

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

UPDATED SMOG CHECK EQUIPMENT AND STATION REQUIREMENTS

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs, Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the actions described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, to be considered by the Bureau, must be received by the Bureau at its office no later than **by 5:00 p.m., Tuesday, March 5, 2024**, or must be received by the Bureau at any requested hearing, if one is held.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 44002, 44036 and 44037.1 of the Health and Safety Code (HSC) and Section 9882 of the Business and Professions Code (BPC), to implement, interpret, or make specific HSC sections 44012, 44036 and 44037.1, the Bureau is considering amending section 3340.17 article 5.5 of chapter 1 of division 33 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The primary purpose of this proposal is to replace the current BAR OBD Data Acquisition Device (DAD) Specification with a more comprehensive and updated version. This change is necessary to provide BAR with additional tools to combat fraud in the Smog Check Program. In addition, this change will allow the DAD to communicate with new vehicles that use a communication protocol not supported by the current generation of DADs. Currently, the “BAR OBD Inspection System Data Acquisition Device (DAD) Specification” dated October 22, 2012, regulates vehicle inspection systems used in California Smog Check stations, as well as inspections and enforcements for the Smog Check Program.

The Bureau is proposing the following changes:

Amend 16 CCR Section 3340.17: Test Equipment, Electronic Transmission, Maintenance and Calibration Records

This section is modified to reflect the correct revision date of the BAR OBD Inspection System Data Acquisition Device Specification. Subdivisions (b)(1) and (b)(2) are added to specify the implementation dates of the revised specification in this proposed rulemaking.

Amend Data Acquisition Device Specification Section 1.2: Scope

The Scope section is modified to reflect the current state of technology and business environment. Additions to the scope provisions include references to “biometric device” and “camera” to reflect future technological usage. Changes are proposed to the language describing the operating systems used by the BAR-OIS device. Other changes clarify word usage or names for existing technologies.

Amend Data Acquisition Device Specification Section 2: Data Acquisition Device Overview

Section 2 is modified because the existing language is difficult to understand and superfluous, as such, it is necessary to amend to make it more concise, easier to understand, and improve flow and readability. This will help further efficiency of regulations, improve understanding, and eliminate unnecessary questions from licensees, consumers, and staff. Revisions are being proposed to references to operating systems to align the description with that in Section 1.2. “Biometric device” and “camera” are also being added to reflect future technological usage.

Amend Data Acquisition Device Specification Section 3: Requirements

This Requirements section includes the necessary detailed requirements which the DAD must meet to obtain BAR certification. In addition to punctuation and grammar changes, changes proposed to this section include adding the following requirements and specifications:

- That vendors release only the current production version of the BAR-OIS software to stations,
- A prohibition against allowing the Data Acquisition Device to cause malfunctions to a vehicle’s systems or operation,
- Software installation, error reporting, and version naming requirements, vendor- to-bureau reporting and data transmission requirements, file verification requirements for vendors, data logging and collection methods, and communications standards and protocols,
- Product support and labeling requirements,
- Global Navigation Satellite System data reporting requirements and device technical specifications,
- Computer device driver specifications,
- Analog Data Sampler technical specifications, data management specifications, and reporting requirements,
- Requirements for measuring vehicle system voltage,
- Revisions to existing references to external document names and revision dates, and to external technical standards from the Society of Automotive Engineers / International Organization for Standardization (SAE/ISO), Minimum connectivity rate standards,
- Other technical software and hardware specifications for the device and its minimum operating and durability standards.

Amend Data Acquisition Device Specification Section 4: Functional Validation Tests

This DAD specification section explains to the DAD Vendors the different tests that BAR will perform in the certification testing of the DAD. In addition to textual clarification and deletion of unnecessary language, this proposed rulemaking includes the following changes to the validation tests section:

- Deletion of requirements to match Bureau testing capabilities and procedures,
- Addition of a sine wave production capability requirement for Bureau testing comparison purposes.

Amend Data Acquisition Device Specification Section 5: Certification, Annual Recertification and Decertification/Citation

This DAD specification section explains to the DAD Vendors the procedural methodologies and requirements involved in the certification and annual recertification testing of the DAD. In addition to textual clarification and deletion of unnecessary language, this proposed rulemaking includes the following changes:

- Changing the Bureau’s certification event standards, clarifying language about the event and how it occurs, and clarifying how fees are collected for certification
- Addition of petition and material submission requirements for certification testing events,
- Clarification of existing and addition of new certification testing procedures and standards,
- Clarification of existing and addition of new recertification timing and requirements.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

Additional fraud detection and prevention methods fed by data collected by the new DAD will support BAR’s Enforcement staff in rooting out Smog Check stations that conduct fraudulent inspections. This will reduce the number of improperly certified vehicles, thus improving air quality and protecting consumers who may have otherwise purchased these illegally certified vehicles. Inspectors who perform legitimate inspections will benefit because fraudulent actors will be more likely to turn customers seeking an illegitimate inspection away.

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 duplicative, nor inconsistent, nor incompatible with existing state regulations.

DOCUMENTS INCORPORATED BY REFERENCE

Bureau of Automotive Repair California Vehicle Inspection System Data Acquisition Device Specification, October 2023.

DISCLOSURES REGARDING THE PROPOSED ACTION

MANDATED BY FEDERAL LAW OR REGULATIONS:

No.

LOCAL MANDATE:

None.

FISCAL IMPACT ESTIMATES

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

None.

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

BAR will be required to update existing IT systems with one-time costs of \$520,000 expended over two-year period – estimated 3,500 total workload hours. BAR will also pay an annual software license fee of \$9,400.

Any workload and costs are absorbed within BAR's existing IT maintenance contract.

BAR notes this proposal updates existing technical specifications and any enforcement- related activities related to non-compliance would be enforced under other regulatory and statutory authority. As a result, the proposed regulations do not include an estimate of enforcement related workload or costs.

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

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

EFFECT ON HOUSING COSTS:

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES:

None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Bureau has determined that 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.

In addition, the proposed action is not expected to expand or reduce existing business. For more on benefits of the regulatory proposal, see above in this notice.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

A representative private person or business may incur costs in reasonable compliance with the proposed action.

BAR estimates each DAD costs \$3,000 and approximately 8,000 DADs will be purchased in the first two-years of implementation (4,000 in each year) and 400 per year thereafter with costs ranging from \$1.2 million to \$12 million per year and up to \$33.6 million over a ten-year period.

BAR provides the DAD IT software system as no costs to the licensee. As a result, no additional costs are required to implement the proposed regulations.

BUSINESS REPORTING REQUIREMENTS

In the DAD specification, there is a new reporting requirement for DAD vendors to tell BAR about tampered devices. Section 3.2.90 states that "the BAR Certified DAD Vendor shall report to BAR within 48 hours the DAD's that have been returned to them as tampered along with the details." It is necessary for the health, safety, or welfare of the people of the state that the regulation which requires a report apply to businesses.

EFFECT ON SMALL BUSINESS

BAR has initially determined that the proposed regulations will have an effect on small business, but the effect will not be significant. See discussion under **COST IMPACT ON REPRESENTATIVE PRIVATE OR BUSINESS** above.”

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative 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 proposed actin, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.” (Emphasis added.)

Any interested person may present statements orally or in writing relevant to the above determinations at any requested hearing.

CONTACT PERSON

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

Holly O'Connor
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Rancho Cordova, CA 95670
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INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons of 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, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau of Automotive Repair at 10949 North Mather Boulevard, Rancho Cordova, California 95670.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested hearing and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Holly O'Connor at the address indicated above. The Bureau will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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, which is available for public inspection by contacting the person named above.

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 above, or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at <https://bar.ca.gov/regulatory-actions>.