

BUREAU OF AUTOMOTIVE REPAIR
FINAL STATEMENT OF REASONS

HEARING DATE: Monday, February 12, 2018

SUBJECT MATTER OF PROPOSED REGULATIONS: Smog Check Inspection Equipment, Procedures, and Reference Documents

SECTIONS AFFECTED: § 3340.17, 3340.41, 3340.45 of Title 16, Division 33, Chapter 1, Article 5.5 of the California Code of Regulations

UPDATED INFORMATION

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day public comment period began on December 29, 2017, and ended on the date of the regulatory hearing, on February 12, 2018. The Bureau of Automotive Repair (Bureau or BAR) received one written comment regarding the proposed regulation during this comment period, and one comment at the hearing. The text was not modified in response to those comments.

The following corrections to the 45-day notice are noted below:

- Health and Safety Code section 44072.10 was inadvertently cited as a reference.
- This rulemaking does not affect the expansion of businesses currently doing business within the state.

The following changes were made to the final text to align with both what is currently printed in the CCR and previous versions of documents incorporated by reference:

- Section 3340.17(a), missing commas were added.
- Section 3340.45(a)(1), the phrase “become effective” was changed to “be in effect”.
- BAR-97 Emissions Systems Specifications:
 - p. 1-6, delete the phrase “or via”
 - p. 2-2, change the word “cable” to “cable modem”; delete the word “modem”; remove the underline from “/or”
 - p. 2-10, pluralize the word “port”
 - p. 2-12, added the missing phrase “digital subscriber line (DSL), cable modem, wireless,”
 - p. 2-23, added the letter “r” and the number “2” to “egulator” and “88”, respectively

- p. 2-44 added the missing word “down”
 - p. 2-45 and 2-46, corrected formulas
 - p. 3-1 to 3-4, corrected page numbers
 - p. 3-26, corrected capitalization
 - p. 3-29, deleted improperly noticed sentence
 - p. 3-44, corrected alignment of column headings
 - p. 5-3, deleted phrase “transfer of files”
 - made other various formatting corrections, including corrections of subdivision lettering and numbering
- Smog Check Manual
 - p. 15, removed underline from the phrase “Smog Check Guide”
 - p. 20, removed underline from a forward slash
 - p. 21, removed underline from a “L”
 - p. 36, removed underline from a “G”
 - p. 38, removed underline from the phrase “equipment and materials requirements continued...”
 - p. 42, underline the word “Customer”
 - p. 53, corrected definitions to align with those printed in 13 CCR section 1900.

LOCAL MANDATE

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

This action may have a minor adverse economic impact on small businesses.

Impact on Smog Check Stations

Smog Check stations will bear a minor economic impact as a result of being required to obtain a BAR-97 Emissions Inspection System (BAR-97 EIS or EIS) capable of communicating over the internet.

STAR stations and non-STAR stations that choose to test older vehicles will be required, per the Smog Check Manual, to transmit data from their EIS to the California Vehicle Inspection System (Cal-VIS) via the internet in a manner approved by BAR. In order to comply with this requirement, owners of the newest generation of EIS can acquire a minor software update from their EIS manufacturer. However, older generations of EIS cannot be updated by software. This older generation of equipment is past its useful life, is failing at a rapid rate, and simply can no longer be supported. In addition, obtaining replacement parts for older equipment is becoming extremely difficult and increasingly expensive. Owners of older systems must acquire a newer model EIS that can be supported and updated through internet connectivity.

The Bureau estimates approximately 1,400 stations currently have an EIS that can connect to or can be easily upgraded to communicate over the internet. In addition to the internet update, there are several other minor updates that will be required to meet the updated 2017 EIS Specification.

Stations will need to acquire these additional updates once they become mandatory, but will be able to do so for little to no cost.

The Bureau estimates approximately 4,200 stations will be required to lease or buy a new EIS. While the cost of new EIS equipment specified in this proposed action varies by vendor, it would cost in excess of \$10,000 to purchase outright. The lease price of the new EIS equipment is anticipated to be about \$450 per month, which is slightly less than the current annual service cost of \$6,000 per year for the current older systems in place. EIS manufacturers are able to offer competitive leasing prices because the new equipment will be much more reliable and less expensive to maintain than the existing equipment. Any additional cost to stations is likely to be significantly (if not entirely) mitigated since equipment manufacturers already plan to lease the equipment to stations. The lease price already includes support, so no additional service contracts will be necessary. Furthermore, stations replacing an older EIS would also save the cost of about \$720 per year for a dedicated analog phone line, which is currently required.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that was otherwise identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Alternative 1: BAR considered a complete redesign of the EIS. This redesign would require that all stations buy or lease a new EIS. The procurement of a replacement EIS would require Smog Check stations to make an initial investment of approximately \$83 million (\$15,000 each x 5,551 stations). This alternative was not adopted because it was determined to be too costly for stations.

Alternative 2: BAR considered only requiring a dial-up to IP converter device to facilitate the shift to Internet communication and not requiring additional EIS updates. This alternative was not adopted because pilot testing was not successful. Additionally, an EIS software update would still be required. This option would not fully achieve BAR's goals of improving the accuracy, reliability, and maintainability of Smog Check equipment.

RESPONSES TO COMMENTS SUBMITTED DURING 45 DAY PUBLIC COMMENT PERIOD

The Bureau received one written comment and one comment at the public hearing during the 45-day public comment period.

Written Comment 1

Commenter: Einar Dale, BAR Licensee

Comment: Mr. Einar Dale submitted a comment in response to the proposed regulatory action stating that the new required equipment specifications aid the equipment manufacturer, Opus, in forcing small shops to buy expensive, new equipment at a cost exceeding what the equipment will generate in business revenue. In addition, he noted that Opus has bought out smaller inspection equipment manufacturers because the market is dwindling. He stated that the proposed regulations effectively require a STAR station to either buy or lease the new EIS equipment, or lose its right to test directed vehicles.

Mr. Dale recommended that the Bureau remove the requirement that STAR stations must be equipped to test all vehicles equipped without second generation onboard diagnostic systems (OBD II). The commenter notes that this would significantly impact the STAR program and suggests, as a permanent replacement to the STAR program, the Bureau contemplate returning to the Gold Shield program model.

Response: This recommendation is rejected with respect to the proposed regulation.

BAR's central database is being refreshed with new hardware and software. As a result, older EIS models will no longer communicate with the database via phone line connection. Only newer model emissions inspection analyzers with Internet connectivity software update will be able to communicate.

The Bureau understands Mr. Dale's request to remove mandatory equipment requirements for STAR stations, and is monitoring the slowly diminishing, yet still large number of vehicles requiring tailpipe inspection. Smog Check stations certified by the Bureau to participate in the STAR Program are required to test gross-polluting and likely high-emitting, directed vehicles, as well as all vehicles not equipped with an OBD II, and those with emissions problems that may not be adequately detected by the vehicle's OBD II, pursuant to Health and Safety Code Section 44010.5. Requiring all STAR stations maintain EIS equipment provides assurance to motorists of 1999 and older model year vehicles that when their vehicle is directed to a STAR station for biennial inspection, any STAR station will have the necessary equipment to perform the inspection.

Public Hearing Comment 1

Commenter: Sam Celly, Celly Services, Inc.

Comment: What is the approximate cost per station to comply with the new regulations?

Response: This comment is rejected as it is an inquiry and does not make a recommendation to modify, nor express support or opposition to the proposed regulation. For informational purposes, BAR provides the following response:

It is the Bureau's understanding that, while varying by vendor, the estimated cost to purchase the equipment outright may be in excess of \$10,000. However, the manufacturers offer stations the

option to lease the equipment for about \$450 per month. The lease price of the new equipment is anticipated to be comparable to service contracts of existing equipment, which is about \$6,000 per year for the current systems in place. This lease price includes support, so no additional service contracts will be necessary.

INCORPORATION BY REFERENCE

The proposed change to Title 16, California Code of Regulations (CCR) section 3340.17 will incorporate an updated BAR-97 Emission Inspection System (EIS) Specifications, dated July 2017.

The proposed change to Title 16, California Code of Regulations (CCR) section 3340.45 will incorporate an updated Smog Check Manual version, dated 2017.

The incorporation by reference method was used because it would be impractical and cumbersome to publish the EIS Specifications and the Smog Check Manual in the California Code of Regulations (CCR).

The Smog Check Manual was created to serve as a guideline for Smog Check stations and inspectors, providing specific inspection procedures, required inspection types, and station equipment requirements to be used when performing Smog Check inspections. The EIS Specifications outline design guidelines and performance criteria for the EIS, and provides the specifications for EIS equipment and procedures to be used for performing inspections on vehicles subject to California's enhanced inspection and maintenance program.

If the EIS Specifications and Smog Check Manual were both incorporated into the CCR, it would increase the size of Division 33 and may cause confusion to the intended users. All documents incorporated by reference in this proposal have been made available to the public throughout this rulemaking process, whether upon request from BAR or on BAR's Web site at www.bar.ca.gov.