

**BUREAU OF AUTOMOTIVE REPAIR**  
**INITIAL STATEMENT OF REASONS**

**HEARING DATE:** January 8, 2016

**SUBJECT MATTER OF:** Smog Check Licensing; Disciplinary Guidelines;  
Probationary Registration/License

**SECTIONS AFFECTED:** §§ 3340.1, 3340.10, and 3340.28 of Title 16,  
Division 33, Chapter 1, Article 5.5, California Code  
of Regulations

§§ 3395.4 and 3395.5 of Title 16, Division 33,  
Chapter 1, Article 12, California Code of  
Regulations

**SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:**

**§§ 3340.1, 3340.10, and 3340.28 OF TITLE 16, DIVISION 33, CHAPTER 1, ARTICLE 5.5,  
CALIFORNIA CODE OF REGULATIONS**

The Bureau is the state agency charged with the administration and implementation of the Smog Check program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light-duty trucks, by requiring that these vehicles meet specific emission standards.

Since the Program’s inception in 1984, BAR has worked jointly with the automotive inspection and repair industry as a partner in administering a fair and competitive marketplace. Over the years, program changes and advancements in automotive technology have necessitated a licensing restructure to continue the success of the Program and to ensure that the license structure appropriately aligns with industry practices and the marketplace demands.

Based on recommendations from two independent consultants as well as discussions and input from the participants of several industry and public workshops, BAR developed a proposal to replace the outdated “one-size-fits-all” licensing structure, which specified technician license designations based on areas of the state where Basic two-speed idles tests or Enhanced loaded-mode tests are administered, with license classifications that actually represent best practices of the industry and matches license requirements with the services and tasks performed.

The proposal, which was adopted in regulation in 2012, established the Smog Check Repair-Only station license and provided technicians the flexibility to choose a license that best represents the services they provide – Inspection or Repair, or both. This restructure allows for the redesignation of a Smog Check Test-Only or Smog Check Test-and-Repair license to a Smog Check Repair-Only license. Further, it replaces the former Basic Area Technician license (EB)

and Advanced Emission Specialist Technician license (EA) options with the Smog Check Inspector license (EO) and the Smog Check Repair Technician license (EI). As such, EB or EA licenses that expired on or after August 1, 2012 will not be renewed and must be redesignated pursuant to the new license classifications upon renewal.

This proposed regulatory action seeks to specify the Bureau's jurisdiction and enforcement of the redesignated licenses. Specifically, the proposal provides that the director may proceed with any investigation or administrative disciplinary action that was initiated prior to the redesignation and may render a decision to invalidate or revoke the license(s) as redesignated. Further, this proposal specifies that should a license be subject to an order of suspension, a probationary order, or any other administrative disciplinary actions at the time of redesignation, the order of suspension, probationary order, or other administrative disciplinary action will be applied to the newly designated license(s). Clarification to definitions and minor, technical, grammatical, and editorial changes to update the regulatory text are also proposed.

The proposed changes are summarized as follows:

**Amend Section 3340.1. Definitions.**

*1. Add definition for "Advanced emission specialist technician."*

The Bureau proposes to add a definition for "Advanced emission specialist technician," as a definition for this license type was omitted in regulation. This definition is necessary because the Bureau continues to include this type of license in its administrative discipline cases.

*2. Add definition for "Basic area technician."*

The Bureau proposes to add a definition for "Basic area technician" as a definition for this license type was omitted in regulation. This definition is necessary because the Bureau continues to include this type of license in its administrative discipline cases.

*3. Amend definition of "Repair-Only station."*

The Bureau proposes to amend this definition from "Repair-Only station" to "Smog Check repair-only station" or "repair-only station." This change promotes consistency within the section with respect to capitalization of the terms "repair-only" and "Smog Check."

*4. Amend definition of "Smog Check station."*

The Bureau proposes to amend this definition to include Smog Check repair-only stations because this additional license type was created as a result of the Bureau's 2012 licensing restructure.

*5. Other minor, technical, grammatical, and editorial changes.*

The Bureau proposes to amend this section in multiple places to correct the capitalization of "Smog Check," "Smog Check Program," and "Section."

## **Amend Section 3340.10. Licensing of Smog Check Stations.**

### *1. Amend section to specify the three license types for Smog Check stations.*

This section is being amended to specify the three license types available to Smog Check stations pursuant to the 2012 license restructure.

### *2. Amend subsection (a).*

This section is being amended to clarify that an application to redesignate a license to another license type at any time will be reviewed in the same manner as an application for an initial license. This language is necessary because, as part of the Bureau's STAR Program, many stations wish to change from Test and Repair to Test Only and vice-versa. While stations are certainly able to do this, they need to understand that any application for new licensure is reviewed as a new application even if they are an existing business.

### *3. Add new subsection (g).*

The Bureau proposes to add this subsection to specify that the director may proceed with any investigation or administrative disciplinary action that was initiated prior to the redesignation of a license and may render a decision to invalidate or revoke the license as redesignated. This provision ensures in the event conduct at a Smog Check station leads to disciplinary action, station owners and managers are properly subject to the disciplinary process. In turn, this ensures continuous protection of consumers from fraudulent or negligent behavior, as the change in license types does not materially alter the responsibilities of stations to consumers.

### *4. Amend current subsection (h).*

The Bureau proposes to add this subsection to specify that should a license be subject to an order of suspension, a probationary order, or any other administrative disciplinary actions at the time of redesignation, the order of suspension, probationary order, or other administrative disciplinary action will be applied to the redesignated license. This provision ensures in the event conduct at a Smog Check station leads to disciplinary action, station owners and managers are properly subject to the disciplinary process. In turn, this ensures continuous protection of consumers from fraudulent or negligent behavior, as the change in license types does not materially alter the responsibilities of stations to consumers.

### *5. Other minor, technical, grammatical, and editorial changes.*

The Bureau proposes to amend this section in multiple places to correct the capitalization of "Smog Check" and "Smog Check Program."

## **Amend Section 3340.28. Licenses and Qualifications for Smog Check Inspectors and Repair Technicians.**

### *1. Add new subsection (f).*

The Bureau proposes to add this subsection to specify that the director may proceed with any

investigation or administrative disciplinary action that was initiated prior to the redesignation of a license and may render a decision to invalidate or revoke the license as redesignated. This provision ensures inspector and repair technician licensees whose conduct leads to disciplinary action are properly subject to the disciplinary process. In turn, this ensures continuous protection of consumers from fraudulent or negligent behavior, as the change in license types does not materially alter the responsibilities of licensees to consumers.

2. *Add new subsection (g).*

The Bureau proposes to add this subsection to specify that should a license be subject to an order of suspension, a probationary order, or any other administrative disciplinary actions at the time of redesignation, the order of suspension, probationary order, or other administrative disciplinary action will be applied to the redesignated license. This provision ensures inspector and repair technician licensees whose conduct leads to disciplinary action are properly subject to the disciplinary process. In turn, this ensures continuous protection of consumers from fraudulent or negligent behavior, as the change in license types does not materially alter the responsibilities of licensees to consumers.

3. *Amend current subsection (f).*

This subsection is being renumbered from (f) to (h) to account for the sections proposed to be added.

**§ 3395.4 OF TITLE 16, DIVISION 33, CHAPTER 1, ARTICLE 12, CALIFORNIA CODE OF REGULATIONS**

The Bureau of Automotive Repair (Bureau or BAR) proposes to amend Section 3395.4 of Title 16, Division 33, Chapter 1, Article 12, California Code of Regulations. The purpose for amending the regulation is to update the *Guidelines for Disciplinary Penalties and Terms of Probation* (Disciplinary Guidelines) which is incorporated by reference in Section 3395.4.

The Bureau and others involved in the administrative disciplinary process use the Disciplinary Guidelines when taking action to suspend, revoke, or place a license or registration on probation. The guidelines establish consistency and impose the most appropriate disciplinary actions for similar offenses on a statewide basis. This proposal would replace the existing Disciplinary Guidelines with new guidelines revised May 2014. This document addresses recent changes to the Automotive Repair Act (Business and Professions Code sections 9880 et seq.), other laws under the Bureau's jurisdiction, and the requirements of Government Code section 11425.50 (e).

The proposed changes to the Disciplinary Guidelines are also necessary to ensure consistent use of titles and terms; to remove outdated and unnecessary terms and conditions of probation; to incorporate changes necessary to ensure rehabilitation of the licensee or registrant; and, to meet the Bureau's consumer protection mandates.

The proposed changes are summarized as follows:

## **Title Page**

The proposed changes would include: changing the document's title, revision to the BAR logo, the removal of BAR contact information from the title page, updates to the edition date, and the addition of supplemental contact information on the proceeding page.

## **Table of Contents**

The proposed changes would include a more detailed list of sections for the Disciplinary Guidelines for the purposes of clarity and consistency. The revised Table of Contents also reflects the correct pages to the location of specific sections.

## **Introduction**

The proposed changes include a clearer introduction and more detailed explanation of the administrative process. Revisions address the following: BAR's mission, the layout of the Disciplinary Guidelines, the usage and applicability of the Disciplinary Guidelines, and a disclaimer for the Disciplinary Guidelines.

## **I. Proposed Decisions**

The Proposed Decisions section is being added to clarify what specific information the Bureau requests to be included in proposed decisions. The following information and guidelines are being requested for the reason(s) stated:

- Specific code section(s) violated and clear description of the violation(s); Respondent's explanation of the violation if he or she is present at the hearing and testifies; and findings regarding aggravation, mitigation, and rehabilitation where appropriate.
  - This information allows the Bureau to maintain records of a licensee's disciplinary history with information relevant to future enforcement decisions such as license reinstatement or aggravation or mitigation of discipline.
- If suspension or probation is ordered, the terms and conditions of probation shall be within recommended guidelines unless the reason for departure from such guidelines is stated in the findings and supported by evidence.
  - This provision promotes consistency in the terms and conditions of probation issued by administrative law judges, while allowing for special cases where appropriate. This consistency in turn strengthens the legitimacy of the Bureau's ongoing enforcement efforts.
- Reimbursement to BAR for its reasonable costs of investigation and prosecution, as determined by the ALJ hearing the matter.
  - This provision ensures the Bureau has the ability to pursue recovery of its investigative costs, which in turn allows the Bureau to maintain its enforcement operations.

## II. Factors in Aggravation and in Mitigation

The proposed changes include a clearer explanation of how the factors are used. Specifically, the factors determine whether minimum, maximum, or intermediary discipline is to be imposed. The changes also provide for numbering instead of lettering as the method of enumerating factors, which change is intended to make the factors easier to follow.

The Bureau proposes to remove certain Factors in Aggravation as follows: (1) “b. Prior Notices of Violations” because the Bureau no longer issues Notices of Violations; (2) “Prior adverse Inspection Reports” because station inspections are not adverse, but rather intended as neutral and educational for the station; and (3) “e. Prior demonstrations of incompetence” because competence is evaluated during the licensing process, and therefore incompetence must be the basis for a cause for discipline, not a factor in aggravation.

The Bureau proposes to amend certain Factors in Mitigation as follows:

Factor a, renumbered to Factor 1, is being changed to require respondent to show evidence he or she *implemented* BAR’s suggested resolution to a consumer complaint, rather than merely *accepted* the suggested resolution to the complaint. This wording change more clearly indicates a licensee must make a demonstrable effort to resolve a consumer complaint.

Factor d, renumbered to Factor 5, is being changed from “Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees and others, which led to wrongdoing” to “Evidence of a medical condition that temporarily prevented respondent from exercising supervision and control over employees or others at the time of wrongdoing.” This wording change clarifies the condition of impermanence applies to the ability to exercise control over employees and not to the medical condition, and clarifies this condition occurred at the time of wrongdoing, rather than caused the wrongdoing.

Factor e, renumbered to Factor 8, is being reworded from “No loss to consumer and no damage to consumer’s property. (Undercover cars are treated as if they were consumers.)” to “Evidence of no loss to consumer and no damage to consumer’s property. (Undercover vehicles are viewed the same as consumer property).” This change clarifies evidence is required to demonstrate there has been no loss to the consumer or damage to their property.

Factor f, renumbered to Factor 9, is being reworded such that a shop must demonstrate evidence of retraining, rather than evidence of “specific steps for retraining.” This change allows for a more reliable indication a shop has undergone relevant retraining.

Factor h, renumbered to Factor 11, replaces the requirement for evidence the respondent has implemented internal controls or an audit designed to eliminate errors with the requirement that the respondent has taken “substantial measures to correct its business practices and/or business operations so as to minimize the likelihood of reoccurrence of the violation.” This change provides more flexibility for respondents in demonstrating efforts to change business practices to avoid unlawful behavior while setting a higher bar by requiring these efforts to be substantial and tailored to the violation.

The Bureau proposes to add certain Factors in Mitigation based on industry comments at public workshops in recent years. Factor 2, “Evidence that the respondent has made restitution to the consumer and/or has correctly repaired the consumer’s vehicle,” is being added because this factor incentivizes shops, particularly absentee shop owners, to take proactive measures to resolve customer concerns when they become aware of them. Factors 6 and 7, “Absence of prior disciplinary action” and “No evidence that the unlawful act was part of a pattern of practice,” respectively, are being added to recognize the violation was not part of an on-going pattern of bad behavior.

Finally, the Bureau is adding a Factor in Mitigation to allow for evidence of any other conduct which would constitute a factor in mitigation. This factor parallels proposed Factor in Aggravation number 15. These factors afford ALJs and Bureau enforcement staff the discretion to reasonably consider mitigating circumstances that have not been foreseen at this time.

### **III. Disciplinary Order Guidelines**

The Bureau proposes to rename the section from “Penalty Guidelines” to “Disciplinary Order Guidelines.” This wording aligns more closely with the administrative disciplinary process, in which administrative law judges issue disciplinary orders.

The Bureau also proposes to move this section, previously placed after the Standard Terms and Conditions, prior to the Model Disciplinary Orders section, which includes the Standard Terms and Conditions. This reorganization would improve the flow, clarity, and readability of the Disciplinary Guidelines.

#### **Introduction**

The section introduction has been amended to include a basic overview of how the section is organized and a description of the minimum and maximum suggested orders, as well as delete an unnecessary explanation of the purpose of the guidelines.

Like the 1997 version of the disciplinary guidelines, the proposed version provides the maximum discipline for each violation is revocation of the registration or license. The proposed changes clarify this is the maximum discipline for all violations by stating so at the beginning of the section rather than listing revocation as a maximum discipline for each individual violation.

Like the 1997 version of the disciplinary guidelines, the proposed version addresses cases involving multiple violations. The proposed changes delete the requirement that in such cases orders for suspension or other discipline run concurrently and instead provide multiple violations should be taken into consideration when determining orders. This affords the administrative law judge the ability to impose the appropriate level and duration of discipline as determined by the findings of the administrative hearing rather than being bound to a prescribed level and duration of discipline.

The proposed changes also clarify an order for recovery of the Bureau’s reasonable costs of investigation is always included in a disciplinary order regardless whether it imposes minimum or maximum discipline. This change is necessary to ensure the Bureau has the ability to pursue

recovery of its investigative costs, which in turn allows the Bureau to maintain its enforcement operations.

As in the 1997 version of the disciplinary guidelines, the proposed section introduction retains substantially the same information on Interim Suspension Orders.

### **Disciplinary Order Tables**

In the May 1997 Disciplinary Guidelines, the Disciplinary Order Guidelines section is organized according to statutory or regulatory code and section number.

In addition, each violation is associated with specific Standard Terms and Conditions of Probation based on a categorical lettering scheme. The Standard Terms and Conditions are conditions of probation that will generally appear in all cases. Currently, this section is divided into a system of three Categories (Scheme A, B, C), each containing certain recommended terms and conditions of probation for a license or registration. Scheme A includes: compliance with laws; posting of the suspension sign; quarterly reporting; reporting financial interests; access to examine vehicles and records; continuing DCA jurisdiction; authority to invalidate licenses; and submission of proposed advertising copies due to false advertising allegations. Scheme B is applicable to technicians only and refers to additional training courses. Scheme C is applicable to Smog Check stations only and refers to the prohibition of executing inspections, diagnosis, or repairs until compliance has been confirmed.

In the proposed Disciplinary Guidelines, the Disciplinary Order Guidelines section would still be organized by statutory or regulatory code and section number; however, each code will have a separate table in which sections of that code are listed. This proposal would also eliminate the somewhat complex lettering system and instead list the minimum discipline, including a specific probationary time period, and optional terms and conditions of probation as applicable for each code section. After identifying the minimum discipline, the user would then refer to the Standard Terms and Conditions section to determine the standard terms for inclusion in a probationary order and the recommended optional terms referenced in the table.

The new organization of the disciplinary order guidelines will promote greater consistency in the discipline imposed by administrative law judges by simplifying the standard terms and conditions of probation. That is, instead of having three sets of standard terms and conditions depending on the entity involved (e.g., station or technician), the Bureau is creating one set of standard terms and conditions for all registrants and licensees and providing optional terms and conditions to be applied as appropriate to each case.

Additional code sections are being added to the Disciplinary Order Guidelines section to account for statutory and regulatory changes that have been adopted subsequent to the drafting of the May 1997 Disciplinary Guidelines. Probation terms have been established or reevaluated to ensure consistent discipline is imposed for similar violations.

Generally speaking, when determining the recommended term of probation, the Bureau evaluated the egregiousness of the violation, the potential harm to the public, the potential unfair advantage gained in committing the violation, and the likelihood of continued

violation. In applying this rationale, the Bureau determined the following recommended probationary terms.

Two-year probationary term – the Bureau is recommending a two-year probationary term for those violations where (1) the evidence demonstrates the registrant or licensee did not willfully commit the violation; (2) there is little if any harm to the public or other licensees; and (3) there is minimal likelihood of further violation.

Three-year probationary term – the Bureau is recommending a three-year probationary term for those violations where (1) there is distinct evidence the registrant or licensee, through the exercise of reasonable care, could have prevented the violation; (2) there is a potential for harm to the public or to the program; (3) the registrant or licensee may have gained an unfair advantage over others in the industry; and (4) three years of probation is a sufficient term to deter continued violation.

Five-year probationary term – the Bureau is recommending a five-year probationary term for the most egregious and willful violations where (1) there is a clear and substantial threat of harm to the public or to the program; (2) the licensee clearly engaged in unfair business practices harming others in the industry; and (3) five years of probation is necessary to gain compliance and prevent further violation.

The proposed changes to the code sections would include:

### **Business and Professions Code (BPC)**

#### **1. BPC 125.9 (b) (5) Failure of Licensee to Pay Fine**

BPC 125.9 (b) (5) would be added to the Disciplinary Guidelines. Adding this section is necessary to impose disciplinary action for failure of a licensee to pay a fine within 30 days of the date of assessment. Enforcing this violation encourages timely payment of fines. The Bureau has determined that a three-year probation term is an appropriate disciplinary recommendation for violation of this section because the failure to pay an administrative fine after notice and opportunity to be heard demonstrates a willful disregard for the requirements of the licensing act, warranting a three-year probationary term.

#### **2. BPC 490 Criminal Conviction Substantially Related to the Qualifications, Functions, or Duties of a Licensee**

BPC 490 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensees on notice that disciplinary action may be imposed upon persons who commit crimes related to the qualifications, functions, or duties of automotive repair and of BAR's recommended discipline for that violation. The Bureau has determined that a five-year probation term is an appropriate disciplinary recommendation for violation of this section because the egregiousness of actions typically associated with criminal filings warrants the imposition of a five-year probationary term to ensure adequate consumer protection.

3. BPC 496 Violation of Section 123 Pertaining to Subversion of Licensing Examinations

BPC 496 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensees on notice that disciplinary action may be imposed for violation of BPC 123 pertaining to subversion of licensing examinations. This provision encompasses cheating on licensing examinations. Such behavior violates the security and reliability of a technical examination, passage of which is required to obtain certain licenses issued by the Bureau. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

4. BPC 498 License Secured by Fraud, Deceit, or Misrepresentation

BPC 498 would be added to the Disciplinary Guidelines. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to put licensees on notice that disciplinary action may be imposed upon persons who secure a license by fraud, deceit, or misrepresentation. The Bureau has determined a five-year probation term is necessary for violation of this section since the prohibited behavior violates the security and reliability of a technical examination required for certain licenses issued by the Bureau.

5. BPC 499 False Information Pertaining to Another Person's Application for Licensure

BPC 499 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensees on notice that disciplinary action may be imposed upon persons who knowingly made a false statement or knowingly omitted to state a fact regarding another person's application for a license. While false and misleading statements in support of any application for licensure is a concern, in this instance the licensee does not directly benefit from the false and misleading statements. Consequently, the Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

6. BPC 9884.6 Unlicensed Activity, Automotive Repair Dealer

BPC 9884.6 would be added to the Disciplinary Guidelines. Adding this section is necessary to put persons on notice that disciplinary action may be imposed upon individuals who, for compensation, perform the duties of an automotive repair dealer (ARD) without a current and valid registration. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section because of the potential harm of unlicensed activity. When dishonest repair dealers conduct fraudulent transactions or perform faulty repairs while unregistered, they often cannot be located by the Bureau because they do not have a business address or contact information on file. Unlicensed activity not only harms consumers, but undermines fair competition in the automotive repair marketplace, the protection of which is central to the Bureau's mission.

7. BPC 9884.7 (a) (1) Making or Authorizing any False or Misleading Statement

The proposed Disciplinary Guidelines replaces "BPC 9884.7 (a) False and Misleading Statements" with "BPC 9884.7 (a) (1) Making or Authorizing any False or Misleading

Statement.” This violation was also included in the previous version of the guidelines. The change in section number is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering of this statute. The Bureau has determined that a probation term of three-years is a more appropriate recommendation for violation of this section than the existing two-year term. The three year term is consistent with the term for other offenses related to misleading consumers or failing to properly disclose information to consumers, such as on an estimate or invoice.

8. BPC 9884.7 (a) (2) Causing/Allowing a Customer to Sign an Incomplete Work Order  
BPC 9884.7 (a) (2) would be added to the Disciplinary Guidelines. Adding this section is necessary to put the licensee, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer on notice that disciplinary action may be imposed upon persons who cause or allow a customer to sign any work order that does not state either the repairs requested by the customer or the automobile's odometer reading at the time of repair. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because the level of harm arising out of violation of this section is minimal.

9. BPC 9884.7 (a) (3) Failure/Refusal to Give Customer Copy of Document When Signed

BPC 9884.7 (a) (3) would be added to the Disciplinary Guidelines. Adding this section is necessary to put the licensee, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer on notice that disciplinary action may be imposed upon persons who fail or refuse to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because the level of harm arising out of violation of this section is minimal.

10. BPC 9884.7 (a) (4) Conduct Constituting Fraud

The proposed Disciplinary Guidelines replaces “BPC 9884.7 (d) Conduct Constituting Fraud” with “BPC 9884.7 (a) (4) Conduct Constituting Fraud.” This violation was also included in the previous version of the guidelines. The change in section number is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering of this statute. The Bureau has determined that the current probation term of five-years remains an appropriate recommendation for violation of this section because this section encompasses fraudulent behavior that frequently causes substantial harm to consumers while benefitting the licensee.

11. BPC 9884.7 (a) (5) Conduct Constituting Gross Negligence

The proposed Disciplinary Guidelines replaces “BPC 9884.7 (e) Gross Negligence” with “BPC 9884.7 (a) (5) Conduct Constituting Gross Negligence.” This violation was also included in the previous version of the guidelines. The proposed change is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering and wording of this statute. Violations of this section can result in substantial risk to the motoring public. For

example, a licensed brake adjuster's negligent repair of a vehicle's braking system can result in serious harm to the driver. Given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term.

#### 12. BPC 9884.7 (a) (6) Failure to Comply with Automotive Repair Act or Regulations

The proposed Disciplinary Guidelines replaces "BPC 9884.7 (f) Failure to Comply" with "BPC 9884.7 (a) (6) Failure to Comply with Automotive Repair Act or Regulations." This violation was also included in the previous version of the guidelines. The proposed change is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering and wording of this statute. The Bureau has determined that the current probation term of two-years remains an appropriate recommendation for violation of this section because the level of harm arising out of violation of this section is minimal and in instances where the section violated does imply a greater level of harm to consumers, the Bureau will seek discipline pursuant to the applicable section.

#### 13. BPC 9884.7 (a) (7) Willful Departure from/Disregard of Accepted Trade Standards

The proposed Disciplinary Guidelines replaces "BPC 9884.7 (g) Willful Departure" with "BPC 9884.7 (a) (7) Willful Departure/Disregard of Accepted Trade Standards." This violation was also included in the previous version of the guidelines. The proposed change is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering and wording of this statute. The Bureau has determined a probation term of three-years is more appropriate for violation of this section than the existing two-year term, because willful departure from accepted trade standards compromises consumer safety, albeit to a lesser degree than gross negligence.

#### 14. BPC 9884.7 (a) (8) Making False Promises to Influence Customer

The proposed Disciplinary Guidelines replaces "BPC 9884.7 (h) False Promises" with "BPC 9884.7 (a) (8) Making False Promises to Influence Customer." This violation was also included in the previous version of the guidelines. The proposed change is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering and wording of this statute. The Bureau has determined that a probation term of three-years is a more appropriate recommendation for violation of this section than the existing two-year term, to promote consistency with the recommended probationary term of three years for other code sections describing instances of false or misleading actions.

#### 15. BPC 9884.7 (a) (9) Subletting Repair Work without Customer's Knowledge or Consent

BPC 9884.7 (a) (9) would be added to the Disciplinary Guidelines. Adding this section is necessary to put the licensee, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer on notice that disciplinary action may be imposed upon persons who have work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer

could not reasonably have been notified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because the consumer must be notified if the automotive repair dealer temporarily releases care and custody of the consumer's vehicle to another facility.

16. BPC 9884.7 (a) (10) Conviction of a Violation of Penal Code § 551

BPC 9884.7 (a) (10) would be added to the Disciplinary Guidelines. Adding this section is necessary to put registered automotive repair dealers, or any automotive technician, employee, partner, officer, or member of such dealers on notice that disciplinary action may be taken against the registration if any of the persons specified is convicted of a violation of Section 551 of the Penal Code. Penal Code section 551 makes it unlawful for an automotive repair dealer or an employee or agent of the dealer to offer kickbacks or other incentives to insurance agents, brokers, or adjusters in exchange for customer referrals. Such behavior undermines fair competition in the automotive repair marketplace, the protection of which is central to the Bureau's mission. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

17. BPC 9884.8 Failure to Use a Proper Invoice

The proposed Disciplinary Guidelines replaces "BPC 9884.8 Improper Invoice" with "BPC 9884.8 Failure to Use a Proper Invoice." This section provides an automotive repair dealer shall record all work done on an invoice and ensure the invoice meets specified requirements. The Bureau has determined that the current probation term of three-years remains an appropriate recommendation for violation of this section. Consumer disclosure requirements for repair transactions remain a critical means of protecting consumers from fraud under the Automotive Repair Act. Nonetheless, a probation term of less than five years is recommended because the offense is less egregious than other forms of fraud or negligence which potentially harm the health and safety of consumers and the environment.

18. BPC 9884.9 Failure to Provide a Written Estimate

The proposed Disciplinary Guidelines replaces "BPC 9884.9 No Written Estimate" with "BPC 9884.9 Failure to Provide a Written Estimate." This alternate wording more accurately describes the violation. The Bureau proposes to amend the recommended probation term for violation of this section from two years to three years. Consumer disclosure requirements for repair transactions remain a critical means of protecting consumers from fraud under the Automotive Repair Act. Nonetheless, a probation term of less than five years is recommended because the offense is less egregious than other forms of fraud or negligence which potentially harm the health and safety of consumers and the environment. This offense is similar to BPC 9884.8, which carries a three year probation term.

19. BPC 9884.10 Failure to Return Replaced Parts When Requested

BPC 9884.10 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with the requirement to return replaced parts to customers as specified. This section

addresses the failure to return replaced parts and does not speak to the level of competence or safety associated with the actual repairs, which are addressed through other sections. Consequently, the level of harm arising out of violation of this section is minimal and the Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

#### 20. BPC 9884.11 Failure to Retain Records

The proposed Disciplinary Guidelines retains this section. The Bureau proposes to amend the recommended probation term for violation of this section from two years to three years, because this violation is similar to 9884.8, which currently carries a three-year term. When repair dealers fail to retain records of transactions with consumers, the Bureau is unable to verify whether the dealer properly informed the consumer or performed repairs in the event a complaint arises.

#### 21. BPC 9888.3 Unlicensed Activity, Lamp or Brake Adjusting Station

BPC 9888.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers licensed as lamp or brake adjusting stations and persons licensed as lamp or brake adjusters on notice that disciplinary action may be imposed for operating an adjusting station or issuing an adjustment certificate without a valid license. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section because of the potential harm of unlicensed activity.

#### 22. BPC 9889.3 (a) Violation of Any Section of the Business and Professions Code Relating to the License

BPC 9889.3 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof violates any section of the Business and Professions Code related to his or her license. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because the level of harm arising out of violation of this section is minimal and in instances where the section violated does imply a greater level of harm to consumers, the Bureau will seek discipline pursuant to the applicable section.

#### 23. BPC 9889.3 (b) Criminal Conviction Substantially Related to the Qualifications, Functions, or Duties of a Licensee

BPC 9889.3 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof is convicted of any crime substantially related to the qualifications, functions, or duties of their license. This offense is similar to BPC 490 Criminal Conviction Substantially Related to the Qualifications, Functions, or Duties of a Licensee, which carries a five year probation term. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate

recommendation for violation of this section.

24. BPC 9889.3(c) Violation of Director's Regulations

BPC 9889.3 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof violates any regulation promulgated by the director. As the level of harm arising out of violation of this section is minimal and in instances where the section violated does imply a greater level of harm to consumers, the Bureau will seek discipline pursuant to the applicable section, the Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

25. BPC 9889.3 (d) Acts Involving Dishonesty, Fraud, or Deceit Whereby Another is Injured

BPC 9889.3 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof commits any act involving dishonesty, fraud, or deceit whereby another is injured. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

26. BPC 9889.3 (e) Misrepresentation of a Material Fact in Obtaining a License

BPC 9889.3 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof has misrepresented a material fact in obtaining a license. This form of misrepresentation carries implications regarding the ethical and technical competence of licensees. However, unlike BPC 498, this offense does not additionally involve violating examination security. Consequently, the Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

27. BPC 9889.3 (f) Aids or Abets an Unlicensed Person

BPC 9889.3 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof aids or abets an unlicensed person to evade the provisions of the Automotive Repair Act. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section because of the potential harm of unlicensed activity.

28. BPC 9889.3 (g) Fails to Retain Records

BPC 9889.3 (g) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary

action may be imposed if the licensee or any partner, officer, or director thereof fails to make and keep records showing his or her transactions as a licensee, or fails to have the records available for inspection by the director or his or her representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request for the director to make the record available for inspection. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. When repair dealers fail to retain records of transactions with consumers, the Bureau is unable to verify whether the dealer properly informed the consumer or performed repairs in the event a complaint arises. This offense is similar to BPC 9884.11, which also carries a three year term.

29. BPC 9889.3 (h) Violates or Attempts to Violate Laws Pertaining to Particular Activity of License

BPC 9889.3 (h) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof violates or attempts to violate the provisions of the Automotive Repair Act relating to the particular activity of which he or she is licensed. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because the level of harm arising out of violation of this section is minimal and in instances where the section violated does imply a greater level of harm to consumers, the Bureau will seek discipline pursuant to the applicable section.

30. BPC 9889.3 (i) Conviction of a Violation of Penal Code § 551

BPC 9889.3 (i) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed lamp or brake adjusting stations and licensed adjusters on notice that disciplinary action may be imposed if the licensee or any partner, officer, or director thereof is convicted of a violation of Penal Code section 551. Penal Code section 551 makes it unlawful for an automotive repair dealer or an employee or agent of the dealer to offer kickbacks or other incentives to insurance agents, brokers, or adjusters in exchange for customer referrals. Such behavior undermines fair competition in the automotive repair marketplace, the protection of which is central to the Bureau's mission. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

31. BPC 9889.16 Failure to Issue Lamp or Brake Adjustment Certificate Upon Request

The proposed Disciplinary Guidelines replaces "BPC 9889.16 Licensed Installer Required" with "BPC 9889.16 Failure to Issue Lamp or Brake Adjustment Certificate Upon Request." The proposed change is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering and wording of this statute. The Bureau has determined a probation term of three-years is a more appropriate recommendation for violation of this section than the existing two-year term. The increased term is appropriate because the adjustment certificate is an official document issued to a vehicle that passes inspection requirements, and failure to issue the adjustment certificate reduces the effectiveness of the program.

### 32. BPC 9889.19 Failure to Charge Appropriate Fee for Lamp and Brake Adjustment Certificate

BPC 9889.19 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers licensed as lamp or brake adjusting stations on notice that disciplinary action may be imposed for failure to charge the appropriate fee for a lamp and brake adjustment certificate. The cost of the certificate is predicated on the cost of administering the program and any deviation from that cost will impose an unnecessary financial burden on consumers. As such, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

### 33. BPC 17500 False or Misleading Statements Generally

BPC 17500 would be added to the Disciplinary Guidelines. Adding this section is necessary to put all registrants and licensees on notice that disciplinary action may be imposed for violations involving false or misleading statements. Although this offense appears similar to BPC 9884.7(a)(1), BPC 17500 is intended to address broad false and misleading statements in advertising including internet and other media advertisements, implying a greater impact than BPC 9884.7(a)(1). Given the severity of the offense, the Bureau has determined a five-year probation term is an appropriate recommendation for violation of this section.

## **Health and Safety Code (HSC)**

### 1. HSC 44011.3 Failure to Comply with Requirements for Complete and Partial Pretest

HSC 44011.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers licensed as Smog Check stations and licensed Smog Check inspectors and repair technicians on notice that disciplinary action may be imposed for failure to comply with the requirements for complete and partial pretests. Such offense would include, for example, informing a vehicle owner who has requested a partial pretest that the partial pretest may not indicate the likelihood of the vehicle passing a subsequent official inspection. The Bureau has determined a two-year probation term is an appropriate recommendation for violation of this section. This section requires the station and technician to confirm the consumer understands the implication of choosing a partial pretest rather than a complete pretest and does not imply any negligence on the part of the station or technician.

### 2. HSC 44012 Failure to Comply with Procedures for Required Testing at Smog Check Station

The proposed Disciplinary Guidelines replaces “HSC 44012 Improper Inspections” with “HSC 44012 Failure to Comply with Procedures for Required Testing at Smog Check Station.” The alternate wording more accurately describes the offense. A proper inspection is essential to the success of the Smog Check program and California’s ability to meet emissions reduction goals. Given the significance of the offense, the Bureau has determined a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term.

3. HSC 44014 Test and Repair Conducted by Unqualified/Unlicensed Technician/Station

The proposed Disciplinary Guidelines retains this section. However, given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term. A five year probation term is appropriate for unlicensed activity because acts by unqualified or unlicensed persons compromise the effectiveness of the Smog Check Program. A five year term is also consistent with the terms for other offenses that compromise the effectiveness of the Smog Check Program.

4. HSC 44014.4 Failure to Comply with Advertisement Restrictions

HSC 44014.4 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check stations on notice that disciplinary action may be imposed if the station falsely advertises that it is certified pursuant to HSC 44014.2. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. While the consumer is not harmed, the offense involves a failure to properly disclose the nature of the station's services to consumers. Like other consumer disclosure requirements, this carries a three year term.

5. HSC 44014.5(b) Repairs Performed at a Test-Only Station

The proposed Disciplinary Guidelines replaces "HSC 44014.5 (b) Repairs Performed at a Test-Only Station" with "HSC 44014.5 Repairs Performed at a Test-Only Station." This violation was also included in the previous version of the guidelines. The change in section number is necessary to account for a change in law since the adoption of the 1997 version which altered the section numbering of this statute. The Bureau has determined that a three-year probation term remains an appropriate recommendation for violation of this section. Past Bureau experience has shown that a three-year probation term for this violation is adequate and appropriate to gain compliance.

6. HSC 44015 Improper Issuance of Certificates of Compliance

The proposed Disciplinary Guidelines retains this section. Violation of this code degrades the effectiveness of the Smog Check program, as the proper issuance of certificates of compliance or noncompliance is critical to the achievement of the program's emission reduction goals. Given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term.

7. HSC 44015.5 Improper Issuance of Certificate of Compliance or Certificate of Noncompliance to a New Motor Vehicle

HSC 44015.5 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check stations and technicians on notice that disciplinary action may be imposed upon Smog Check stations that improperly issue a certificate of compliance or certificate of noncompliance to either a new motor vehicle or motor vehicle with a new motor

vehicle engine which is not certified by the Bureau, and which is the subject of a transaction prohibited by Health and Safety Code sections 43125 and 43153. Violation of this code degrades the effectiveness of the Smog Check program, as the proper issuance of certificates of compliance or noncompliance is critical to the achievement of the program's emission reduction goals. Given the severity of the offense, the Bureau has determined a five-year probation term is an appropriate recommendation for violation of this section.

#### 8. HSC 44016 Specifications and procedures

HSC 44016 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check repair stations and technicians on notice that disciplinary action may be imposed for failure to perform repairs in accordance with established specifications and procedures. Because this failure compromises the durability of the repairs and degrades the effectiveness of the program, the Bureau has determined a five-year probation term is an appropriate recommendation for violation of this section.

#### 9. HSC 44017 Failure to Comply with Repair Cost Limits

The proposed Disciplinary Guidelines replaces "HSC 44017 Failure to Comply with Cost Limits" with "HSC 44017 Failure to Comply with Repair Cost Limits." This alternate wording more accurately describes the violation. Issuing a repair cost waiver to an ineligible vehicle degrades the effectiveness of the Smog Check program. Given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term.

#### 10. HSC 44017.3 Failure to Post Required Information at Smog Check Station

HSC 44017.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check stations on notice that disciplinary action may be imposed upon Smog Check stations failing to post a sign informing customers about options when their vehicle fails a biennial smog check inspection. Additionally, disciplinary action may be taken on Smog Check stations where licensed Smog Check technician repairs are not performed if that station fails to post a sign conspicuously in an area frequented by customers with a statement that repair technicians are not available and repairs are not performed. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

#### 11. HSC 44017.4 Failure to Properly Inspect Specially Constructed Vehicles

HSC 44017.4 would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensees on notice that disciplinary action may be imposed upon stations failing to properly inspect specially constructed vehicles. Because the Bureau has determined that failing to properly inspect any vehicle degrades the effectiveness of the program, a five-year probation term is an appropriate recommendation for violation of this section.

12. HSC 44030 (a) Allowing Unqualified Mechanic to Perform Smog Check Tests, Services, and Adjustments

HSC 44030 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those stations allowing unqualified mechanics to perform Smog Check tests, services, and adjustments. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section. Five years' probation is appropriate because performance of Smog Check services by unqualified persons compromises the effectiveness of the Smog Check Program. A five year term is also consistent with the terms for other offenses that compromise the effectiveness of the Smog Check Program.

13. HSC 44031.5 Test and Repair by Unqualified Smog Check Technician

The proposed Disciplinary Guidelines replaces "HSC 44031.5 & 44032 Test and Repair by Non-Qualified Technician" with "HSC 44031.5 Test and Repair by Unqualified Smog Check Technician." HSC 44032 has been retained and is repositioned as a separate standalone disciplinary action. Given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term. Five years' probation is appropriate because performance of Smog Check services by unqualified persons compromises the effectiveness of the Smog Check Program. A five year term is also consistent with the terms for other offenses that compromise the effectiveness of the Smog Check Program.

14. HSC 44032 Performance of Test and Repair by Unqualified Technician

The proposed Disciplinary Guidelines replaces "HSC 44031.5 & 44032 Test and Repair by Non-Qualified Technician" with "HSC 44032 Test and Repair by Unqualified Smog Check Technician." HSC 44031.5 has been retained and is repositioned as a separate standalone disciplinary action. Given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term. Five years' probation is appropriate because performance of Smog Check services by unqualified persons compromises the effectiveness of the Smog Check Program..

15. HSC 44033 (a) Failure to Display Identifying Sign

HSC 44033 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those stations failing to display an identifying sign prescribed by the Department. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program.

16. HSC 44033 (b) Requiring Repairs as a Condition of Performing a Test

HSC 44033 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary

to put Smog Check stations on notice that disciplinary action may be imposed upon those stations that require repairs as a condition of performing the Smog Check test. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because this action undermines the consumer's right to choose where to have their vehicle repaired.

17. HSC 44033 (c) Failure to Provide Written Estimate or Repair Choice Statement

HSC 44033 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those who fail to provide customers with a written estimate that provides notice to the customer that they may choose another Smog Check station to perform needed repairs, installations, adjustments, or subsequent tests. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as this offense is similar to BPC 9884.9 (failing to provide a written estimate) and other consumer disclosure requirements which carry three year terms.

18. HSC 44033 (d) Failure to Separately State Charges for Testing and Repairs

HSC 44033 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those who fail to provide customers with a written estimate that states separately, the charges for testing and repairs. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as this offense is similar to BPC 9884.9 (failing to provide a written estimate) and other consumer disclosure requirements which carry three year terms.

19. HSC 44033 (e) Failure to Post Station and Technician Licenses

HSC 44033 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those who fail to post station licenses and qualified technicians' certificates prominently in each place of business so as to be readily visible to the public. The public must be afforded the ability to determine the license status of the station and technicians providing services so as to be able to make an informed decision. Because of this, the Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

20. HSC 44035 Failure to Provide Access to Licensed Station

HSC 44035 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations and technicians on notice that disciplinary action may be imposed upon those who fail to provide the Department or its representatives access to licensed stations for the purpose of examining property, station equipment, repair orders, emissions equipment maintenance records, and any emission inspection items. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because violation of this section limits the ability of the Bureau to enforce the program.

21. HSC 44036(b)(1) Failure to Utilize Certified Original Equipment and Replacement EIS Parts

HSC 44036 (b)(1) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those who fail to utilize original equipment and replacement parts certified by the Department. Using Bureau-certified equipment and parts helps to ensure consistent inspections, but failure to use certified equipment and parts does not result in degradation of the effectiveness of the program. Thus, the Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

22. HSC 44050 (e) Failure to Comply with an Order of Abatement or Payment of an Administrative Fine

HSC 44050 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed upon those who fail to comply with an order of abatement or payment of an administrative fine. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 125.9(b)(5) (Failure of Licensee to Pay Fine), which also carries a three year probation term.

23. HSC 44059 Perjury

The proposed Disciplinary Guidelines removes this section. Removal of this section is necessary because the section pertains to perjury, which is more applicable to criminal proceedings than in administrative actions for which the guidelines are intended.

24. HSC 44060 (g) Charging More for Certificate than Amount Charged by the Department

HSC 44060 (g) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed upon those who charge consumers a different amount for certificates, waivers, or extensions than the fee charged by the Department. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9889.19 (Failure to Charge Appropriate Fee for Lamp and Brake Adjustment Certificate), which carries a five year probation term.

25. HSC 44072.2 (a) Violation of the Chapter and Regulations

HSC 44072.2 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof violates any section of the Motor Vehicle Inspection Program and the regulations adopted pursuant to it, which relate to the licensed activities. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9884.7 (a) (6) (Failure to Comply with Automotive

Repair Act or Regulations), which carries a two year probation term.

26. HSC 44072.2 (b) Conviction of a Substantially Related Crime

HSC 44072.2 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof is convicted of any crime substantially related to the qualifications, functions, or duties of the license-holder. This offense is similar to BPC 490 (Criminal Conviction Substantially Related to the Qualifications, Functions, or Duties of a Licensee), which carries a five year probation term. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

27. HSC 44072.2 (c) Violations of Regulations Adopted by the Director

HSC 44072.2 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof violates any regulations adopted by the director pursuant to the Motor Vehicle Inspection Program. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9984.7(a)(6) which carries a two-year probationary term.

28. HSC 44072.2 (d) Committed Any Act Involving Dishonesty, Fraud, or Deceit

HSC 44072.2 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof commits any act involving dishonesty, fraud, or deceit whereby another is injured. This offense is similar to BPC 9884.7(a)(4), which carries a five year probation term. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

29. HSC 44072.2 (e) Misrepresentation of a Material Fact in Obtaining a License

HSC 44072.2 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof has misrepresented a material fact in obtaining a license. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This form of misrepresentation has implications regarding the ethical and technical competence of licensees. However, unlike BPC 498, this offense does not additionally involve violating examination security. This offense is similar to BPC 9889.3 (e) Misrepresentation of a Material Fact in Obtaining a License, which carries a three year probation term.

30. HSC 44072.2 (f) Aiding and Abetting an Unlicensed Person

HSC 44072.2 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary

to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof aids or abets unlicensed persons to evade provisions of the Motor Vehicle Inspection Program. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section because of the potential harm of unlicensed activity.

31. HSC 44072.2 (g) Failure to Make, Keep, or Have Available for Inspection, Records of Transactions as a Licensee

HSC 44072.2 (g) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof fails to make and keep records showing transactions as a licensee, fails to have records available for inspection for a period of at least three years, or fails to comply with a written request of the director to make the records available for inspection. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. When repair dealers fail to retain records of transactions with consumers, the Bureau is unable to verify whether the dealer properly informed the consumer or performed repairs in the event a complaint arises. This offense is similar to BPC section 9889.3 (g) and 9884.11, which carry three year probation terms.

32. HSC 44072.2 (h) Violates or Attempts to Violate the Chapter

HSC 44072.2 (h) would be added to the Disciplinary Guidelines. Adding this section is necessary to place licensees on notice that disciplinary action may be imposed if the licensee, or any partner, officer, or director thereof violates or attempts to violate the provisions of the Motor Vehicle Inspection Program relating to the particular activity for which he or she is licensed. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9884.7(a)(6) which carries a two-year probation term.

33. HSC 44072.10 (c) Fraudulent Certification/Inspection of Vehicle

HSC 44072.10 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations and technicians on notice that disciplinary action may be imposed upon those who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. Revocation of the applicable registration/license is the consequence required by statute for violation of this section. Specifically, Health and Safety Code section 44092.10(c) provides the Bureau “shall revoke the license of any smog check technician or station licensee” that fraudulently certifies or inspects vehicles.

**Title 16, California Code of Regulations (CCR)**

1. CCR 3303.3 Failure to Have Correct Mailing and Street Addresses on File with BAR

CCR 3303.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failing to maintain a correct mailing and street address on file with the Bureau. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section

because in many cases the failure to notify BAR of the correct mailing address is a clerical error and does not necessarily result in harm to the public.

2. CCR 3305 Failure to Comply with Lamp and Brake Adjusting Standards

CCR 3305 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers licensed as lamp or brake adjusting stations on notice that disciplinary action may be imposed for any adjusting, inspecting, servicing, and repairing of lamp or brake systems for the purpose of issuing any certificate of compliance or adjustment that is not performed in accordance with current standards, specifications, procedures, directive, manuals, bulletins, instruction, recommended procedures, and handbook. The Bureau has determined that a three- year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7).

3. CCR 3307 (a) Failure to Appropriately Display Official Station License

CCR 3307 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to place an official station license under glass or other transparent cover and prominently displayed in an area of the station frequented by customers. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (e) Failure to Post Station and Technician Licenses, which carries a two year probation term.

4. CCR 3307 (b) Failure to Appropriately Display Licenses of All Official Adjusters Employed at Station

CCR 3307 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to mount licenses of all official adjusters employed at a licensed station under glass or other transparent cover and prominently display the licenses in an area of the station frequented by customers. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (e) Failure to Post Station and Technician Licenses, which carries a two year probation term.

5. CCR 3307 (c) Failure to Appropriately Display Official Station Sign

CCR 3307 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to display an official station sign, meeting the specifications in CCR 3309, in a location where it is clearly visible to the general public from outside the station. The Bureau has

determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (a) Failure to Display Identifying Sign, which carries a two year probation term.

6. CCR 3307 (d) Failure to Post List of Prices

CCR 3307 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to post conspicuously, in an area frequented by customers, a list of prices for the specific activities for which the station is licensed. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, because consumers are unable to make informed decision if the station fails to post the prices as required by this section.

7. CCR 3307 (e) Failure to Maintain Adjusting, Servicing, and Testing Instruments, Machines, Devices, and Equipment

CCR 3307 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to maintain all adjusting, servicing, and testing instruments, machines, devices, and equipment. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section because poorly maintained brake and lamp adjusting equipment will potentially compromise the safety of the vehicle.

8. CCR 3307 (f) Failure to Make, Keep, or Have Available for Inspection, Records of Transactions as a Licensee

CCR 3307 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to make, keep, and have available for inspection upon request of the Bureau, records showing the transactions as a licensee for a period of not less than three years. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to Health and Safety Code section 44072.2(g) and BPC sections 9889.3 (g) and 9884.11, which carry three year probation terms.

9. CCR 3308 (a) Failure to Remove/Cover Official Station Sign When Services of a Licensed Adjuster are No Longer Available

CCR 3308 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure of an official station that no longer has services of a licensed adjuster to immediately remove or cover the official station sign or surrender its license and all unused certificates of adjustments if a licensed adjuster is not employed by the station within 60 days. The Bureau has determined that a three- year probation term is an appropriate recommendation for violation of this section because the stations have direct knowledge of the loss of the services of a licensed adjuster and must act immediately to cover the official sign to prevent the perception of having

the ability to perform the functions of a licensed station.

10. CCR 3308 (b) Failure to Remove/Cover Official Station Sign When Station is No Longer Authorized to Perform Functions of Licensed Station

CCR 3308 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure of an official station to remove or cover the sign or portion of the sign pertaining to the licensed functions for which it is no longer licensed. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because although this offense is similar to sub-section (a) above, the station may not have immediate and direct knowledge of the loss in authorization.

11. CCR 3308 (c) Failure to Return Unused Certificates When Official Station License has Expired or has been Surrendered, Suspended, or Revoked

CCR 3308 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failure to return to the Bureau all unused certificates when an official station license has expired or has been surrendered, suspended, or revoked. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because the station must act proactively to return unused certificates to avoid the improper issuance of any certificates.

12. CCR 3309 Failure to Appropriately Post Official Station Sign

CCR 3309 would be added to the Disciplinary Guidelines. Adding this section is necessary to place official brake and lamp adjusting stations on notice that disciplinary action may be imposed for failing to post a sign meeting official station sign specifications. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (a) Failure to Display Identifying Sign, which carries a two year probation term.

13. CCR 3316 Failure to Meet Official Lamp Adjusting Station Operation and Equipment Requirements

CCR 3316 would be added to the Disciplinary Guidelines. Adding this section is necessary to put official lamp adjusting stations on notice that disciplinary action may be imposed for failure to follow provisions for the operation of official lamp adjusting stations as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, since there is a potential for harm to motorists if a station's failure to meet operation and equipment requirements affects the quality of repairs.

14. CCR 3321 Failure to Meet Official Brake Adjusting Station Operation and Equipment Requirements

CCR 3321 would be added to the Disciplinary Guidelines. Adding this section is necessary to put official brake adjusting stations on notice that disciplinary action may be imposed for failure to follow provisions for the operation of official brake adjusting stations as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, since there is a potential for harm to motorists (for example, if a poor brake measuring device leads to a poor brake job), though no actual harm has been caused.

15. CCR 3340.15 (a) Failure of Smog Check Station to Comply with Work Area Requirement

CCR 3340.15 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with work area requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, since there is a potential for harm to consumers if inspection equipment is damaged.

16. CCR 3340.15 (b) Failure of Smog Check Station to Have Smog Check Technician Present During Hours of Operation

CCR 3340.15 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to have a licensed technician present during business hours. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. In addition to inconveniencing motorists, the station is failing to comply with licensing requirements.

17. CCR 3340.15 (c) Failure of Smog Check Station to Post Station License and Technician Licenses

CCR 3340.15 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to post station and technician licenses prominently under glass or other transparent material in an area frequented by customers. The public must be afforded the ability to determine the license status of the station and technicians providing services so as to be able to make an informed decision. Because of this, the Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

18. CCR 3340.15 (d) Failure of Smog Check Station to Post List of Prices

CCR 3340.15 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to post conspicuously, in an area frequented by customers, a list of price ranges for specific activities for which the station is licensed. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because consumers are unable to make informed decisions if the station fails to post the prices as required by this

section.

19. CCR 3340.15 (e) Failure of Smog Check Station to Make, Keep, or Have Available for Inspection, Records of Transactions

CCR 3340.15 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to make, keep secure, and have available for inspection on request of the Bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years and to meet record requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to Health and Safety Code section 44072.2(g), BPC sections 9884.11 and 9889.3 (g), and CCR section 3307(f), which carry three year probation terms.

20. CCR 3340.15 (f) Failure of Smog Check Station to be Open and Available to the General Public for Smog Check Program Services

CCR 3340.15 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to be open and available to the general public for Smog Check Program services. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. In addition to inconveniencing motorists, the station is failing to comply with licensing requirements.

21. CCR 3340.15 (g) Failure of Smog Check Station to Provide Access to BAR for Quality Assurance Evaluation

CCR 3340.15 (g) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to afford the Bureau access to the station during normal business hours to evaluate the effectiveness of tests and/or repairs made to vehicles subject to the Smog Check Program. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section because violation of this section limits the ability of the Bureau to enforce the program. Why 3 yrs?

22. CCR 3340.15(h) Subletting Inspections or Repairs Required as part of the Smog Check Program

CCR 3340.15(h) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for subletting inspections or repairs required as part of the Smog Check Program, except under specified circumstances. The Bureau has determined a three year probation term is appropriate because the licensee is responsible for the inspections and repairs performed under their license and cannot delegate this responsibility to another station through a sublet transaction.

23. CCR 3340.16 Failure to Comply with Smog Check Test-Only Station Requirements

The proposed Disciplinary Guidelines replaces "CCR 3340.16 & 3340.16.5 - Station Equipment and Testing Requirements" with "CCR 3340.16 - Failure to Comply with Smog Check Test-Only Station Requirements." CCR 3340.16.5 has been retained and is repositioned as a separate standalone disciplinary action. The Bureau has determined that a three-year probation term remains an appropriate recommendation for violation of this section, since there is a potential for harm to motorists if a station fails to meet requirements intended to protect consumers.

24. CCR 3340.16.4 Failure to Comply with Smog Check Repair-Only Station Requirements

CCR 3340.16.4 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with Smog Check repair-only station requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, since there is a potential for harm to motorists if a station fails to meet requirements intended to protect consumers and ensure the quality of repairs.

25. CCR 3340.16.5 Failure to Comply with Smog Check Test-and-Repair Station Requirements

The proposed Disciplinary Guidelines replaces "CCR 3340.16 & 3340.16.5 - Station Equipment and Testing Requirements" with "CCR 3340.16.5 - Failure to Comply with Smog Check Test-and-Repair Station Requirements." CCR 3340.16 has been retained and is repositioned as a separate standalone disciplinary action. The Bureau has determined that a three-year probation term remains an appropriate recommendation for violation of this section, since there is a potential for harm to motorists if a station fails to meet requirements intended to protect consumers and ensure the quality of repairs.

26. CCR 3340.16.6 Requirement for Telephone Line

This section was repealed on June 29, 2006; therefore, this section is being removed.

27. CCR 3340.17 Failure to Comply with Test Equipment, Electronic Transmission, Maintenance, and Calibration Requirements

CCR 3340.17 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with test equipment, electronic transmission, and maintenance and calibration requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to other code sections requiring stations to comply with equipment requirements, such as HSC 44036(b)(1), carry three year probation terms.

28. CCR 3340.22 Failure to Display Appropriate Smog Check Station Sign

CCR 3340.22 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to display an identifying sign as specified. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section

results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (a) Failure to Display Identifying Sign, which carries a two year probation term.

29. CCR 3340.22.1 Failure to Display Appropriate Smog Check Station Service Sign

CCR 3340.22.1 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with requirements for Smog Check station service signs as specified. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (a) Failure to Display Identifying Sign, which carries a two year probation term.

30. CCR 3340.23 (a) Failure to Remove/Cover Official Smog Check Station Sign When Services of a Licensed Inspector or Repair Technician are No Longer Available

CCR 3340.23 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with specified requirements upon loss of services of a licensed technician. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. Stations have direct knowledge of the loss of the services of a licensed adjuster and must act immediately to cover the official sign to prevent the perception of having the ability to perform the functions of a licensed station.

31. CCR 3340.23 (b) Failure to Remove/Cover Official Smog Check Station Sign When Station is No Longer Authorized to Perform Functions of Station

CCR 3340.23 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to remove or cover the Smog Check station sign when the station is no longer authorized to perform the function for which it was licensed. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Although this offense is similar to sub-section (a) above, the station may not have immediate and direct knowledge of the loss in authorization.

32. CCR 3340.23 (c) Failure to Return Unused Certificates When Station License has Expired or has been Surrendered, Suspended, or Revoked

CCR 3340.23 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to return to the Bureau all unused certificates when an official station license has expired or has been surrendered, suspended, or revoked. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to CCR 3308(c) (Failure to Return Unused Certificates When Official Station License has Expired or has been Surrendered, Suspended, or Revoked), which carries a three year term.

33. CCR 3340.30 (a) Failure of Smog Check Technician to Comply with Inspection, Testing, and Repair Requirements

CCR 3340.30 (a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check technicians on notice that disciplinary action may be imposed for failure to comply with inspection, testing, and repair requirements as specified. Violation of this code degrades the effectiveness of the Smog Check program, as proper inspection, testing, and repair of vehicle emission systems is critical to the achievement of the program's emission reduction goals. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

34. CCR 3340.30 (b) Failure of Licensed Technician to Maintain Correct Mailing Address on File with BAR

CCR 3340.30 (b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check technicians on notice that disciplinary action may be imposed for failure to maintain a correct mailing and street address on file with the Bureau. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. This offense is similar to CCR 3303.3, which carries a two year probation term.

35. CCR 3340.30 (c) Failure of Licensed Technician to Notify BAR of Change of Employment

CCR 3340.30 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check technicians on notice that disciplinary action may be imposed for failure to notify the Bureau in writing within two weeks of any change of employment. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section because the level of harm to consumers arising out of violation of this section is minimal.

36. CCR 3340.30 (d) Failure of Licensed Technician Whose License Has Expired to Cease to Inspect, Test, or Repair Failed Vehicles

CCR 3340.30 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put licensed Smog Check technicians on notice that disciplinary action may be imposed for failure of a licensed technician whose license has expired to immediately cease to inspect, test, or repair failed vehicles. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as there is potential harm to the consumer, for example, if the technician performs a substandard repair.

37. CCR 3340.35 Failure to Comply with Certificate of Compliance and Noncompliance Requirements

CCR 3340.35 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to

comply with requirements for the purchase and use of certificates of compliance and noncompliance as specified. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section. Violation of this code degrades the effectiveness of the Smog Check program, as proper certification of compliance is critical to the achievement of the Smog Check Program's emission reduction goals.

38. CCR 3340.41 (a) Failure to Give Customer a Copy of Test Report

The proposed Disciplinary Guidelines retains the section. However, the Bureau has determined that given the nature of the offense that a probation term of two-years is a more appropriate recommendation for violation of this section than the existing three-year term. While failing to provide full disclosure to consumers warrants some level of discipline, the reduced probationary term is appropriate because the test report is not an official document and does not compromise the integrity of the Smog Check Program.

39. CCR 3340.41 (b) Tampering with or Entering False Information into Emissions Inspection System

The proposed Disciplinary Guidelines replaces "CCR 3340.41 (b) & (c) Tampering with or Entering False Information into a Test Analyzer System (TAS)" with "CCR 3340.41 (b) Tampering with or Entering False Information into Emissions Inspection System. CCR 3340.41 (b) has been retained and is repositioned as a separate standalone disciplinary action. The Bureau has determined that a three-year probation term remains an appropriate recommendation for violation of this section. This offense includes possibly inadvertent entry of false information and so does not rise to the level of fraud demonstrated by CCR 3340.41(c).

40. CCR 3340.41 (c) Entering Information into the Emissions Inspection System for a Vehicle Other than the One Being Tested

The proposed Disciplinary Guidelines replaces "CCR 3340.41 (b) & (c) Tampering with or Entering False Information into a Test Analyzer System (TAS)" with "CCR 3340.41 (c) Entering Information into the Emissions Inspection System for a Vehicle Other than the One Being Tested." CCR 3340.41(c) has been retained and is repositioned as a separate standalone disciplinary action. However, given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing three-year term. The increased probationary term is appropriate because entering information for a different vehicle than the one being tested into the Emissions Inspection System compromises the effectiveness of the Smog Check Program and the health and safety of consumers. Also, unlike CCR 3340.41(b), which includes possibly inadvertent entry of false information, CCR 3340.41(c) would be enforced in the event of deliberate entry of information related to a different vehicle. This offense is known as "clean-plugging" or "clean-piping."

41. CCR 3340.41 (d) Failing to Follow Specifications and Procedures for Diagnosis and Repair When Vehicle Fails Smog Check Test

The proposed Disciplinary Guidelines replaces "CCR 3340.41 (d) Failing to Follow Specifications

and Procedures for Diagnosis and Repair” with “CCR 3340.41 (d) Failing to Follow Specifications and Procedures for Diagnosis and Repair When Vehicle Fails Smog Check Test.” The alternate wording more accurately describes the offense. Also, given the severity of the offense, the Bureau has determined that a probation term of five-years is a more appropriate recommendation for violation of this section than the existing three-year term. The increased probationary term is appropriate because improper repair procedures compromise the effectiveness of the Smog Check Program and the health and safety of consumers. This offense is similar to HSC 44016, which also carries a five year probation term.

42. CCR 3340.41 (f) Performing Initial Test, Reinspection, or Issue Certificate of Compliance to STAR Directed Vehicle at a Non-STAR Station

CCR 3340.41 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for performing an initial test, reinspection, or issuance of a certificate of compliance to a directed vehicle at a non- STAR station. A certain percentage of vehicles in the state that are identified as higher polluting are required by state law to be directed to a STAR station meeting certain performance standards for their biennial Smog Check. When non-STAR stations perform an initial test or reinspection or pass smog for directed vehicles, it undermines the effectiveness of the Smog Check Program and the health and safety of consumers. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

43. CCR 3340.41.3 Failure to Comply with Invoice Requirements

CCR 3340.41.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations on notice that disciplinary action may be imposed for failure to comply with invoice requirements for service, adjustments, or repairs performed as part of the Smog Check program. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9884.8, which applies to automotive repair dealers generally and carries a three year probation term.

44. CCR 3340.42 Failure to Comply with Smog Check Emissions Test Methods and Standards

CCR 3340.42 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations and technicians on notice that disciplinary action may be imposed for failure to comply with Smog Check emissions test methods and standards as specified. Violation of this code degrades the effectiveness of the Smog Check program, as proper testing of vehicle emission systems is critical to the achievement of the program’s emission reduction goals. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

45. CCR 3340.42.2 Failure to Comply with Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors

CCR 3340.42.2 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations and technicians on notice that disciplinary action may be imposed for

failure to comply with pass/fail criteria for on-board diagnostic system readiness monitors as specified. Violation of this code degrades the effectiveness of the Smog Check program, as proper testing of vehicle emission systems is critical to the achievement of the program's emission reduction goals. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

46. CCR 3340.45 Failure to Comply with Smog Check Manual Requirements and Procedures

CCR 3340.45 would be added to the Disciplinary Guidelines. Adding this section is necessary to put Smog Check stations and technicians on notice that disciplinary action may be imposed for failure to perform inspections in accordance with the requirements prescribed in the Smog Check Inspection Procedures Manual. Violation of this code degrades the effectiveness of the Smog Check program, as proper testing of vehicle emission systems is critical to the achievement of the program's emission reduction goals. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

47. CCR 3340.50(a) Failure to Own and Operate Fleet of 10 Vehicles

CCR 3340.50(a) would be added to the Disciplinary Guidelines. Adding this section is necessary to put owners of vehicle fleets on notice that disciplinary action may be imposed for failure to own and operate a fleet of at least 10 vehicles which are subject to the Smog Check Program and used only as specified. A probation term of three years is appropriate because three years demonstrated compliance with the fleet requirements by the fleet station is needed to show the station will continue to maintain the required number of vehicles to retain its status as a fleet station.

48. CCR 3340.50(b) Failure to Have Required Equipment

CCR 3340.50(b) would be added to the Disciplinary Guidelines. Adding this section is necessary to put owners of vehicle fleets on notice that disciplinary action may be imposed for failure to have the equipment required by a Smog Check station as specified in CCR sections 3340.16.5 and 3340.17, and to maintain and calibrate equipment in accordance with CCR section 3340.17. A probation term of three years is appropriate because fleet stations must maintain the appropriate equipment to inspect, diagnose, and repair the vehicles in their fleet and three years demonstrated compliance is needed to show correction of the violation.

49. CCR 3340.50(c) Failure to Have Licensed Smog Check Inspector or Technician Present When Necessary to Test, Inspect or Repair

CCR 3340.50(c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put owners of vehicle fleets on notice that disciplinary action may be imposed for failure to have a licensed inspector and/or repair technician present at the facility when necessary to test, inspect, or repair a vehicle. Discipline may also be imposed when testing and/or repairing of vehicles subject to Smog Check is not performed by a licensed inspector and/or repair technician. A probation term of three years is appropriate because fleet stations must retain a licensed inspector and repair technician to inspect, diagnose, and repair the vehicles in their fleet and three years demonstrated compliance is needed to show correction of the violation.

#### 50. CCR 3340.50 (d) Failure to Comply with Work Area Requirements

CCR 3340.50 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put fleet facilities on notice that disciplinary action may be imposed for failure to comply with work area requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, since there is a potential for harm to fleet vehicle owners if inspection equipment is damaged. This offense is similar to CCR 3340.15(a), which carries a three year probation term.

#### 51. CCR 3340.50 (e) Testing, Repairing, or Certifying a Non-Fleet Vehicle by a Fleet Facility

CCR 3340.50 (e) would be added to the Disciplinary Guidelines. Adding this section is necessary to put fleet facilities on notice that disciplinary action may be imposed against a fleet facility that tests, repairs, and certifies a vehicle that it does not own. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. While consumers are not harmed, the offense violates licensing and contractual obligations. Fleet facilities are only licensed to test, repair, and certify fleet vehicles.

#### 52. CCR 3340.50 (f) Failure to Facilitate Onsite Inspection

CCR 3340.50 (f) would be added to the Disciplinary Guidelines. Adding this section is necessary to put fleet facilities on notice that disciplinary action may be imposed against a fleet facility for failure to facilitate an onsite inspection at the Bureau's request. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to Bureau enforcement staff but does not compromise the effectiveness of the program. This offense is similar to HSC 44035, which also carries a three year probation term.

#### 53. CCR 3340.50 (g) Failure to Display Station License and Technician Licenses

CCR 3340.50 (g) would be added to the Disciplinary Guidelines. Adding this section is necessary to put fleet facilities on notice that disciplinary action may be taken against a fleet facility for failure to display the station license and technician licenses in a prominent and accessible area. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (e) and CCR 3307(a) and 3340.22, which carry two year probation terms.

#### 54. CCR 3340.50(h) Failure to Maintain Manuals and Bulletins Relating to Fleet Facilities

CCR 3340.50(h) would be added to the Disciplinary Guidelines. Adding this section is necessary to put owners of vehicle fleets on notice that disciplinary action may be imposed for failure to maintain manuals and bulletins pertaining to fleet facilities in a location readily accessible to licensed inspector and/or repair technicians. A probation term of three years is appropriate because fleet stations must maintain the appropriate manuals and bulletins to inspect, diagnose, and repair the vehicles in their fleet and three years demonstrated compliance is needed to show correction of

the violation.

55. CCR 3351.3 Failure to Comply with Display Requirements

CCR 3351.3 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with display requirements for a current or valid certificate of registration and an official automotive repair dealer's sign as specified. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section. Violation of this section results in an inconvenience to consumers but does not compromise the effectiveness of the program. This offense is similar to HSC 44033 (e) and CCR 3307(a) and 3340.22, which carry two year probation terms.

56. CCR 3351.5 Failure of Auto Body Repair Shop to Comply with Equipment Requirements

CCR 3351.5 would be added to the Disciplinary Guidelines. Adding this section is necessary to put auto body repair shops on notice that disciplinary action may be imposed for failure to comply with requirements for equipment necessary to paint and repair non-structural damage as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to other code sections that require compliance with equipment requirements, such as CCR 3340.17, and carry three year probation terms.

57. CCR 3351.6 Failure to Comply with Equipment Requirements for Automotive Air Conditioning

CCR 3351.6 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive air conditioning repair dealers on notice that disciplinary action may be imposed for failure to comply with equipment requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to other code sections that require compliance with equipment requirements, such as CCR 3340.17, and carry three year probation terms.

58. CCR 3353 Failure to Comply with Written Estimate and Authorization Requirements

CCR 3353 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to comply with written estimate and authorization requirements. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as this offense is similar to other consumer disclosure requirements such as BPC 9884.9 and HSC 44033(c), which also carry three year probation terms.

59. CCR 3355 Failure to Comply with Requirements for Replaced Parts that are Not Returnable

CCR 3355 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to comply with requirements for replaced parts that are not returnable. This section addresses the failure to

return replaced parts and does not speak to the level of competence or safety associated with the actual repairs, which are addressed through other sections. Consequently, the level of harm arising out of violation of this section is minimal. Thus the Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

60. CCR 3356 (a) – (c) Failure to Comply with Invoice Requirements

CCR 3356 (a) – (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers notice that disciplinary action may be imposed for failure to comply with invoice requirements as specified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section as this offense is similar to other consumer disclosure requirements such as BPC 9884.9 and HSC 44033(c), which also carry three year probation terms.

61. CCR 3356 (d) Failure to Provide and Retain Legible Copy of Invoice

CCR 3356 (d) would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to give the customer a legible copy of the invoice and retain a legible copy as part of the dealer's records. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section as this offense is similar to other invoice-related consumer disclosure requirements, such as BPC 9884.9 and HSC 44033(c), which also carry three year probation terms.

62. CCR 3356.1 Failure to Comply with Toxic Waste Disposal Cost Requirements

CCR 3356.1 would be added to the Disciplinary guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with toxic waste disposal cost requirements. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. Among other things, CCR 3356.1 requires dealers, when charging a consumer for toxic waste disposal costs, to charge up to an amount which recoups their costs. Violation of CCR 3356.1 potentially harms consumers given the possibility the dealer is imposing an unnecessary financial burden on consumers.

63. CCR 3358 Failure to Comply with Maintenance of Records Requirements

CCR 3358 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with requirements for records maintenance. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. When repair dealers fail to retain records of transactions with consumers, the Bureau is unable to verify whether the dealer properly informed the consumer or performed repairs in the event a complaint arises. This offense is similar to other record retention offenses, such as BPC 9884.11, BPC 9889.3(g), and HSC 44072.2 (g), which carry three year probation terms.

64. CCR 3359 Failure to Comply with Sublet Disclosure Requirement

CCR 3359 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failing to disclose, upon the request of the consumer, the location at which any repair work will be done other than repair work to be done at the dealer's location and by the dealer or his/her employees. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, because the consumer must be notified if the automotive repair dealer temporarily releases care and custody of the consumer's vehicle to another facility.

65. CCR 3360.2 Failure to Comply with General Requirements for the Sale and Installation of Ball Joints

The proposed Disciplinary Guidelines replaces "CCR 3360.2 - Ball Joints" with "CCR 3360.2 - Failure to Comply with General Requirements for the Sale and Installation of Ball Joints." This alternate wording more accurately describes the offense. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7) and CCR 3305.

66. CCR 3361.1 Failure to Comply with Minimum Requirements and Standards for Automatic Transmissions

The proposed Disciplinary Guidelines replaces "CCR 3361.1 - Automatic Transmission" with "CCR 3361.1 - Failure to Comply with Minimum Requirements for Rebuilding Automatic Transmissions." This alternate wording more accurately describes the offense. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7) and CCR 3305.

67. CCR 3362.1 Failure to Comply with Engine Changes Requirements

CCR 3362.1 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with requirements for engine changes. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7) and CCR 3305.

68. CCR 3363.4 Failure to Comply with Installation Standards Applicable to Ignition Interlock Devices

CCR 3363.4 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with standards applicable to dealers who install ignition interlock devices. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7) and CCR 3305.

69. CCR 3364 Defacing/Removing Vehicle Identification and Information

CCR 3364 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for the defacing/removing of vehicle identification and information labels. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as violation of this offense indicates a potential for fraudulent activity, but commission of fraud has not yet occurred.

70. CCR 3365 Failure to Comply with Auto Body and Frame Repair Standards

CCR 3365 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to comply with auto body and frame repair standards. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from accepted industry repair standards compromises consumer safety, albeit to a lesser degree than gross negligence. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards, such as BPC 9884.7(a)(7), and CCR 3305, 3361.1, and 3363.4.

71. CCR 3366 Failure to Comply with Automotive Air Conditioning Procedures

CCR 3366 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with automotive air conditioning inspection standards and service procedures. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as departure from the accepted industry repair standards potentially harms the environment. This section is similar to other statutory and regulatory sections requiring compliance with industry repair standards.

72. CCR 3367 Improper Installation, Re-installation, Sale or Distribution of Previously Deployed Airbags

CCR 3367 would be added to the Disciplinary Guidelines. Adding this section is necessary to put

automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with requirements regarding the proper installation, re-installation, sale, or distribution of previously deployed air bags. Violation of this section can result in the risk of serious, life-threatening injury to consumers. Given the severity of the offense, the Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

73. CCR 3368 Improper Receipt or Payment of Commissions, Consideration, Inducements, or Referral Fees for Towing Services

CCR 3368 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with requirements regarding proper receipt or payment of commissions, consideration, inducements or referral fees for towing services. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. While this violation is similar to Penal Code 551, it carries a three year term given the potentially lower standard of proof required to receive administrative versus criminal discipline.

74. CCR 3371 Untrue or Misleading Statements or Advertising

The proposed Disciplinary Guidelines replaces "CCR 3371 & 3372 - Misleading Advertising" with "CCR 3371 Untrue or Misleading Statements or Advertising." The removal of CCR section 3372 is appropriate because the section only defines False and Misleading, and therefore a licensee cannot be in violation of it. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section, as it is similar to BPC 9884.7(a)(1), which also carries a three year probation term.

75. CCR 3372.1 Misleading Price Advertising by an Automotive Repair Dealer

CCR 3372.1 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for advertising automotive services at a price which is misleading. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to BPC 9884.7(a)(1) and CCR 3371, which also carry three year probation terms.

76. CCR 3373 False or Misleading Records

CCR 3373 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for false or misleading records. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar to other sections of law and regulation that prohibit false or misleading statements, such as BPC 9884.7(a)(1), and also carry a three year probation term.

77. CCR 3374 Advertise, Represent, or Imply That a Used Part is New

CCR 3374 would be added to the Disciplinary Guidelines. Adding this section is necessary to put automotive repair dealers on notice that disciplinary action may be imposed for advertising,

representing, or in any manner implying that a used rebuilt or reconditioned part or component is new. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. While this violation is not an egregious act of fraud, it is similar to other consumer disclosure violations which carry a three year term.

78. CCR 3375 Advertisement Containing False or Misleading Information Regarding Guarantees or Warranties

CCR 3375 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for any advertisement containing any false or misleading representation concerning the nature, extent, duration, terms or cost of a guarantee of a motor vehicle part, component, or repair service subject to the provisions of the Automotive Repair Act. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar other offenses requiring proper customer disclosures and prohibiting false and misleading statements, such as BPC 9884.7(a)(1) and 9884.8, which carry three year probation terms

79. CCR 3376 Failure to Comply with Requirements for Disclosure of Guarantee

CCR 3376 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to comply with the requirements for guarantee disclosures. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar other offenses requiring proper customer disclosures and prohibiting false and misleading statements, such as BPC 9884.7(a)(1) and 9884.8, which carry three year probation terms.

80. CCR 3377 False and Misleading Pro-Rata Guarantee

CCR 3377 would be added to the Disciplinary Guidelines. Adding this section is necessary to put registrants and licensees on notice that disciplinary action may be imposed for failure to comply with requirements regarding false or misleading pro-rata guarantees. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. This offense is similar other offenses requiring proper customer disclosures and prohibiting false and misleading statements, such as BPC 9884.7(a)(1) and 9884.8, which carry three year probation terms.

81. CCR 3394.44 (c) Failure to Timely Comply with Order of Abatement or Pay Fine

CCR 3394.44 (c) would be added to the Disciplinary Guidelines. Adding this section is necessary to put any cited persons on notice that disciplinary action may be imposed for failure to comply with an order of abatement or citation. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section. Failure to pay an administrative fine after notice and opportunity to be heard demonstrates a willful disregard for the requirements of the licensing act, warranting a three-year probationary term. This offense is similar to other offenses, such as BPC 125.9(b)(5) and HSC 44050(e), which relate to failure to pay a fine and carry a three year probation term.

## **IV. Model Disciplinary Orders**

The proposed changes would include the addition of this new section. Adding the Model Disciplinary Orders section would provide language to be used in various disciplinary orders, including orders of revocation, stay orders, and orders of cost recovery. The section also includes specific language to prescribe the standard and optional terms and condition of probation, as well as information on terms of suspension of a license. This section provides the reader consistent language to expect when disciplinary action must be taken. In addition, the orders would provide guidance to communicate the discipline in a clear and concise manner.

### **Terms and Conditions of Probation**

The Terms and Conditions are used by Administrative Law Judges in conjunction with the discipline assigned to each violation. They are intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive.

The proposed changes would include dividing the current section into two general categories: (1) Standard Terms and Conditions of Probation and (2) Optional Terms and Conditions of Probation. The Standard Terms and Conditions of Probation would be those conditions of probation which will generally appear in all cases involving probation. The Optional Terms and Conditions of Probation would be those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case. These guidelines are intended to foster uniformity of discipline and to inform registrants and licensees of the potential consequences of violations.

The proposed changes would provide additional information on the imposed terms of probation, greater detail regarding the probationary actions, and actions registrants and licensees must take in order to stay in compliance with the Bureau. Additionally, each term has been given a title and the existing terms have been renumbered to reflect changes and new terms that are proposed to be incorporated.

#### **Proposed Changes to Standard Terms and Conditions of Probation:**

- **1. Obey All Laws** (current term “a”) - This term is being renumbered and modified to include a title and revised language to clarify the term.
- **2. Posting of Sign** (current term “b”) - This term is being renumbered and modified to include a title and revised language to specify that the location of the sign/signs shall be approved by BAR.
- **3. Quarterly Reporting** (current term “c”) - This term is being renumbered and modified to include a title and revised language to clarify that quarterly reports are to be scheduled no more frequently than once each calendar quarter.

- **4. Report Financial Interests** (current term “d”) - This term is being renumbered and modified to include a title and revised language to provide BAR the ability to request that the Respondent report any financial interest as specified.
- **5. Access to Examine Vehicles and Records** - Current term “e” is being renumbered and modified to include a title and revised language to require the Respondent to provide BAR unrestricted access to all vehicles receiving services and business records pursuant to BAR laws and regulations.
- Current term “f” is being removed as its provisions will be contained in new term 7 regarding violation of probation.
- **6. Tolling of Probation** - This term is being added to the proposed Disciplinary Guidelines. This addition is necessary to establish provisions should a respondent cease business or leave the jurisdiction of the state of California during a probation term. Tolling of probation will stop a respondent’s probation term until such time as they resume business or return to California. The tolled period is then added to the end of the probation and extends the expiration date.
- **7. Violation of Probation** - Current term “g” is being renumbered and modified to include a title and revised language to clarify that the director may set aside a stay order and carry out disciplinary action should a respondent violate the terms and conditions of probation. Additionally, language is being added to specify that the director will continue to have jurisdiction during the probation period if a petition to revoke probation or accusation is filed against a respondent.
- Current term “h” regarding advertising is being removed. Advertisement requirements are specified in Title 16, Division 33, Chapter 1, Article 9 of the California Code of Regulations. Any violation of these requirements is considered noncompliance with the Automotive Repair Act and is a violation of the term “Obey All Laws.” Additionally, this term is not applicable to all registrants and licensees; and thus, is not appropriate as a standard term of probation.
- **8. Maintain Valid License** - This term is being added to the proposed Disciplinary Guidelines. This addition is necessary to specify license and renewal requirements for respondents while on probation. This term allows the Bureau to take necessary disciplinary action in the event a respondent fails to maintain a current and active registration and/or license during the period of probation.
- **9. Cost Recovery** - This term is being added to the proposed Disciplinary Guidelines. This addition is necessary to clearly establish provisions for cost reimbursement to the Bureau for the reasonable costs of the investigation and prosecution of the case. This change allows for the implementation of a payment schedule and also allows the Bureau to pursue alternative measures to collect costs should a respondent fail to pay the ordered costs in full.
- **10. Completion of Probation** - This term is being added to the Disciplinary Guidelines.

This addition is necessary to specify how a probation period is successfully completed and how the respondent's affected registration and/or license will become restored or issued without restriction.

- **11. License Surrender** - This term is being added to the Disciplinary Guidelines. This addition is necessary to allow respondents on probation to surrender their registration and/or license if they are unable to comply with the disciplinary order's terms and conditions. This eliminates the need for additional, costly administrative action to revoke probation. Additionally, the proposed language contains requirements a respondent must meet should they choose to reapply for a BAR registration or license subsequent to a surrender.

Proposed Changes to Optional Terms and Conditions of Probation:

- **1. Actual Suspension** - This new optional term of probation codifies the Bureau's routine practice of suspending a respondent as part of the discipline imposed.
- **2. Restitution** - This optional term of probation is being added to the Disciplinary Guidelines. This addition is necessary to order restitution when a party has suffered a monetary loss related to proven violations by the respondent.
- **3. Training Course** (current term "i") - This optional term of probation is being renumbered and titled as a separate subsection. In the event training is imposed, this subsection applies revised training requirements to technicians and adds training requirements for automotive repair dealers and licensees. The term has also been revised to specify that failure by Smog Check technicians or inspectors to comply with training requirements will constitute a violation of probation.
- **4. Notification to Employer** - This optional term of probation is being added to the Disciplinary Guidelines. This addition requires Smog Check technicians and inspectors as well as lamp and brake adjusters to provide a copy of the decision and underlying accusation or Statement of Issues to their employer before commencing employment. This term also specifies the responsibility of the respondent to ensure that appropriate documentation is submitted to the Bureau, upon request, to confirm compliance with this requirement.
- **5. Prescribed Equipment** (current term "j") - This optional term of probation is being renumbered and modified to include a title and revised language to clarify equipment requirements for Smog Check Stations. Additionally, language is being added to specify requirements for automotive repair dealers who have violated specific regulations. This change is necessary to ensure that certain services or repairs are not performed until equipment requirements are met and are inspected by a BAR representative.
- **6. Restriction on inspecting vehicles requiring Smog Check certification at a STAR station** – This optional term of probation is being added to the Disciplinary Guidelines. This addition is necessary should a disciplinary case against a Smog Check station involve violations of specified laws and regulations regarding Smog Check provisions.

- **7. Supervision Requirements** – This optional term of probation is being added to the Disciplinary Guidelines. This addition is necessary for probationary registrations and for other cases where owner absenteeism was a contributing factor to the violations.

### **Incorporation by Reference:**

The incorporation by reference of the proposed *Guidelines for Disciplinary Orders and Terms of Probation*, August 2013, would be appropriate since publishing this document in the California Code of Regulations would clearly be cumbersome, unduly expensive, impractical, and unnecessary. The document would consist of over 20 pages and would be specifically applicable to the users of the guidelines. These include: Administrative Law Judges, attorneys, licensees, and others involved in the disciplinary process. The composition of the proposed Disciplinary Guidelines would not lend itself to publication in the CCR, as it would include specific disciplinary actions that are necessary to the disciplinary administrative process. The Disciplinary Guidelines would serve as the primary reference source for the stated intended users and would mean little to the public since it is so specific to the disciplinary administrative process. In addition, copies of the Disciplinary Guidelines would be available on the Bureau's Web site [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov); and would be available from any Bureau field office.

### **§ 3395.5 OF TITLE 16, DIVISION 33, CHAPTER 1, ARTICLE 12, CALIFORNIA CODE OF REGULATIONS**

The Bureau proposes to add Section 3395.5 to Title 16, Division 33, Chapter 1, Article 12, California Code of Regulations. This section is being added pursuant to Business and Professions Code section 9984.21 which states, in part, that the director may, in his or her sole discretion, issue a probationary registration to an applicant subject to terms and conditions deemed appropriate by the director. The proposed section sets forth the Bureau's process for offering and issuing a probationary registration or license when an application for a standard registration or license is denied pursuant to Sections 480, 9884.7, and 9889.1-9889.4 of the Business and Professions Code and Section 44072.1 of the Health and Safety Code. Further, the proposal specifies a timeframe within which the applicant must either accept the probationary registration or license or request a hearing on the denial of the application for a standard registration or license.

For a detailed explanation of why the proposed probationary registration and licensing process is necessary, see "Probationary Registrations and Licenses," the second subsection in the following "Factual Basis" section.

### **FACTUAL BASIS:**

The Bureau of Automotive Repair was established within the California Department of Consumer Affairs in 1972. The Bureau was created by Senate Bill 51<sup>1</sup>, which mandated a statewide consumer protection program for automotive repair.

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<sup>1</sup> SB 51, Beilenson (Chapter 1578, Statutes of 1971)

Through its statewide offices, the Bureau conducts consumer protection services related to automotive repair. Bureau representatives register and regulate automotive repair dealers, accept and mediate auto repair complaints from the public, investigate violations of the Automotive Repair Act (Business and Professions Code Section 9880, et seq.) and, when appropriate, refer cases to law enforcement authorities for prosecution. The Bureau is also responsible for managing the statewide Smog Check Program (Program) to reduce vehicle emissions.

Legislation that went into effect January 1, 1996<sup>2</sup> required licensing agencies that utilize administrative Disciplinary Guidelines, such as the Bureau, to adopt Disciplinary Guidelines in regulation in accordance with the Administrative Procedures Act. In July 1997, the Bureau's adoption of its guidelines, as revised in May 1997, became effective with the approval of Section 3395.4 of the California Code of Regulations by the Office of Administrative Law.

Currently, the Bureau registers approximately 36,000 automotive repair dealers, which includes 2,000 ARDs that are also licensed as lamp and/or brake stations and 7,000 ARDs that are also licensed as Smog Check stations. In addition the Bureau licenses approximately 3,000 lamp and brake adjusters and 20,000 Smog Check technicians.

### ***Disciplinary Guidelines***

Business and Professions Code sections 9889.1 through 9889.10 specify the grounds for denial, suspension and revocation of any license issued by the Bureau. Specifically, Section 9889.5 provides statutory authority for which the Bureau may take disciplinary action against any licensee or registrant.

Current statute requires the Bureau to adopt the Disciplinary Guidelines as regulations. The regulations proposed by the Bureau are necessary to comply with the provisions of this statute.

The Bureau's Disciplinary Guidelines are used to assist Administrative Law Judges (ALJs) in imposing the most appropriate discipline upon a licensee or registrant who has violated the laws or regulations relating to the Automotive Repair Act. The Disciplinary Guidelines have also assisted the Attorney General's Office in determining appropriate terms and conditions for stipulated settlement agreements in contested cases.

The Bureau has not received any complaints challenging its Disciplinary Guidelines. The Bureau has acted on these guidelines since its adoption in regulation and they have proven to be reasonable and effective.

Since the May 1997 revision of the Bureau's *Guidelines for Disciplinary Penalties and Terms of Probation*, several new regulations have been adopted which, if violated by a licensee, could result in the filing of formal administrative disciplinary actions. These regulations are not included in the Disciplinary Order Guidelines section of the guidelines, but should be. There are also other statutes and regulations that were previously omitted from the guidelines that the Bureau now wishes to add. The Bureau has also made revisions to its Disciplinary Guidelines in order to comply with technical changes in statutes since 1997. These changes are considered non-

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<sup>2</sup> SB 523, Kopp (Chapter 938, Statutes of 1995)

substantive. In addition to revisions needed in response to changes in law and regulation, the Bureau held public workshops on June 11, 2012 and April 12, 2012 to discuss proposed revisions to the Disciplinary Guidelines and sought public comment. The proposed changes reflect comments seeking to ensure the Disciplinary Guidelines are easier to use and understand.

In sum, the proposed changes to the Disciplinary Guidelines are necessary to incorporate new statutes and regulations, to clarify existing terms, and to more clearly present the guidelines to promote consistency and ease of use.

### ***Probationary Registrations and Licenses***

Business and Professions Code sections 480, 9884.7, and 9889.1 through 9889.4 and Health and Safety Code section 44072.1 provide grounds for denial of a registration or license issued by the Bureau. Further, Section 9884.21 of the Business and Professions Code authorizes the Bureau to issue a probationary registration or license to an applicant subject to terms and conditions deemed appropriate by the director.

Pursuant to this statutory authority, the Bureau wishes to add to regulation a process for the issuance of a probationary registration or license to an applicant when good cause exists for the denial of the application for a standard registration or license. A probationary registration or license will be a fully functioning registration or license that will remain on probation for up to three years. Factors that may warrant the issuance of a probationary registration or license in lieu of denial include:

- A criminal conviction that is substantially related to the qualifications, functions, or duties of the registration or license applied for.
- The amount of time elapsed since a conviction.
- The applicant was an owner, partner, corporate officer, limited liability company (LLC) member, or responsible managing employee of a business that has had a Bureau-issued registration or license, or other related registration or license issued by the Department of Consumer Affairs, that has been invalidated or revoked without stay.
- The applicant made false and/or misleading statements by commission or omission of any fact required to be revealed on the application for registration or licensure.
- Evidence of rehabilitation provided by the applicant at the time of application.
- Applicable factors in aggravation and mitigation, as published in the Guidelines for Disciplinary Orders and Terms of Probation.

Currently, if the Bureau denies an application for a registration or license, the applicant is entitled to a formal administrative hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. An ALJ presides at the hearing and a Deputy Attorney General represents the Bureau. An attorney may represent the applicant during all stages of the administrative proceedings. At the conclusion of the hearing, the ALJ issues a written decision regarding the denial.

The proposed action will allow both the Bureau and the applicant to forgo this administrative process, resulting in significant time and cost savings for both parties. The applicant will be able to commence activities for which a registration or license is required and will be afforded the opportunity to demonstrate compliance with probationary terms and conditions in order to obtain a standard registration or license. In turn, the Bureau will have appropriate oversight over the applicant to ensure consumer protection and will have appropriate recourse should the applicant violate the terms and conditions of the probationary registration or license.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The proposed regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following:

- **Smog Check Licensing:** The proposal creates no new requirements for licensees. The regulatory proposal simply seeks to clarify the Bureau's jurisdiction and enforcement of licenses that have been redesignated pursuant to the restructure of Smog Check licenses.
- **Disciplinary Guidelines:** The proposal would not change the degree of the impact of an administrative disciplinary action. Any adverse economic impact would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the Bureau's laws and/or regulations. That potential adverse economic impact would be the same with or without these guidelines.
- **Probationary Registration/License:** The Bureau has made an initial determination that the proposed regulatory action may save ARDs an indeterminable amount of money should their application for a standard registration or license be denied and they be offered a probationary registration or license. Rather than proceeding with an often costly and onerous administrative hearing, which delays the ability to obtain licensure and to conduct business, an applicant can accept the Bureau's offer for a probationary registration or license and commence operation under specified terms and conditions.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

#### **IMPACT ON JOBS/NEW BUSINESSES:**

BAR has made an initial determination that the proposed regulatory action will have an impact on the creation of jobs or new business, the elimination of jobs or existing businesses, or the expansion of business in the State of California as follows:

Offering a probationary registration or license to an applicant when good cause exists for the denial of the application for a standard registration or license could lead to expanded opportunities for business or employment for individuals who would otherwise be ineligible pending an administrative hearing. A probationary registration or license will be a fully

functioning registration or license that will remain on probation for up to three years.

**BENEFITS OF THE REGULATION TO WORKER SAFETY:**

BAR has made an initial determination that the proposed regulatory action will not have any impact on worker safety in the State of California. This determination was made because the proposal does not change the occupational scope of affected individuals.

**BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS AND THE STATE'S ENVIRONMENT:**

BAR has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents and the state's environment:

By ensuring that licenses and registrations are issued appropriately, BAR will be better able to protect consumers. The actions proposed in this rulemaking will protect consumers by putting the automotive industry on notice that violations of statutes and regulations enforced by BAR could lead to the levying of appropriate and uniform administrative discipline, thereby potentially dissuading unscrupulous behavior. Preventing or halting incompetent or unscrupulous behavior could save consumers time and money. Ensuring that the industry is appropriately monitored and disciplined could also ensure more effective Smog Check inspections and repairs, and in turn lead to reduced carbon-based emissions and cleaner air.

**FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE ON WHICH THE AGENCY RELIED TO SUPPORT AN INITIAL DETERMINATION THAT THE PROPOSED ACTIONS WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESSES:**

As stated under the Economic Impact Assessment above, the amendments outlined in this proposal will make clearer the Bureau's jurisdiction, clearly state the Bureau's disciplinary recommendations, and provide business and employment opportunities that may not otherwise be available. Therefore, the proposed regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**UNDERLYING DATA:**

Technical, theoretical or empirical studies or reports relied upon:

- SB 51, Beilenson (Chapter 1578, Statutes of 1971)
- SB 523, Kopp (Chapter 1995, Statutes of 1995)

**BUSINESS IMPACT:**

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The proposed regulatory action to amend the Bureau's Disciplinary Guidelines would not change the degree of the impact from an administrative disciplinary action. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the Bureau's laws and/or regulations. That potential "adverse economic impact" would be the same with or without these guidelines.

Further, with respect to the probationary registrations or licenses, the Bureau has made an initial determination that the proposed regulatory action may save institutions money should their application be denied. Rather than proceeding with an often costly and onerous administrative hearing, which delays the ability to obtain licensure and to conduct business, an applicant can accept the Bureau's offer for a probationary registration or license and continue operating under specified terms and conditions.

### **SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The regulation does not mandate the use of specific technologies or equipment.

### **CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would either be more effective in carrying out the purpose for which the action is proposed or 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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

Set forth below is the alternative which was considered and the reason it was rejected:

BAR considered the alternative of taking no action. However, this option was deemed unacceptable for several reasons. First, BAR would not be acting in compliance with Government Code section 11425.50 (e), which essentially provides a penalty may not imposed if based on a guideline that is not adopted in regulation. Second, taking no action would leave confusion as to the Bureau's jurisdiction and enforcement of the redesignated licenses. Third, taking no action would leave no alternative to a formal administrative hearing process when an application for a registration or license is denied, but a probationary registration or license may be warranted.