

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
Division 33
Chapter 1

DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Updated Smog Check Inspection Equipment and Station Requirements

Articles/Sections Affected: California Code of Regulations (CCR), Title 16, Division 33, Chapter 1, Article 5.5, section 3340.17

Updated Information

The Board noticed the regulation proposal on January 19, 2024, and gave the public forty-five (45) days to provide public comment ending on March 5, 2024.

No public hearing was requested or conducted.

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The Bureau did not make any changes to the Informative Digest; however, please note the following changes to the Proposed Text and the Initial Statement of Reasons:

Proposed Text

In section 3340.17(b)(2), the date “January 2022” was erroneously included with both underline and strikethrough. That date should have been deleted. BAR seeks adoption of the document dated "October 2023", which was incorporated by reference in the text, went out for notice and comment, and was addressed in the ISOR. This was removed from the text in the Order of Adoption.

In section 3340.17(b)(2), after OAL review, the Bureau deleted the words “became effective” and added the words to “be implemented”. This nonsubstantive change clarifies that (b)(2) shall be “implemented” on the day it takes effect. This change was made in text of the Order of Adoption.

Initial Statement of Reasons

1. Corrected two typos: Page 2, second paragraph from the bottom, first line, changed the word “interesting” to “interested”. Page 55, third paragraph from the top, first line, changed the word “Classis” to “Classic”.
2. On page 86, first bullet under Economic Impact Assessment, middle of the paragraph, “BAR sees no need to submit financial mitigation measures...” is changed to “BAR is not required to submit...” This clarifies that BAR is not required to submit financial mitigation measures, not just that BAR didn’t see a need to.
3. On page 3, under the Benefits section, added the following to the beginning of that section: “When certificate blocking was first introduced with the current DAD in 2017, the detection methods were relatively simple but so were the OBD defeat devices they were designed to detect. 2,600 Smog Check certificates were blocked in 2017 and those vehicles were directed to the Referee. The next year, with the introduction of new detection methods, that number increased to nearly 12,000. In 2023, the number of detections dropped to 1,175. Rather than concluding that the fraud has tapered off, the more likely conclusion is that the industry has successfully developed effective workarounds that are beyond the detection capabilities of the existing DAD. This has been corroborated by the discovery of OBD defeat devices in Smog Check stations that were otherwise undetected.”

This additional information expands on the benefits of this regulation package.

Local Mandate

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

Consideration of Alternatives

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

Set forth below are the alternatives the Bureau considered and the reason the Bureau rejected the alternatives:

Alternative 1:

Attempt to update the current, in-use DADs to collect additional fraud detection data and communicate with the newer generation of vehicles. The extent of changes and discussions with the existing DAD Vendors resulted in the realization that this path was not viable and that an updated replacement DAD was the preferred path.

The Bureau also considered taking no action. However, if the Bureau were to take no action, the DAD Specification Manual would be out of date and not all of BAR's Hardware, Firmware, and Software requirements for the DAD, used to support California's Smog Check Program and Vehicle Safety Systems Inspection Program would be current.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.