

TITLE 16.

BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING**

**Smog Check Licensing; Disciplinary Guidelines;
Probationary Registration/License**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the actions described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at the hearing to be held at the following location on the following date:

NORTHERN CALIFORNIA

Friday, January 8, 2016 at 10:00am
Bureau of Automotive Repair
Hearing Room
10949 North Mather Blvd
Rancho Cordova, CA 95670

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on Friday, January 8, 2016**, or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be include in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 9882 and 9984.19 of the Business and Professions Code, and to implement, interpret, or make specific Sections 475, 476, 477, 478, 480, 481, 482, 484, 485, 486, 487, 488, 489 and 9884.21 of the Business and Professions Code, Sections 11400.20, 11400.21, 11425.50(e), and 11505 of the Government Code, Sections 220 and 11500 of the Vehicle Code, and Sections 44001.3, 44005, 44010.5, 44011, 44012, 44014, 44014.2,

44014.5, 44017, 44017.1, 44030, 44031.5(e), 44033, 44034, 44036, 44037.1, 44045.5, 44056, 44062.1, 44070, 44072.10, 44092, 44093, 44094 and 44103 of the Health and Safety Code, the Bureau is proposing the following changes to Articles 5.5 and 12 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATION DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau of Automotive Repair (Bureau or BAR) was established within the Department of Consumer Affairs (DCA) in 1971 with the enactment of the Automotive Repair Act¹. BAR was created by Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statutes of 1971), which mandated a statewide automotive repair consumer protection program. BAR is charged with protecting consumers in the automotive repair marketplace and administering the Smog Check Program (Program).

Through its statewide offices, BAR provides consumer protection services related to Title 16, Division 33, of the California Code of Regulations. BAR regulates Automotive Repair Dealers (ARD), Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's Office or law enforcement authorities for administrative action, civil, and/or criminal prosecution.

CURRENT REGULATIONS:

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, are summarized as follows:

- I. Section 3340.1 specifies definitions.
- II. Section 3340.10 specifies licensing requirements for Smog Check stations.
- III. Section 3340.28 specifies licensing and qualification requirements for Smog Check Inspectors and Repair Technicians.

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 12, is summarized as follows:

- I. Section 3395.4 specifies the use of the Disciplinary Guidelines and incorporates the document into regulation.

¹ Business and Professions Code § 9880, et seq.

EFFECT OF REGULATORY ACTION:

The proposed rulemaking will make the following changes:

I. §§ 3340.1, 3340.10, AND 3340.28 OF TITLE 16, DIVISION 33, CHAPTER 1, ARTICLE 5.5, CALIFORNIA CODE OF REGULATIONS

a. 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.

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.

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.

4. Amend definition of “Smog Check station.”

The Bureau proposes to amend this definition to include “Smog Check repair-only stations.”

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.”

b. 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 license restructure that went into effect in 2012.

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 is reviewed in the same manner as an application for an initial license.

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.

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.

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.”

c. 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.

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.

3. *Amend current subsection (f).*

This subsection is being renumbered from (f) to (h).

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

The proposed amendment to Section 3395.4 would incorporate by reference the new disciplinary guidelines entitled “Guidelines for Disciplinary Orders and Terms of Probation [Rev. May 2014].”

III. § 3395.5 OF TITLE 16, DIVISION 33, CHAPTER 1, ARTICLE 12, CALIFORNIA CODE OF REGULATIONS

The Bureau proposes to adopt 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. This proposal 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 44072.1 of the Health and Safety Code. Further, the proposal specifies a timeframe for 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 detailed information regarding the anticipated benefits of this proposed regulation, please see the subsection "Benefits of the Regulation to the Health and Welfare of California Residents and the State's Environment" within the section titled, "Results of Economic Impact Assessment/Analysis."

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS:

During the process of developing these regulations and amendments, BAR has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

As outlined in Business and Professions Code (BPC) section 9882, BAR is the state agency solely responsible for enforcing and administering the Automotive Repair Act.

INCORPORATION BY REFERENCE

Guidelines for Disciplinary Orders and Terms of Probation [Rev. May 2014]

LOCAL MANDATE

None.

FISCAL IMPACT ESTIMATES

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTION 17500 –17630 REQUIRE REIMBURSEMENT:

None.

COSTS OR SAVINGS TO STATE AGENCIES OR COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

The proposed action described in this Notice will not create any costs or savings in state resources or federal funding. The Bureau does not currently receive federal funding and that will not change because of this proposal. State agencies will not realize any costs or savings because the disciplinary guidelines are suggestions only and not updating the document does not preclude the Bureau from seeking disciplinary actions against a registrant or licensee for violation of any statute or regulation not contained therein.

NONDISCRETIONARY COSTS OR SAVINGS TO LOCAL AGENCIES:

None.

EFFECT ON HOUSING COSTS

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING 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 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.
- **Probationary Registration/License:** The Bureau has made an initial determination that the proposed regulatory action may save institutions a significant amount of money should their application for a standard registration or license be denied and 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 with specified terms and conditions.

RESULTS OF 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 earlier business or employment opportunities 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:

Ensuring that licenses and registrations are issued appropriately, BAR will be better able to protect consumers from incompetent or unscrupulous behavior which could save consumers time and money. In the case of the Smog Check Program, ensuring that the industry is appropriately monitored and disciplined could ensure more effective Smog Check inspections and repairs, which leads to reduced carbon-based emissions and cleaner air. Additionally, the actions proposed in this document 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.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

However, should a person or business be disciplined by the Bureau, or denied a standard registration or license and reject a probationary version of either, they may choose to be represented by an attorney during the administrative hearing process, and as a result, may incur costs related to legal representation.

EFFECT ON SMALL BUSINESSES

The Bureau has determined that the proposed regulations would not have a significant adverse economic impact directly affecting small businesses as it will only affect businesses or individuals registered or licensed by the Bureau who have chosen to participate in the Smog Check Program, are subject to disciplinary action, or denied applicants.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, documents incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10949 N. Mather Boulevard, Rancho Cordova, CA 95670, or from the Bureau's Web site (www.smogcheck.ca.gov).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

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

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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at www.bar.ca.gov.