. This text is being moved to proposed section 3392.3 (existing section 3392.5.1) subdivision (a)(9).

Failure to allow a physical inspection of the station may result in the suspension of the STAR certification. Moving this language reduces confusion and makes the regulation easier to comply with.

M. Delete Section 3392.5 Causes for Invalidation of Gold Shield Station Certification.

This section relates to causes for invalidation of Gold Shield certification. The Gold Shield program no longer exists because it was replaced by the STAR program effective January 1, 2013. Deleting this defunct section is necessary to avoid confusion given the replacement of the Gold Shield Program by the STAR program.

N. Amend Section 3392.5.1. Causes for ~~Invalidation~~Suspension of STAR Station Certification

- a. Renumber to section 3392.3.

The proposed renumbering accounts for the proposed

deletion of existing section 3392.4 and 3392.5 and simplifies the section numbering format for California Code of Regulations Title 16, Article 10. This change is necessary because it makes the regulations easier to read and reference.

- b. Delete “[t]his section shall become effective January 1, 2013.”

BAR proposes to delete effective dates that are no longer relevant to clean up its regulations. The deletion of the sentence is necessary to make the regulations more concise and easier to read and comprehend.

- c. Change “It shall be cause for the bureau to ...” to “The Bureau has cause to...”

This change is non-substantive and cleans up the language to be clearer and more concise.

- d. Change “invalidation” to “suspension” in the section title and “invalidate” to “suspend” in subsection (a).

This clarifying change does not represent a change in practice, but rather makes the terminology used in the STAR regulations consistent with that used in the authorizing statutes. Health and Safety Code section 44014.5(d)(2) provides failure to meet performance standards set by the Bureau shall be cause for *suspension* of a station’s STAR certification. The change is necessary to make the STAR regulations consistent with the authorizing statutes.

- e. Delete existing subdivisions (a)(1) - (3). These sections are being moved within the proposed renumbered section 3392.3.

This move is necessary for the order of the causes for suspension from the STAR program to parallel the order of the eligibility criteria in proposed section 3392.2. The parallel order makes the regulations easier to read and comprehend.

- f. Amend proposed subdivision (a)(1) as follows:
 - i. Replace “3392.3.1(a)(1)” with “3392.2(b).”

This change is necessary given the proposed

renumbering within proposed section 3392.2.

- g. Insert a new subdivision (a)(2), insert a new subdivision (a)(2)(A), and renumber existing subdivisions (a)(5 – 8) to (a)(2)(B – E).

- i. Insert a new subdivision (a)(2).

Adding this language as an introduction to subdivisions (a)(2)(A)-(E) allows the removal of wordy text in those subdivisions. Stating this here relieves BAR from repeating it in each subdivision (a)(2)(A)-(E).

- ii. Insert new subdivision (a)(2)(A):

The existing STAR criteria allow stations with no score to add inspectors with no score to their Inspector Information Table and without suspension of their STAR privileges. This has become a loophole for operators with no performance history to hire an inspector similarly lacking performance history and subsequently defraud consumers, for example, by engaging in clean-piping. The proposed regulatory changes would require that STAR stations without enough performance history to have earned a score in order to install in the Inspector Information Table only inspectors who have an appropriate score. This change is necessary to close this loophole and to protect the integrity of the STAR program.

- iii. Reword renumbered subdivisions (a)(2)(B)-(E) for clarity, and consistency.

The intent of the STAR regulations is to ensure the inspectors that perform the inspections at a STAR station continue to meet the STAR performance criteria. To perform inspections, licensed Smog Check inspectors must be listed in the Inspector Information Table. The amendment is necessary to clarify the exact nature of the STAR performance measure and make the language more concise for easy reading and comprehension.

- iv. Add hundredths place digit in specified FPR scores.

This change ensures the number of digits for performance scores is consistent with that for scores reported on the STAR Web page. The amendment is necessary for consistency purposes.

h. Amend proposed sections 3392.3(a)(3) and (4).

Current section 3392.5.1(a)(1) is being moved and split into 3392.3(a)(3) and (4).

This split is necessary to address confusion caused by the current language of section 3392.5.1(a)(1). Some licensees incorrectly interpret the language to mean that an order of suspension or a probationary order shall be cause for STAR certification suspension only if it was issued for a violation of the subsequently specified sections of the Health and Safety Code or California Code of Regulations. BAR's adoption of the regulation was intended to provide grounds for suspension of a Smog Check station's STAR certification based upon the receipt of any order of suspension or any probationary order, in addition to the receipt of a citation for violation of the specified sections of the Health and Safety Code or California Code of Regulations.

Separating the causes for suspension based upon violation of the specified sections of the Health and Safety Code or California Code of Regulations into proposed subdivision (a)(3) and the causes for suspension based upon receipt of an order of suspension or a probationary order into subdivision (a)(4) will make the regulations easier to comprehend and will help ensure uniform enforcement of the STAR certification suspension provisions.

i. Proposed section 3392.3(a)(3) includes the following changes to the content of current section 3392.5.1(a)(1):

- i. Revise the existing phrase "The STAR station, manager, or any licensed technician employed by the station" to:

"The STAR station or any licensed Smog Check inspector maintained in the Inspector Information Table by the station."

The word “manager” is being deleted because citations issued for violations of specified sections of the Health and Safety Code and California Code of Regulations are only issued to Smog Check inspectors and stations, thus rendering inclusion of “manager” in the revised regulation unnecessary. The revision will eliminate an unnecessary and potentially confusing word and is necessary to make the regulations easier to comprehend and comply with.

The proposed revision of “technician” with “Smog Check inspector” aligns with the Bureau’s current licensing structure. As discussed in section I.C. above, use of the term “inspector” instead of “technician” is consistent with the licensing structure adopted by BAR in 2012. The term “inspector” is used to differentiate those who inspect vehicles from those who repair them. The proposed revision is necessary to clarify that the dictates of the proposed regulation apply to individuals licensed as “Smog Check inspectors,” as such term is defined in California Code of Regulations title 16, section 3340.1. The proposed revision will make the regulation easier to comprehend and comply with.

- ii. Add Health and Safety Code section 44035, subdivision (b) and California Code of Regulations Title 16, section 3340.15, subdivision (b) to the list of prohibited activities that may result in the issuance of a citation and be cause for suspension of a Smog Check station’s STAR certification.

The proposed addition of Health and Safety Code section 44035, subdivision (b) permits STAR certification suspension for refusing BAR access to a Smog Check station necessary to examine property, station equipment, repair orders, emissions equipment maintenance records and any emission inspection items. The proposed revision closes a loophole wherein a citation for refusal of station access to BAR is not grounds for STAR certification suspension. The revision is necessary to protect the integrity of the STAR program.

The proposed addition of California Code of

Regulations Title 16, section 3340.15, subdivision (b) permits STAR certification suspension for failing to have a licensed Smog Check inspector and/or repair technician present during all hours the station is open for business, for testing and/or repairing vehicles by unlicensed inspectors and/or technicians or the performance of testing or repairs that are inconsistent with the inspector's or technician's license classification. The proposed revision closes a loophole wherein a citation for any of these violations is not grounds for STAR certification suspension. The revision is necessary to protect the integrity of the STAR program.

It also prevents suspension of a station's STAR certification due to a citation that contains only an order of abatement. This addition is necessary to clarify the Bureau's existing policy regarding citation penalties. When the Bureau determines cause exists to issue a citation, the penalty is determined by the facts surrounding each circumstance and applying the factors in aggravation as defined in Health and Safety Code section 44050(b). In cases where there are no factors of aggravation present and through the presence of mitigation or the appearance of a bona fide error, the Bureau will issue a citation with order of abatement as a formal means of reminding the licensee to perform proper inspections. In these cases, invalidation of the STAR certification is not warranted.

- iii. Revise "final and non-appealable" to "final and effective."

In the context of the Bureau's administrative appeal process, the existing phrase "non-appealable" has proven to be too vague to be easily understood by licensees subject to this regulation. The existing language does not clearly indicate when the citation is final and there is cause for STAR station suspension. The proposed revision clarifies that a citation becomes final and effective if it is not appealed or after the formal administrative appeal process is completed and the proposed decision, default decision, or stipulated settlement has been adopted

by the Director. The proposed revision is necessary to ensure that licensees and BAR staff clearly understand when the receipt of a citation becomes grounds to suspend a STAR certification.

- j. Proposed section 3392.3(a)(4) includes the following changes to the content of current section 3392.5.1(a)(1):
 - i. Provides that the entity receiving an order of suspension or probation cannot be the STAR station, responsible managing employee, or any licensed Smog Check repair technician or inspector, as opposed to “the STAR station, manager, or any licensed technician employed by the station.”

The Bureau proposes to replace the term “manager” with “responsible managing employee.” “Responsible managing employee” is a commonly understood term in the Smog Check industry used to describe the manager of a location and applies to the person(s) responsible for the daily operation of a Smog Check station.

In addition, “responsible managing employee” encompasses all those who fulfill a managerial role and are therefore subject to the enforcement jurisdiction of the Bureau. This change is necessary to ensure the regulations cover the appropriate classes of employees.

- k. The proposed section 3392.3(a)(5) includes the following changes to the content of current section 3392.5.1(a)(3)(A)-(C):
 - i. Proposed subdivision (a)(5) will contain a list of parties whose criminal conviction, civil liability, or serving of probation (as set forth in proposed paragraphs (A – C), respectively) shall be cause for STAR station certification at the beginning of proposed section (a)(5).

This formatting change, wherein the dictates of subdivision (a)(5) apply to the subordinate paragraphs (A – C) contained within the subdivision, instead of repeating the list of parties at the beginning of each

subordinate paragraph, is necessary to eliminate repetitive verbiage and will make the regulation easier to read and comprehend.

ii. Amend the types of parties whose criminal conviction, civil liability, or serving of probation may render a station ineligible for the STAR program as follows:

1. Revise “station owner” to “STAR station owner.”

The revision is necessary to clarify that the regulation does not apply to Smog Check stations that have not received STAR certification. The proposed revision will make the regulations easier to comprehend and comply with.

2. Add “partner,” “corporate officer,” “member,” “director,” and “trustee.”

The proposed change ensures a “substantially related” criminal conviction, civil liability or serving of a probationary period by any person acting in the capacity of owner, regardless of the ownership structure, will preclude the station from STAR eligibility. These changes are necessary to reflect the Bureau’s current licensing scheme. HSC 44014.5(d)(2)(A) indicates the “station” shall meet the performance standards; however, it is not possible for the “station” to be subject to criminal or civil action. Therefore, the Bureau is listing all possible types of station ownership. The owner, whether it be a member, officer, partner, or the like, is responsible for setting the policies of the station. HSC 44016 goes on to state that the provisions of 44014.5 (test only) shall apply to all stations as defined in 44012.

Current law, including Business and Professions Code section 480 allows the Bureau to use substantially related acts and convictions in its licensing inquiries, and 16

CCR 3395.2 establishes substantial relationship requirements for licensing. Applying this standard to an enumerated list of parties serves the same public protection interest by ensuring bad actors are prevented from participation. Further, the Bureau's enforcement staff have encountered multiple instances where members or officers of a corporate entity control the business despite their title.

These restrictions further ensure that highest performing stations are certifying the highest polluting vehicles.

3. Revise manager to "responsible managing employee."

"Responsible Managing Employee" is a commonly understood term in the Smog Check industry used to describe the manager of a location and applies to the person(s) responsible for the daily operation of a Smog Check station. The Bureau proposes to replace the term "manager" with the broader term "responsible managing employee" as the latter encompasses all those who fulfill a managerial role and are therefore subject to the enforcement jurisdiction of the Bureau. This change is necessary to protect the integrity of the STAR program by ensuring that the regulation covers all employees having responsibility for the daily activities at the Smog Check station and not just those with the title "manager."

- I. Renumber existing paragraphs (2), (9), and (10) of subdivision (a) to (6), (7), and (8), respectively.

This change is necessary given the proposed deletion, addition, renumbering and rearrangement of preceding text within subdivision (a).

- m. Add subdivision (a)(9).

This section was moved from section 3992.4. As mandated in the current regulatory text of 3340.15(g), the station shall provide the Bureau access to perform physical inspection. Failure to allow a physical inspection of the station may result in the suspension of the STAR certification. Moving this language reduces confusion and makes the regulation easier to comply with. The wording was changed to make for easier reading and make the regulation easier to follow and comprehend.

- n. The existing text of subdivisions (b) and (c) will be deleted and will be incorporated, with revisions, into subdivisions (b) and (c), respectively, of section 3392.5.⁵

This move relocates these provisions within a new proposed section that specifically addresses the consequences of STAR program suspension or withdrawal. Grouping these provisions under a new section 3392.5 is necessary to make them easier to locate and comply with and will help ensure consistent enforcement of the regulations.

- o. Add new language to subsection (b), which states the Bureau's notice procedures in the event it finds cause to suspend STAR station certification. This language was moved from current section 3392.6.1 (preamble and subsection (a)). The original language has been modified to specify more accurately the methods by which the Bureau may serve notice pursuant to statute, and to require that the notice state the period of suspension. Moving this language from the current section 3392.6.1 is necessary because service of the notice of suspension is more consistent with the causes for suspension. The current section 3392.6.1 is being renumbered and modified to clearly reflect the appeal process, making inclusion of the procedures for service of the notice in appropriate for this section.

⁵ Substantive revisions to these subsections are discussed in ISOR section III. J., below.

The proposed language requires the notice to contain a reference to the statutes and regulations forming the grounds for suspension and codifies the requirement that the notice shall state the term of suspension. This change is necessary to improve consistency with authorizing statutes.

- p. Add new language to subsection (c), which provides that when a suspension ends, the station may resume operating as a STAR station, unless otherwise prohibited.

These new provisions eliminate possible confusion about the need to reapply to the STAR program following conclusion of the suspension period, unless the STAR station is otherwise prohibited from resuming. This change is necessary to promote clarity and consistency within the STAR program.

O. Delete the existing text of Section 3392.6. Gold Shield Program Hearing and Determination.

This section pertains to the previous voluntary certification program called Gold Shield, which was replaced by the STAR program effective January 1, 2013. Deleting this section is necessary to avoid confusion due to the termination of the Gold Shield Program.

P. Amend Section 3392.6.1. STAR program Hearing and DeterminationDecision.

- a. Renumber to section 3392.4⁶.
- b. In the title and throughout the section, change “Determination” to “Decision.”

These changes make terminology in the STAR regulations consistent with that in authorizing statute, Health and Safety Code section 44014.5(d), and do not represent a change in practice. This change is necessary to make the regulations consistent with the terminology in the authorizing statute and should make the regulations easier to comprehend and comply with.

- c. Throughout, change “invalidate” or “invalidation” to “suspend” or “suspension” and “administrative hearing” to “administrative review.”

⁶ See ISOR section I.G. above for discussion of proposed renumbering.

These changes make terminology in the STAR regulations consistent with that in authorizing statute, Health and Safety Code section 44014.5(d), and do not represent a change in practice. This statute outlines the right of stations to go through an informal hearing process to contest a suspension. This change is necessary to make the regulations consistent with the terminology in the authorizing statute and should make the regulations easier to comprehend and comply with.

- d. Throughout, change “hearing” to “informal hearing.”

Government Code section 44014.5(d)(2)(C) states that “the hearing requirements of [Government Code] Section 44072 shall not apply.” Government Code Section 44072 requires proceedings conducted under Article 7 (titled “Denial, Suspension and Revocation”) to be conducted in accordance with “Chapter 5 [(titled “Administrative Adjudication: Formal Hearing”)] of Part 1 of Division 3 of Title 2 of the Government Code....” The proposed revision is necessary to make it easier to discern that the formal hearing requirements contained in Chapter 5 of the Government do not apply to the STAR certification suspension hearings. It is anticipated that identifying the hearings as “informal” in the regulations will reduce meritless arguments and appeals based on adherence to formal hearing requirements, may reduce hearing preparation time and expense and should enable BAR to resolve STAR suspension matters in an expedited and more efficient manner.

- e. Delete the introductory paragraph and existing subsections (a) and (b).

The Bureau is reorganizing this section for clarity and consistency with authorizing statutes.

The introductory paragraph has been moved to proposed section 3392.3(b) above. Subsections (a) and (b) are reworded and the information therein is provided in the proposed sections (a) and (b).

- f. New language for proposed subsection (a) will be revised as follows:

- i. Insert new language stating what the STAR station may do to contest the suspension.

Although Health and Safety Code section 44014.5, subdivision (d)(2)(B) contains language that enables STAR stations to contest suspensions by submitting a request for an informal hearing by the chief of the Bureau or the chief's designee; it does so indirectly, by including the language in a description of the information that must be included in a STAR suspension notice issued by BAR. The new regulatory language directly states what a STAR station must do to contest a suspension and is easier to read and comprehend by interested parties. The revision is necessary to ensure that affected parties are fully apprised of their right to contest a STAR suspension and how to do so.

- g. New language for proposed subsection (b) will be revised as follows:

- i. Amend subdivision (b) by adding "If the Bureau receives a timely written request for an informal hearing:"

This addition provides a revised due process procedure, as further explained in the revisions to (b)(1) below. The additions here to (b) clarify when the subdivision applies, which is upon timely request for an informal hearing. Adding this preamble language clarifies the preconditions of the further subdivisions and assist in establishing a clear procedure.

- ii. Add new subdivision (b)(1) as follows:

[t]he Bureau shall stay the suspension, pending the outcome of the hearing.

This addition, which repeats a provision of Health and Safety Code section 44014.5(d)(2)(B), clarifies the Bureau's authority to suspend STAR stations immediately following the informal hearing conducted by the Bureau. This change is consistent with the

Legislature's intent that suspension be stayed only until the conclusion of the informal hearing. The amendment is necessary to ensure that the regulation is consistent with the above-mentioned legislative intent. As this requirement is contained in a portion of the statute that primarily addresses suspension notice requirements, it may be overlooked by interested parties. Including it in the regulations makes it easier to reference and comprehend the suspension tolling provision.

iii. Amend subdivision (b)(2) as follows:

1. Delete "or representative." Pursuant to Health and Safety Code section 44014.5(d)(2) it is the station that is to be notified. This change is necessary to make the regulations consistent with the authorizing statute and should make the regulations easier to comprehend and comply with.

iv. Amend subdivision (b)(3) as follows:

1. Add "on the contested suspension as follows:." This proposed revision more clearly conveys that the following subdivisions will contain the elements of the suspension process as specified in Health and Safety Code section 44014.5(d)(2).

v. In proposed subdivision (b)(3)(A), Revise "... within ten (10) days of the date on which the bureau received a timely request for a hearing" to:

... not later than ten (10) days following the date on which the Bureau received a timely request for the informal hearing.

The phrase "not later than" is the same language contained in Health and Safety Code section 44014.5, subdivision (d)(2)(C). The proposed revision is necessary to make the regulations consistent with the terminology in the authorizing statute and should make the regulations easier to comprehend and

comply with.

- vi. Replace “of” with “from.”

The proposed revisions more clearly convey the idea of a strict 10-day deadline within which a hearing must be held. The revisions are necessary to make the regulation easier to comprehend and comply with. It is anticipated that the revised language will enhance compliance with the hearing scheduling requirements and reduce appeals arising from the failure to do so.

- vii. Replace “a” with “the.”

The proposed revision makes the reference to “hearing” consistent with “the contested suspension.” This grammatical consistency makes the regulations easier to read and comprehend.

- h. Add a new subdivision (b)(3)(C), providing the Bureau chief or the chief’s designee will conduct the hearing.

Health and Safety Code section 44014.5 states that the chief or his or her designee shall hold the hearing. The proposed revision is necessary to make the regulations consistent with the authorizing statute and should make the regulations easier to comprehend.

- i. Amend proposed subdivision (c) as follows:

Within ten (10) days of the close of the informal hearing the Bureau shall notify the STAR-certified station of the decision to either rescind the suspension, affirm the suspension, or order any other appropriate action.

- i. The Bureau proposes rearranging the text for easier reading and understanding.
- ii. The addition of the words “rescind the suspension, affirm the suspension, or order any other appropriate action” state existing law pursuant to Health and Safety Code section 44014.5 and clarifies options available to the Bureau in the informal hearing process, including the ability to modify a suspension period. This is necessary to allow the Bureau to have

the appropriate flexibility in determining suspension lengths.

- j. Amend proposed subdivision (d) as follows:
 - i. The Bureau proposes rearranging the text for easier reading and understanding.
 - ii. Add “pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.”

This change is necessary to clarify that the administrative review described in statute will be conducted in accordance with Chapter 5 of the Government Code. This provides clarity in the regulation and clarity and consistency with authorizing statutes.

Q. Add Section 3392.5 Consequences of Suspension or Withdrawal.

- a. Add subsection (a), which provides: (1) the STAR station may withdraw from the STAR program by providing written notice to the Bureau; and (2) withdrawal shall not deprive the Bureau of authority to continue suspension proceedings.

The first provision is a carryover from current section 3392.5.1(b), “Causes for Invalidation of STAR Station Certification.” The second provision mirrors Health and Safety Code section 44072.6, which provides that under the Smog Check Program, voluntary surrender of a license by a licensee shall not deprive the Bureau of authority to continue proceedings to suspend or revoke a license. In this same context, the surrender of a license shall not deprive the Bureau of the authority to continue proceedings to suspend the STAR certification of a Smog Check station.

This proposed subsection retains an existing provision and clarifies that withdrawal of a station license shall not preclude BAR from proceeding with a suspension or invalidation. This addition is necessary to promote clarity and consistency with authorizing statutes.

- b. Add subsection (b), which provides if a STAR certification is suspended or withdrawn, a STAR station may not (1)

perform specified services; or (2) advertise they are part of or in compliance with the STAR program until the suspension ends or the station is recertified.

The first provision is a carryover from current section 3392.5.1(c), with the referenced section numbers updated. The second provision mirrors Health and Safety Code section 44014.4, which provides it is an unfair business practice for a Smog Check station not certified to advertise they are certified or are complying with certification standards.

This proposed subsection retains an existing provision and clarifies advertising requirements for stations that have their STAR certification suspended. This addition is necessary to promote clarity and consistency with authorizing statutes.

- c. Add “Authority cited: Sections 44001.5 and 44014.5, Health and Safety Code. Reference: Sections 44014.2, 44014.4, 44014.5, and 44014.6, Health and Safety Code.”

The additions are necessary to capture all appropriate authority and reference sections. Health and Safety Code section 44014.6 is discussed in ISOR section I.E. above.

Health and Safety Code section 44001.5 pertains to the motor vehicle inspection program. Health and Safety Code Section 44001.5(a) directs the Bureau chief to enforce and administer the Motor Vehicle Inspector Program. Health and Safety Code section 44001.5(b) authorizes the Bureau to take action to ensure that the reduction in vehicle emissions meets or exceeds those required by the Clean Air Act and Health and Safety Code section 44001.5(c) directs the Bureau to ensure that gross polluters are identified and failed when tested and that vehicles meeting the state standards are protected from being falsely failed.

Health and Safety Code section 44014.4 pertains to STAR Smog Check station advertising. Health and Safety Code section 44014.4(a) allows licensed Smog Check stations that have been STAR-certified to advertise that fact. Health and Safety Code section 44014.4(b) prohibits licensed Smog Check stations from advertising that they are STAR-certified if they are not in fact STAR-certified.

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.

Smog Check station participation in the STAR program is voluntary and there are no additional license or registration fees. Compliance with the new rules for existing STAR stations and inspectors operating therein are, by design, intended to be easy and seamless for stations and inspectors performing legitimate and accurate inspections. Changes to the analytical processes that calculate STAR scores and display them for users are minor and absorbable. As a result, there is no economic impact anticipated to the state.

However, to the extent a non-STAR registered Smog Check station opts to register as a STAR Smog Check station, these stations may be required to purchase additional equipment. STAR stations are required to maintain equipment necessary to inspect all vehicles subject to the Smog Check Program, whereas other stations are permitted to maintain only the equipment necessary to inspect their preferred vehicle clientele. The BAR-97 equipment necessary to test the older vehicles runs in the \$500-\$600/month range. OIS equipment necessary to test most newer vehicles runs in the \$100-\$200/month range. Most stations who choose to participate in the STAR Program already have all of the required equipment.

In addition, the proposed action is not expected to expand or reduce existing business, because it has no impact on the state's population of directed- and gross-polluting vehicles that are required to undergo Smog testing at a STAR station.

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

Bureau of Automotive Repair 2019 Smog Check Performance Report.
(https://smogcheck.ca.gov/pdf/2019_Smog_Check_Performance_Report.pdf)

BENEFITS

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 air quality laws and regulations.

The Bureau's 2019 Smog Check Performance Report⁷ indicates that poor performance by inspectors during Smog Check inspections costs the state an additional 60 to 70 tons per day of reactive organic gases (ROG) and oxides of nitrogen (NOx) that would have been removed had all Smog Check stations and inspectors performed accurate inspections. By enacting these regulatory changes, BAR can help to close the gap, ensuring better compliance with the Smog Check Program, which directly translates to cleaner air for California residents.

BENEFITS OF THE REGULATION TO THE STATE'S ENVIRONMENT:

BAR has made an initial determination the proposed regulatory action will likely benefit the environment, specifically air quality. The proposal updates existing requirements to improve STAR performance standards that will promote accurate, high quality testing. This would result in identifying an increased number of gross polluting vehicles and either requiring repairs to pass a biennial inspection, or removal from the road altogether. When repaired, vehicles contribute less pollution and greenhouse gas to the environment.

BENEFITS OF THE REGULATION TO WORKER SAFETY:

BAR has determined the proposed regulatory action will have a positive effect on worker safety because the workforce will be breathing cleaner air.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal was found to be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

BAR considered the alternative of taking no action. However, taking no action was rejected for the following reasons:

- The voluntary certification program called Gold Shield, was replaced by the STAR program effective January 1, 2013. Failing to delete the outdated sections would cause confusion given the replacement of the Gold Shield Program by the STAR program.
 - These deletions provide clarity and avoid confusion due to the termination of the Gold Shield Program. In addition, keeping requirements for a certification program that has been defunct since 2013 makes the regulations less concise, may cause confusion regarding whether the Gold Shield program is still in existence, and

⁷ https://smogcheck.ca.gov/pdf/2019_Smog_Check_Performance_Report.pdf

makes the regulations more difficult to read and comprehend.

- The non-substantive changes are part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations section 100(a)(4).
 - Failing to address these changes would make the regulations difficult to reference and comprehend and may result in misinterpretation or unintentional noncompliance.
- General clean-up of the regulations makes them easier to read, comprehend, and understand.
 - The continued inclusion of superfluous, long-passed effective and submission dates makes the regulations less clear and harder to comprehend.
 - Continuing to have terminology that is different than what is used in the authorizing statutes may cause confusion and makes the statute and regulations harder to comprehend and comply with. In addition, the existing regulation’s use of inconsistent terms may be construed as conflicting with statute.
 - Maintaining repetitive verbiage makes the regulations more difficult to read and comprehend.
- Amending authority and reference citations is required by Government Code section 11349.1 and California Code of Regulations title 1, section 14.
 - Failing to update the authority and reference citations may give rise to arguments that the regulatory standards are inconsistent with the enabling statutes.
- Renumbering, reordering, and moving text is necessary for easier reading and understanding of the regulations.
 - Renumbering preceding text without renumbering the existing text would make the regulations more difficult to reference, comprehend, and comply with.
 - Failing to reorder text and leaving scattered provisions throughout the regulations, as opposed to grouping them under a single section, makes the regulations harder to reference, comprehend, comply with, and enforce.
 - Excessive length of a subdivision, with multiple references and the complexity of the information contained therein can combine to make the regulation difficult to comprehend and may result in misinterpretation of its provisions.
- Amending, adding, and deleting definitions clarifies the statutory and regulatory language and make the definitions more clear, concise, and

easy to understand.

- These amendments, additions, and deletions make it easier for stations to comply with the STAR program requirements and alleviate any confusion as to whether the Gold Shield program is still in existence, as some definitions are only applicable to that defunct program. In addition, failing to amend, add, or delete a definition or term could lead to confusion, misinterpretation, and possible misapplication of the regulation.
- Existing regulations that are unclear or vague make the regulations more difficult to comprehend and may lead to misinterpretation of the regulation.
 - Maintaining existing language and failing to add new text where the existing regulations do not clearly set forth requirements makes it difficult to understand the regulation.
 - Not explicitly requiring that all STAR stations be capable of performing inspections on all vehicles subject to Smog Check, and that STAR stations maintain all required equipment, may result in inconsistent inspections and repairs, and/or the inability of STAR stations to perform required inspections and necessary repairs, to the detriment of consumers and the integrity of the STAR program.
- Loopholes that exist in current regulation that facilitate fraudulent conduct are detrimental to consumers, the environment, and the integrity of the Smog Check and STAR programs.
- The STAR Certification Application Form, which is incorporated by reference, is outdated and the update is necessary to ensure that applicants do not use an outdated application when applying for STAR station certification.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of any new specific technologies or equipment. This proposal seeks to add to existing regulation language that specifies requirements for equipment to be possessed and maintained by a STAR station so that they can inspect all vehicles subject to the Smog Check Program. STAR stations are currently required to possess and maintain equipment to test all vehicles as a convenience to consumers. By contrast, non-STAR stations may choose which inspection services to provide their consumers.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Although the proposed action will directly affect businesses statewide, including small businesses, and including that it potentially increases the profitability for

STAR-certified stations, the Bureau concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant because the program is voluntary and is limited to California.

DUPLICATION OR CONFLICT WITH FEDERAL 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 federal or state regulations.