

TITLE 16
Bureau of Automotive Repair

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

DISCIPLINARY GUIDELINES AMENDMENTS

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.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, to be considered by the Bureau, must be received by the Bureau at its office no later than **5:00 p.m. on Tuesday, May 25, 2021**, or must be received by the Bureau at the above referenced hearing, if a hearing is held.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 480, 9882, 9884.2, 9884.7, 9884.12, 9889.1, 9889.2, 9889.3, and 9889.4, of the Business and Professions Code, Section 11400.20 of the Government Code, and Sections 44072.1 of the Health and Safety Code to implement, interpret, or make specific Sections 480, 9884.2, 9884.7, 9884.12, 9889.1, 9889.2, 9889.3, and 9889.4 of the Business and Professions Code, Sections 11400.20 and 11425.50(e) of the Government Code, and Section 44072.1 of the Health and Safety Code, the Bureau is proposing to amend section 3395.4 of Article 12 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau is proposing to amend section 3395.4 of Title 16 of the California Code of Regulations and the incorporated by reference *Guidelines for Disciplinary Penalties and Terms of Probation*, dated January 2020 (“Disciplinary Guidelines”), replacing the previous revision date, March 2016. This proposal

amends the Disciplinary Guidelines to clarify training is a rehabilitative option for respondents who have demonstrated an insufficient understanding of either the laws and regulations protecting consumers in repair transactions, or the technical aspects of automotive repair. Specifically, administrative law judges (ALJs) and the Bureau would have the option to require, as a condition of probation, training in compliance with specified parts of the Automotive Repair Act or technical training.

Respondents who are required to complete training in compliance with laws and regulations would obtain this training that meets the requirements specified in the *Disciplinary Guidelines*. The requirements of this section will help ensure respondents receive training in how to achieve and maintain compliance with the laws and regulations relative to the operation of their automotive repair business and that is consistent with the terms or conditions of probation.

This proposal also amends the Disciplinary Guidelines' listing of factors in mitigation that should be considered to clarify the Bureau's role in dispute resolution from existing language stating the Bureau 'suggests' a resolution to a consumer complaint to language stating the Bureau 'mediates' a resolution to a consumer complaint. While actively involved in the resolution of consumer complaints, the Bureau's role is not to prescribe a resolution. Rather, representatives work with consumers and respondents to satisfactorily resolve each complaint. Thus, amending the current statement is necessary to ensure the Disciplinary Guidelines accurately reflect the consumer complaint process.

This proposal also amends the Disciplinary Guidelines to clarify the factors listed as mitigation in disciplinary matters are not required to be the only source of circumstances relied upon to influence whether to issue a disciplinary order nor in determining the terms of a disciplinary action being issued. This will provide clarity for interested parties by emphasizing the enumerated mitigation factors are not intended to be limiting in nature.

This proposal also amends the Disciplinary Guidelines by replacing existing model disciplinary order language. The revised model language will maintain consistency and clarity throughout the Guidelines by clearly identifying which language should be used in which type of administrative disciplinary action.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

BAR has made an initial determination that the proposed regulatory action will have a positive impact on the health and welfare of California citizens to the extent it promotes compliance with laws and regulations that protect consumers.

BENEFITS OF THE REGULATION TO THE STATE'S ENVIRONMENT:

BAR has made an initial determination the proposed regulatory action will benefit the State's environment because those licensees who have gone through the disciplinary process and received the acceptable laws and regulations training will be better able to assist consumers and perform better inspections and repairs thereby reducing harmful smog-forming pollutants.

BENEFITS OF THE REGULATION TO WORKER SAFETY:

BAR has determined the proposed regulatory action will not affect worker safety.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

After reviewing existing state regulations relating to or affecting this regulatory proposal, BAR has determined that this proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

DOCUMENTS INCORPORATED BY REFERENCE

Guidelines for Disciplinary Orders and Terms of Probation [Rev. January 2020]

DISCLOSURES REGARDING THE PROPOSED ACTION

MANDATED BY FEDERAL LAW OR REGULATIONS:

No.

LOCAL MANDATE:

None.

FISCAL IMPACT ESTIMATES

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

None.

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

This proposal does not change the fine amounts for violations but provides a more accurate overview of BAR's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Office of Attorney General, and ALJs by outlining relevant and transparent standards directly related to violations outlined in law.

BAR does not anticipate any additional workload or costs resulting from the proposed regulations.

Because the proposal does not change fine amounts no additional revenues from fines are anticipated.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

EFFECT ON HOUSING

None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Bureau of Automotive Repair has made an initial determination that this action 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, and will not have any significant impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California, because the regulatory proposal updates and clarifies various provisions of the *Disciplinary Guidelines* and clarifies standards for training in compliance with laws and regulations as directed to licensees and registrants who have been instructed under the terms or conditions of probation in a disciplinary order to take a course that meets the proposed Bureau-prescribed standards. These standards are California-specific.

For more on benefits of the regulatory proposal, see above in this notice.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

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

Any costs to develop curricula for a course on BAR laws and regulations may be passed on to the individual respondent completing training; however, because the Bureau does not regulate tuition or course fees, the actual costs, if any, are

indeterminate. It is important to note that course fees are typically based on the competitive marketplace.

BUSINESS REPORTING REQUIREMENTS

None.

EFFECT ON SMALL BUSINESS

The Bureau of Automotive Repair has made an initial determination that this action will not have any significant, statewide adverse economic impact directly affecting small businesses, including the ability of California businesses to compete with businesses in other states, because the regulatory proposal updates and clarifies various provisions of the Disciplinary Guidelines and clarifies standards for training in compliance with laws and regulations as directed to licensees and registrants who have been instructed under the terms or conditions of probation in a disciplinary order to take a course that meets the proposed Bureau prescribed standards. Licensees and registrants required to complete a course in compliance with laws and regulations training will likely incur expenses similar to disciplinary orders made under the existing terms, which differ in that they require a respondent to exercise their own discretion in determining whether the training being sought is both relevant to the adjudicated violation and acceptable to the Bureau.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Bureau must determine that no reasonable alternative that it considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation 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 in writing relevant to the above determinations.

CONTACT PERSON

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

Lucy Sarkisyan
Bureau of Automotive Repair
10949 N. Mather Boulevard
Rancho Cordova, CA 95670

The backup contact person is:

Holly O'Connor
Bureau of Automotive Repair
10949 N. Mather Boulevard
Rancho Cordova, CA 95670

Telephone: (916) 403-8560
E-mail:
Lusine.Sarkisyan@dca.ca.gov

Telephone: (916) 403-8627
E-mail:
Holly.OConnor@dca.ca.gov

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons of the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact person named above, or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at https://bar.ca.gov/About_BAR/Regulatory_Actions.aspx