

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

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

**SMOG CHECK INSPECTION EQUIPMENT, PROCEDURES, AND REFERENCE
DOCUMENTS**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following location on the following date:

NORTHERN CALIFORNIA

February 12, 2018
at 10:00 a.m.
Bureau of Automotive Repair
Hearing Room
10949 North Mather Blvd
Rancho Cordova, CA 95670

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office no later than 5:00 p.m. on Monday, February 12, 2018, or must be received by the Bureau at the above referenced hearing. The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.5, 44002, 44003, 44012.1, 44013, 44036, 44037.1, and 44072.10 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BAR is the state agency charged with administration and implementation of the Smog Check Program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific inspection standards. Currently, Smog Check stations are required to use equipment known as the BAR-97 Emissions Inspection System (EIS) to perform tailpipe based inspections on 1999 and older model year vehicles and other gasoline powered vehicles that do not have On Board Diagnostic OBDII systems. BAR is making changes to the specifications for this equipment and to the procedures followed by inspectors using this equipment.

California began using BAR-97 EIS in 1998. Since then, BAR has made several changes to implement new Smog Check requirements; however none of the updates resulted in new equipment systems. The greatest issue with current equipment is the lack of available replacement parts. This issue has been addressed by proposed requirements to use current technology computers and software. BAR-97 EIS are still using software written to run on obsolete Microsoft Disk Operating System (DOS) and IBM OS2 operating systems instead of a supported software operating system version like Windows 7. Requiring the recertification of BAR-97 EIS will result in the installation and use of currently available emissions measurement components as well. BAR's specifications also require obsolete hardware like phone modems and floppy disk drives which have been replaced by USB drives and Internet connection. The EIS have used a traditional dial up modem and phone line to transmit data to BAR's central database for the last 20 years. This technology is becoming unreliable, difficult to maintain, and obsolete.

The proposed regulatory action will update the document incorporated by reference titled "BAR-97 Emission Inspection System Specifications" dated July 2017, with new requirements to utilize current technology, match current inspection procedures, and collect additional data. Stations performing tailpipe based inspections will be required to utilize BAR-97 EIS certified to the new specification, including using an Internet connection to BAR's central database in lieu of a traditional phone line.

The proposed regulatory action would update the document incorporated by reference titled "Smog Check Manual" dated November 2017, to require stations to use an Internet connection from their BAR-97 EIS to BAR's central database in lieu of a traditional phone line. The proposed regulation would also update the Smog Check Manual to clarify and document existing inspection procedures.

DOCUMENTS INCORPORATED BY REFERENCE

- Smog Check Manual, November 2017.
- BAR-97 Emission Inspection System Specifications, July 2017.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, BAR has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

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

Costs associated with the development of the specifications and certification of the equipment will be fully absorbed within existing resources.

This proposal will result in no costs or savings in federal funding to the state.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

BUSINESS IMPACT:

BAR has made an initial determination that the proposed regulation may have a statewide economic impact directly affecting businesses.

Smog Check stations that are STAR certified or are not STAR certified but choose to perform tailpipe based inspections on older model year vehicles, will be required to obtain and use a BAR-97 Emissions Inspection System meeting the proposed 2017 specification. This will require about one third of the stations statewide to acquire new systems. No obligation rent options costing \$450 per month are available and include both service and replacement consumable parts. This monthly rate is similar to the existing annual maintenance contract cost associated with equipment currently in use. Some stations that seldom use the equipment, choose to not maintain a service contract, so such stations may incur greater expense since the lease cost could be higher than paying out of pocket for occasional maintenance. If there is an increased equipment cost in the station, it would be absorbed to remain competitive with other stations, or would be passed on to customers via increased Smog Check inspection fee. Supply and demand affects the inspection fee because it is not BAR regulated.

The BAR has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The BAR has considered proposed alternatives that would lessen any adverse economic impact on business and invites the public to submit proposals as well. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Smog Check stations currently use equipment originally sold by four vendors. Two of these vendors have expressed interest in submitting modern equipment for BAR certification to the 2017 specification. These vendors will be permitted to sell and service the new equipment once it is BAR certified. The majority of BAR-97 equipment is already being replaced due to obsolescence, so these customers would simply need an update to fully comply with the proposed regulations.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

BAR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS:

The majority of businesses that are likely to be affected by this regulation are small businesses. The most affected would be small businesses that seldom use this equipment and choose to pay out of pocket for maintenance. To avoid this expense, a station could choose to only inspect newer vehicles using the OBD Inspection System equipment as long as the station is not STAR certified. STAR certified stations must possess, maintain, and use both old and new inspection equipment to inspect all vehicles.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

BAR has made the following initial determinations regarding the impact of the proposed regulatory action on the jobs/businesses:

It will not have any impact on the creation or elimination of jobs, the creation of new businesses, or the elimination of existing businesses. First, the proposed regulation imposes new equipment requirements that may drive low tailpipe test volume stations to specialize in only testing newer model year vehicles. Second, stations performing a high volume of tailpipe based inspections will continue business as usual with a rent/lease equipment cost similar to their current service contract cost. Lastly, the proposed action is not expected to expand or reduce existing businesses, because it has no impact on the vehicle population requiring a BAR-97 inspection.

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 consumer protection and air quality laws and regulations.

Recent studies such as the 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending*, concluded that, “Meeting federal clean air standards would have prevented an estimated 29,808 hospital admissions and ER visits throughout California over 2005 - 2007... Failing to meet federal clean air standards cost health care purchasers/payers \$193,100,184 for hospital care alone. In other words, improved air quality would have reduced total spending on hospital care by \$193,100,184 in total.”

Additionally, an ARB study, *Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007,¹ identified significant health effects attributable to high levels of ozone. Polluting vehicles produce hydrocarbons and oxides of nitrogen which combine in the presence of sunlight to form bad ozone. The report stated that. "Ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in exercising children (McConnell, 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics.”

Further, a recent study by USEPA, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM2.5 and Ozone*, found that, “Ground-level ozone (O₃) and fine particulate matter (PM2.5) are associated with increased risk of mortality... Using PM2.5 and O₃ mortality risk coefficients drawn from the long-term American Cancer Society (ACS) cohort study and National Mortality and Morbidity Air Pollution Study (NMMAPS), respectively, we estimate 130,000 PM2.5-related deaths and 4,700 ozone-related deaths to result from 2005 air quality levels. Among populations aged 65–99, we estimate nearly 1.1 million life years lost from PM2.5 exposure and approximately 36,000 life years lost from ozone exposure. Among the 10 most populous counties, the percentage of deaths attributable to PM2.5 and ozone ranges from 3.5% in San Jose to 10% in Los Angeles. These results show that despite significant improvements in air quality in recent decades, recent levels of PM2.5 and ozone still pose a nontrivial risk to public health.”

These studies suggest that, although California air quality has improved, additional reductions of smog-forming pollutants are necessary. Requiring current technology equipment will aid in properly identifying faults requiring repair.

¹ http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf

BENEFITS OF THE REGULATION TO THE STATE'S ENVIRONMENT:

The BAR has made an initial determination the proposed regulatory action may benefit the environment, specifically air quality. The regulation requires use of modern more reliable and accurate inspection equipment, capable of better identifying faulty vehicle emission controls. When repaired, vehicles pollute and contribute to greenhouse gas less.

BENEFITS OF THE REGULATION TO WORKER SAFETY:

BAR has determined the proposed regulatory action will have no positive or negative affect on worker safety.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10949 North Mather Blvd., Rancho Cordova, California 95670.

WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at www.bar.ca.gov.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file. Further, the express terms, Initial Statement of Reasons, and information upon

which the proposed regulations are based is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed above.

CONTACT PERSON

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

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The backup contact person is:

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