

BUREAU OF AUTOMOTIVE REPAIR  
**FINAL STATEMENT OF REASONS**

**HEARING DATE(S):** None.

**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.

**UPDATED INFORMATION**

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 or the Initial Statement of Reasons.

The Board noticed the regulation proposal on June 25, 2021, and gave the public forty-five (45) days to provide public comment ending on August 10, 2021.

No public hearing was requested or conducted.

After discussion with Office of Administrative Law, further information was requested for section 3392.5(a), specifically the rationale for adding the following provision: “Withdrawal from the STAR program shall not deprive the Bureau of its authority to continue a proceeding to suspend a station from the STAR program.”

The Bureau included this provision to prevent STAR stations undergoing a suspension proceeding from withdrawing from the STAR program prior to the

outcome of the proceeding. If a STAR station were to withdraw and not receive the suspension or invalidation, then the station could reapply for STAR certification without the suspension/invalidation on its record. This could allow stations to circumvent the process and reapply without penalty.

### **LOCAL MANDATE**

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

### **Small Business Impact**

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.

### **Economic Impact Assessment**

The Bureau has determined 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.

### **Fiscal Impact**

The regulations do not result in a fiscal impact to the state.

The Bureau already ensures registrants comply with the STAR program through its inspection programs and the amendments are not anticipated to create additional workload or costs.

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

### **Anticipated Benefits of this Proposal**

This rulemaking removes outdated Gold Shield Program provisions, updates the performance measures used to determine STAR eligibility, revises disciplinary procedures applicable to STAR Program regulations, and revises terminology throughout to ensure consistency with the Bureau's current license structure and align with authorizing statutes.

The Bureau's 2019 Smog Check Performance Report<sup>1</sup> 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 and oxides of nitrogen 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.

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.

The proposed changes ensure the vehicles most likely to fail a Smog Check inspection and cause air pollution receive an accurate Smog Check inspection.

Further, protection of the public is the Bureau's highest priority in licensing, regulatory, and disciplinary functions. The proposed regulation allows the Bureau to continue carrying out this mandate through its regulatory efforts by ensuring the most accurate Smog Check inspections, which in turn will reduce air pollution.

### **Alternatives Determination**

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.

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<sup>1</sup> [https://smogcheck.ca.gov/pdf/2019\\_Smog\\_Check\\_Performance\\_Report.pdf](https://smogcheck.ca.gov/pdf/2019_Smog_Check_Performance_Report.pdf)

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 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.

**Objections or Recommendations/Responses**

There were no objections or recommendations regarding the proposed action.