

**BUREAU OF AUTOMOTIVE
REPAIR**

**SMOG CHECK EQUIPMENT SECURITY AND FRAUD
PREVENTION**

PROPOSED MODIFIED TEXT

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Modified text (15-day) comment period:
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§ 3340.15. General Requirements for Smog Check Stations

A Smog Check station shall meet the following requirements for licensure and shall comply with these requirements at all times while licensed.

(a) The testing and repairing of vehicles shall be performed only in a work area of the station that has been approved by the ~~b~~Bureau~~during the licensing inspection~~. Other work may be performed in the approved area, as desired. Except for heavy-duty vehicles, the work area shall be within a building and shall be large enough to accommodate the type of vehicle being serviced. In the case of the testing and repair of heavy-duty vehicles the work area need not be in a building, but the emissions inspection system used at the station may only be used within a building. The work area shall be kept clean and orderly.

(b) A licensed inspector and/or repair technician shall be present during all hours the station is open for the business. Testing and/or repairing of vehicles pursuant to the Smog Check Program shall be performed by a licensed inspector and/or repair technician, consistent with their license classification.

(c) The station, inspector, and/or repair technician licenses shall be posted prominently under glass or other transparent material in an area frequented by customers.

(d) The station shall post conspicuously in an area frequented by customers a list of price ranges for the specific activities for which it is licensed. The posted prices shall include the price charged by the station for inspections, and, if a separate price is charged for reinspections, the reinspection price. The station shall also post the inspection prices for vans and/or heavy-duty vehicles if those prices differ from the

passenger car inspection price. If the station imposes an hourly labor charge for repairs, the hourly labor rate shall be posted. The price of issuance of a certificate of compliance or noncompliance charged by the ~~h~~Bureau shall be posted separately from the price of the inspection and of the reinspection, if any.

(e) The station shall make, keep secure, and have available for inspection on request of the ~~h~~Bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years after completion of any transaction to which the records refer. All records shall be open for reasonable inspection and/or reproduction by the ~~h~~Bureau or its representative. Station records required to be maintained shall include copies of:

- (1) All certificates of compliance and certificates of noncompliance in stock and/or issued,
- (2) Repair orders relating to the inspection and repair activities, and
- (3) Vehicle inspection reports generated either manually or by the emissions inspection system.

The above listed station records shall be maintained in such a manner that the records for each transaction are kept together, so as to facilitate access to those records by the ~~h~~Bureau or its representative. In this regard, the second copy of an issued certificate shall be attached to the final invoice record.

(f) A Smog Check station shall be open and available to the general public for Smog Check Program services.

(g) A Smog Check station shall afford the ~~h~~Bureau or its representative reasonable access during normal business hours, ~~to the station for the bureau's quality assurance efforts to evaluate the effectiveness of tests and/or repairs made to vehicles subject to the Smog Check Program and any time inspections and/or repairs are being~~ performed outside of normal business hours, for the purpose of performing an examination of the station pursuant to Health and Safety Code section 44035, subdivision (b).

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Note: Authority cited: Sections 44002 and 44030, Health and Safety Code; and Section 9882 and 9884.9(b), Business and Professions Code.

Reference: Sections 44014, 44030, 44032, 44033, 44035, 44036, 44037, and 44045.5, Health and Safety Code.

§ 3340.41. Inspection, Test, and Repair Requirements.

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(f) Participation in BAR's biometric data system is an eligibility requirement for Smog Check Inspectors. Smog Check Inspectors shall have their biometric data collected and identity verified at a BAR field office or other BAR-designated facility during a BAR station visit prior to biometric use during inspections. For purposes of this section, "biometric data" means data collected from a scan of the licensee's hand(s). During initial biometric data collection and annually, Inspectors shall review the Notice on Collection of Personal Biometric Information and Its Use (New 1/2021) and the Biometric Data Collection Consent Statement (New 1/2021), hereby incorporated by reference, and agree to their terms. When prompted by the EIS or OIS software, the licensee shall authenticate their identity for purposes of authorizing their access to the EIS or OIS using a biometric device model specified in section 1.8.0 of the Smog Check Manual described in section 3340.45. Upon proven incompatibility with the biometric system, if, at the time of enrollment, the biometric system is unable to collect sufficient data necessary to create a uniquely identifiable profile from both hands, BAR may shall allow access to the BAR-97 EIS or BAR-OIS using a inspector's license number and BAR-assigned access code. If the Bureau determines that the reason for which the uniquely identifiable profile could not be collected is temporary, the Bureau shall establish a 30-day window during which the inspector may access the BAR-EIS or BAR-OIS using a BAR-assigned access code, after the conclusion of which the inspector would need to return to the BAR field office or other BAR-designated facility to enroll, which shall include the establishment of another 30-day window, if the biometric system is unable to collect sufficient data necessary to create a uniquely identifiable profile from both hands. If, after enrollment, an inspector encounters circumstances where the biometric scanner is unable to collect the data required to permit them to perform an inspection, the inspector shall return to the BAR field office or other BAR-designated facility for enrollment based on the changed circumstances.

(g) When prompted by the EIS or OIS software, the BAR licensee shall permit BAR and/or a BAR designee remote access to view and record audio, video, pictures, and text relating to the inspection.

(h) No licensed station shall have in the approved testing area at any time any electronic device or software capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration identification, calibration verification number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection.

(i) The procedure for the enrollment process is as follows:

(1) Enrollment at a BAR field office or other a BAR-designated licensed facility for current licensees shall occur on or after begin on the effective date of the regulation. BAR will inform Smog Check inspectors of the mandatory enrollment requirement and

~~date at least 30 days prior to the mandatory enrollment date of the enrollment start date at least 30 days prior to that date. The mandatory enrollment date shall be at least 30 calendar days after the effective date of the regulation. Smog Check inspectors licensed after the effective date of the regulation shall enroll as outlined in subdivision (f) prior to being allowed to performing any Smog Check inspections, before or with the issuance of an access code pursuant to Section 1.1.0 of the Smog Check Manual described in section 3340.45. Biometric use in lieu of a BAR-assigned access code shall be mandatory no earlier than October 1, 2022, except as provided in subdivision (f). BAR will inform Smog Check inspectors of the mandatory use date at least 30 days prior to the start date.~~

(2) BAR will verify inspector identity using two forms of identification. One must be a valid, government-issued photo identification, other than a BAR issued license badge (e.g., driver license, passport, or military identification). The second identification must have the enrollee's signature and legal name (e.g., social security card or credit card). If the enrollee is licensed with a name other than the enrollee's legal name, the enrollee shall correct the name with BAR to match the legal name prior to enrolling.

Licensed enrollees shall also provide their inspector license number and the enrollee's BAR-issued inspector badge if received by the enrollee from BAR prior to enrollment.

(3) Enrollees shall review and agree to the Notice on Collection of Personal Biometric Information and Its Use (New 1/2021) and the Biometric Data Collection Consent Statement (New 1/2021).

(4) Information collected during enrollment will include a photograph of the enrollee's face and a biometric scan of the enrollee's hand(s).

Note: Authority cited: Sections 44002, 44016 and 44030, Health and Safety Code; and Section 9882, Business and Profession Code.

Reference: Sections 44010.5, 44012, 44014, 44014.2, 44014.7, 44016, 44030, 44036(a), 44036(b) and 44050, Health and Safety Code.

§ 3340.45. Smog Check Manual.

(a) All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the following:

(4) Smog Check Manual, dated ~~2013~~January 2021, which is hereby incorporated by reference. ~~This manual became effective on or after January 1, 2013. This manual shall remain in effect until subparagraph (2) is implemented.~~

~~(2) Smog Check Manual, August 2, 2018.~~

Note: Authority cited: Section 44002, Health and Safety Code; and Section 9882, Business and Professions Code.

Reference: Sections 44002, 44003, 44005, 44010, 44011, 44011.3, 44012, 44012.1, 44013, 44014, 44014.5, 44014.7, 44015 and 44032, Health and Safety Code.

§ 3394.26. Administrative Fine Amounts.

The minimum and maximum administrative fine amounts are established in Table I, Administrative Fine Schedule. If a citation lists multiple violations arising from an inspection or repair on a single vehicle the total penalties assessed shall not exceed five thousand dollars (\$5,000) pursuant to Health and Safety Code section 44052.

Penalties exceeding five thousand dollars (\$5,000) for inspections and repairs that arise from multiple vehicles shall be assessed in separate citations.

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§ 3340.41(c)		\$1000	\$5000
§ 3340.41(d)		\$1000	\$5000
§ 3340.41(f)		\$1000	\$5000
<u>§ 3340.41(g)</u>		<u>\$1000</u>	<u>\$5000</u>
<u>§ 3340.41(h)</u>		<u>\$1000</u>	<u>\$5000</u>
§ 3340.41.3		\$250	\$1000
§ 3340.42		\$1000	\$5000
§ 3340.42.2		\$1000	\$5000
§ 3340.45		\$1000	\$5000
§ 3340.50(e)		\$750	\$3000
§ 3340.50(f)		\$750	\$3000
§ 3340.50(g)		\$250	\$1000
§ 3340.50(h)		\$250	\$1000
§ 3353		\$250	\$1000

Note: Authority cited: Section 9882, Business and Professions Code. Reference: Sections 44002, 44050 and 44052, Health and Safety Code.