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# STAR PROGRAM INFORMAL HEARING PROCESS



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BAR ADVISORY GROUP MEETING  
JULY 15, 2020

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# STAR PROGRAM

- Developed in response to AB 2289 (Eng, Chapter 258, Statutes of 2010). Required inspection-based performance standards for Smog Check stations
- Voluntary certification program for stations that meet higher performance standards established in BAR regulations
- STAR certification by BAR is required to inspect/certify directed and gross-polluting vehicles

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# STAR STATION CRITERIA

- California Code of Regulations (CCR) section 3392.2.1 lists the required services of STAR stations and equipment required to perform those services
- CCR section 3392.3.1 sets the eligibility/performance standards for STAR certification, which includes:
  - Short-Term Measures (STM)
  - Follow-Up Pass Rate (FPR)
  - Citation and Disciplinary History

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# CAUSES FOR INVALIDATION

- CCR section 3392.5.1 lists the causes for invalidation of a STAR certification:
  - Failure to meet the STM standards for two consecutive quarters
  - A technician and/or station that does not meet the FPR standard
  - Not having operational equipment necessary to perform the required services
  - A Smog Check citation or disciplinary action that has become effective

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# INFORMAL HEARING PROCESS

## (1 of 3)

- CCR section 3392.6.1 details the requirements for the informal hearing process:
  - Station has five days after receiving an invalidation letter to request an informal hearing
  - Chief or designee has 10 days to conduct the informal hearing after receiving the request
  - Station will be notified of the decision 10 days after close of the informal hearing
  - Station may request a formal administrative hearing to contest the informal decision

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# INFORMAL HEARING PROCESS

(2 of 3)

- CCR section 3392.6.1(c) states:
  - “...The bureau shall notify the STAR certified station or representative of the time and place of the hearing. The hearing shall be limited in scope to the time period, facts, and allegations specified in the notice prepared by the bureau.”
- Historically, the STAR invalidations were:
  - Upheld
  - Upheld and Modified to a temporary invalidation
  - Overturned

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# INFORMAL HEARING PROCESS

## (3 of 3)

- Informal hearings consist of a review of:
  - Written arguments and supporting evidence provided by the licensee
  - STAR Report Card criteria
- Chief or designee may contact the licensee if necessary to obtain clarification regarding the licensee's written arguments or to review and discuss the cause of the invalidation

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# 2019 INFORMAL HEARING STATISTICS

- 1,274 invalidation letters sent to STAR-certified stations
- BAR received 962 requests for an informal hearing (76%)
- Informal hearing results:
  - 670 invalidations upheld (70%)
  - 292 invalidations overturned (30%)
- Of the 670 invalidations upheld:
  - 433 requested a formal hearing (65%)



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# 2019 INFORMAL HEARING STATISTICS FOR CITATIONS

- 264 invalidation letters were sent to STAR-certified stations for a citation that became effective
- BAR received 213 requests for an informal hearing (81%)
- 200 invalidations were upheld (94%)
- In Spring 2019, BAR began offering a 30-day temporary STAR invalidation
- 98 of 156 licensees offered a temporary invalidation accepted the offer and did not formally appeal (63%)
- 35% of the citation invalidations upheld were formally appealed – down from 53% in 2018

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# 2019 INFORMAL HEARING STATISTICS FOR OTHER CAUSES

- Other invalidation causes with high percentage of formal appeals:
  - Disciplinary Actions
    - 83% of the invalidations upheld were formally appealed
  - Follow-Up Pass Rate (FPR)
    - 83% of the invalidations upheld were formally appealed
  - Short-Term Measures (STM)
    - 82% of the invalidations upheld were formally appealed

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# NEW INFORMAL HEARING APPROACH

- Given the high percentage of formal appeals for those causes, it seemed the STAR informal hearings were neither:
  - Alleviating BAR administrative filings, nor
  - Helping to bring STAR stations into compliance with STAR requirements
- Based upon the success of the temporary STAR invalidation for citations, BAR began testing a new approach in May 2020
- Correction vs. Consequence

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# UPHELD INVALIDATIONS FOR STM/FPR/EQUIPMENT REASONS

- Since May 2020, when a STAR invalidation for STM/FPR/Equipment is upheld following an informal hearing, the licensee receives a “modified” decision
- The modified decision suspends the station’s STAR certification until the licensee corrects the condition for which they were invalidated
- A “STAR Certification Reinstatement Request” form is provided to the station owner, which can be completed and submitted to BAR Licensing when the cause is corrected

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# DECISION LETTER/WEBSITE CHANGES

- To facilitate this new approach, BAR made several changes
  - The hearing decision letter was changed:
    - Directs stations to the STAR Report Card on BAR's website
    - Provides direction on when and how to use the STAR Certification Reinstatement Request form
  - BAR's website was changed to locate a link to the STAR Report Card in "Quick Links" on the home page
  - [STAR.Reinstatement@dca.ca.gov](mailto:STAR.Reinstatement@dca.ca.gov) email account was created for BAR to receive the reinstatement request form, in addition to fax

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# FY 20/21 INFORMAL HEARING STATISTICS FOR STM AND FPR

- Short-Term Measures (STM)\*
  - 43% of the invalidations appealed informally were then formally appealed
- Follow-Up Pass Rate (FPR)\*
  - 58% of the invalidations appealed informally were then formally appealed

\* Due to differences in invalidation volume and informal evaluation criteria, these percentages should not be directly compared to the 2019 STAR Informal Hearing statistics.

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# CITATION INVALIDATIONS

- In reviewing 2019 STAR invalidations for citations that became effective, BAR found:
  - 69% of invalidations were for stations that had not received a citation in the prior three years
  - 31% of invalidations were for stations that had received at least one citation in the prior three years
- Of the 69% of stations that had not received a citation prior to the cause of invalidation:
  - 8% have since received a second citation
- It appears 92% of STAR stations that receive a citation do not receive a second citation within three years

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# CITATION INVALIDATIONS

- Based upon this observation:
  - In July 2020, BAR began to test waiving one citation within a 3-year period as a cause for invalidation
  - When appropriate, the newly revised citation now includes the statement:  
“...this citation **WILL NOT** be cause for invalidation of your station’s STAR certification”
  - FY 2020/2021–14% of the invalidations informally appealed were then appealed formally\*

\* Due to differences in invalidation volume and informal evaluation criteria, these percentages should not be directly compared to the 2019 STAR Informal Hearing statistics.



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# DISCIPLINARY ACTION INVALIDATIONS

- To be more effective and efficient addressing STAR invalidations for stations with disciplinary actions:
  - BAR started working with the Attorney General's Office to include STAR certification in settlement talks
    - But only after a settlement has been reached that achieves the greatest level of public protection
  - Any STAR certification suspension shall be served separately of any registration suspension

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# QUESTIONS AND COMMENTS

Submit questions and/or comments to:

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