

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing scheduled

Subject Matter of Proposed Regulations: Omnibus Clean Up of Related Regulations

Section(s) Affected: 3303, 3312.1, 3312.1.1, 3340.10, 3351, 3351.1, and 3395.8 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations (CCR)

Background and Statement of the Problem:

The Department of Consumer Affairs (DCA), Bureau of Automotive Repair (Bureau or BAR) is the state agency charged with licensing automotive repair dealers (ARDs), smog check stations, STAR stations, brake and lamp adjusting stations, and their respective inspectors, repair technicians, and adjusters. The mission of both DCA and the Bureau, and therefore the main purpose of any regulatory proposal, is consumer protection, which includes ensuring “all Californians are informed, empowered, and protected.” (DCA, About Us <https://www.dca.ca.gov/about_us/index.shtml> [as of Aug. 31, 2023])

In 2021, the Legislature passed Assembly Bill 471 (“AB 471”; Low, Chapter 372, Statutes of 2021), which modified the Business and Professions Code (“BPC”; adding new sections, and amending or repealing existing sections), requiring the Bureau to develop regulations implementing a new vehicle safety systems inspection program. This new program “promote[s] the safe and uniform installation, maintenance, and servicing of vehicle safety systems and components.” (BPC section 9888.5.). The program includes inspection criteria and standards for specific vehicle safety systems and components, and the issuance of vehicle safety systems inspection licenses to stations and technicians to conduct inspections of, and repair, vehicle safety systems. Additionally, AB 471 modified BPC section 9888.5(d) to include that these vehicle safety systems inspection licenses replace licenses issued pursuant to existing provisions—governing the licensure of brake and lamp adjusting stations and adjusters—that the bill repealed on the effective date of the new regulations. Modifications to the current regulations are necessary to comply with the requirements of AB 471 and the BPC.

In 2023, the Legislature passed Assembly Bill 1263 (“AB 1263”; Berman, Chapter 681, Statutes of 2023), which set provisions that allow to Bureau to sunset the outdated brake and lamp programs within six months of the new regulations’ effective date. As a result of these provisions, several effected sections regarding current brake and lamp regulations will become inoperative six months after the Vehicle Safety Systems Inspection Program regulations take effect. However, within those sunseting sections exist certain definitions that will still be applicable to the program and therefore need to be added back into

regulations. Additionally, several sections that reference these definition sections will need to be amended to cross-reference the new sections where these definitions will be located.

Also, with updates to automotive repair dealer and vehicle safety system applications, it has become necessary to codify a definition for Responsible Managing Employee (RME), a term which has longstanding and critical use within the Bureau and across the industry.

Lastly, references to now-obsolete Health and Safety Code sections are being removed from the regulation text.

In this rulemaking proposal, the Bureau proposes amending sections 3303, 3312.1, 3312.1.1, 3340.10, 3351, 3351.1, 3395.8 of Chapter 1 of Division 33 of Title 16 of the CCR as follows:

- Amending section 3303(u) to establish a definition to clarify and make specific what constitutes “change of ownership.”
- Amending 3303(v) to establish a definition to clarify and make specific what constitutes “change of address.”
- Amending 3303(w) to establish a definition to clarify and make specific what constitutes a “Responsible Managing Employee.”
- Amending 3312.1(a)(1) to update the cross-referenced subsection.
- Amending 3312.1(a)(3) to update the cross-referenced subsection.
- Amending 3312.1.1(d)(1) to update the cross-referenced subsection.
- Amending 3312.1.1(d)(3) to update the cross-referenced subsection.
- Amending 3340.10(e) to update the cross-referenced subsection.
- Amending 3351(a)(2)(Q) to remove a cross-reference to an outdated Health and Safety Code subsection.
- Amending 3351(e)(1) to update the cross-referenced subsection.
- Amending 3351(e)(3) to update the cross-referenced subsection.
- Amending 3351.1(c) to update the cross-referenced subsection.
- Amending 3395.8(a)(6) to remove a cross-reference to an outdated Health and Safety Code subsection.

Anticipated benefits from this regulatory action:

By implementing these regulatory changes, the Bureau will reinstate definitions that are in CCR sections that will become inoperative six months after the effective date of the Vehicle Safety Systems Inspection program regulations, adding the definitions existing and current regulation sections in order to provide definitions for terms used throughout BAR’s regulations. The Bureau will also add another definition for a term used in applications (including removing references to outdated Health and Safety Code sections).

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

(1) Amend section 3303. Definitions.

- a. Add Subdivision (u) to state, “Change of ownership’ means any change in legal ownership of the license or the licensed business, including the addition or deletion of a partner, the transfer of any ownership interest between members of a family, such as by sale, gift, or the death of the legal owner or one of the owners, change of the business entity by incorporation of the business, or any other form of entity change to the legal owner of the license.”

Subdivision (u), the definition of “change of ownership”, is being added to section 3303 “Definitions.” This definition is contained in CCR section 3306, which will become inoperative on September 27, 2024. The purpose of this subsection is to provide a definition of a term used in reference to licensing requirements for licenses issued by the Bureau, specifically related to a requirement that licensees update the Bureau regarding material ownership changes. It is necessary to provide this definition so that the industry understands what this term means when they encounter the term.

- b. Add Subdivision (v) to state, “Change of address’ means any relocation of a licensed business not involving a change of ownership, and any change in the mailing address, including a change resulting from street renumbering.”

Subdivision (v), the definition of “change of ownership”, is being added to section 3303 “Definitions.” This definition is contained in CCR section 3306, which will become inoperative on September 27, 2024. The purpose of this subsection is to provide a definition of a term used in reference to licensing requirements for licenses issued by the Bureau, specifically related to a requirement that licensees update the Bureau regarding material address changes. It is necessary to provide this definition so that the industry understands what this term means when encountering the term.

- c. Add subdivision (w) to state, “Responsible Managing Employee (RME)’ means an individual designated by the automotive repair dealer as responsible to oversee the day-to-day operations of the automotive repair

dealer and ensure the automotive repair dealer's compliance with all laws and regulations in conducting its licensed activities."

Subdivision (w), the definition for "responsible managing employee (RME)", is being added to section 3303 "Definitions." There is not any existing definition for RME in BAR's regulations. The purpose of this subsection is to provide a definition of a term used in applications. BAR requires the designation of an RME in specific circumstances, especially when Automotive Repair Dealer (ARD) business owners do not reside within the state of California. In these situations, the need for a responsible and accountable individual to represent the business is paramount. An RME acts as the primary point of contact and is vested with the authority to handle critical business functions, including purchasing brake and lamp certificates of compliance, which are essential for vehicle safety standards.

Furthermore, the role of the RME extends beyond mere administrative functions. They are integral in managing consumer relations and ensuring compliance with regulatory requirements set forth by the BAR. By having an RME, businesses can ensure that there is a knowledgeable and responsible individual who can effectively communicate and interact with regulatory authorities, thereby upholding the standards and regulations that protect consumers.

It is necessary to codify a definition for an RME to prevent ambiguities regarding the qualifications, responsibilities, and expectations associated with this role. Ambiguity regarding this term can create challenges for both businesses and regulatory bodies, potentially leading to inconsistent enforcement and understanding of the responsibilities.

- d. Amend the authority cited section to reference Business and Professions Code section 9888.5.

The authority cited reference is being updated to reflect the adoption of new BPC sections resulting from the adoption of AB 1263. This is a change without regulatory effect because it is "changing an 'authority' or 'reference' citation for a regulation" within the meaning of Title 1, CCR section 100(a)(5).

(2) Amend section 3312.1. Licensing Vehicle Safety Systems Inspection Stations; Inspection, Term, and Renewal.

- a. Change cross-reference from 3306(c)(1) to 3303(u).

The Bureau proposes amending the cross-reference in CCR section 3312.1(d)(1), changing the cross-reference from CCR section 3306(c)(1) to 3303(u). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to "[revise] structure, syntax, cross-reference, grammar, or punctuation" within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(1) will become inoperative on September 27, 2024. The definition in section 3306(c)(1) will now be in proposed section 3303(u). Therefore, section 3312.1(d)(1) should cross-reference proposed section

3303(u).

b. Change cross-reference from 3306(c)(2) to 3303(v).

The Bureau proposes amending the cross-reference in CCR section 3312.1(d)(3), changing the cross-reference from CCR section 3306(c)(2) to 3303(v). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(2) will become inoperative on September 27, 2024. The definition in section 3306(c)(2) will now be in proposed section 3303(v). Therefore, section 3312.1(d)(3) should cross-reference proposed section 3303(v).

(3) Amend section 3312.1.1. Licensing Vehicle Safety Systems Inspection Stations; Inspection, Term, and Renewal.

a. Change cross-reference from 3306(c)(1) to 3303(u).

The Bureau proposes amending the cross-reference in CCR section 3312.1.1(d)(1), changing the cross-reference from CCR section 3306(c)(1) to 3303(u). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(1) will become inoperative on September 27, 2024. The definition in section 3306(c)(1) will now be in proposed section 3303(u). Therefore, section 3312.1(d)(1) should cross-reference proposed section 3303(u).

b. Change cross-reference from 3306(c)(2) to 3303(v).

The Bureau proposes amending the cross-reference in CCR section 3312.1.1(d)(3), changing the cross-reference from CCR section 3306(c)(2) to 3303(v). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(2) will become inoperative on September 27, 2024. The definition in section 3306(c)(2) will now be in proposed section 3303(v). Therefore, section 3312.1.1(d)(3) should cross-reference proposed section 3303(v).

(4) Amend section 3340.10. Licensing of Smog Check Stations.

a. Change cross-references from 3306(c)(1) and (2) to 3303(u) and (v).

The Bureau proposes amending the cross-reference in CCR section 3340.10(e) from “3306(c)(1) and (2)” to “3303(u) and (v).” This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR

section 100(a)(4). Sections 3306(c)(1) and (2) will become inoperative on September 27, 2024. The definitions in section 3306(c)(1) and (2) will now be in proposed sections 3303(u) and (v), respectively. Therefore, section 3340.10(e) should cross-reference proposed sections 3303(u) and (v).

(5) Amend section 3351. Registration of Automotive Repair Dealers.

- a. Remove reference to California Health and Safety Code section 11357(e).

The Bureau proposes removing the reference to California Health and Safety Code section 11357(e) from section 3351(a)(2)(Q) of the regulation text. This is a change without regulatory effect because this Health and Safety Code subsection has been repealed.

- b. Change cross-reference from 3306(c)(1) to 3303(u).

The Bureau proposes amending the cross-reference in CCR section 3351(e)(1), changing the cross-reference from CCR section 3306(c)(1) to 3303(u). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(1) will become inoperative on September 27, 2024. The definition in section 3306(c)(1) will now be in proposed section 3303(u). Therefore, section 3351(e)(1) should cross-reference proposed section 3303(u).

- c. Change cross-reference from 3306(c)(2) to 3303(v).

The Bureau proposes amending the cross-reference in CCR section 3351(e)(3), changing the cross-reference from CCR section 3306(c)(2) to 3303(v). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(2) will become inoperative on September 27, 2024. The definition in section 3306(c)(2) will now be in proposed section 3303(v). Therefore, section 3351(e)(3) should cross-reference proposed section 3303(v).

(6) Amend section 3351.1. Fees.

- a. Change cross-reference from 3306(c)(1) to 3303(u).

The Bureau proposes amending the cross-reference in CCR section 3351.1(c), changing the cross-reference from CCR section 3306(c)(1) to 3303(u). This is a change without regulatory effect because it is a cross-reference change that is part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, CCR section 100(a)(4). Section 3306(c)(1) will become inoperative on September 27, 2024. The definition in section 3306(c)(1) will now be in proposed section 3303(u). Therefore, section 3351.1(c) should cross-reference proposed section 3303(u).

(7) Amend section 3395.8. Application and Petition Requirements for Remedial Training Providers for Automotive Repair Dealers; Renewal.

- a. Remove reference to California Health and Safety Code section 11357(e).

The Bureau proposes removing the reference to California Health and Safety Code section 11357(e) from section 3395.8(a)(6) of the regulation text. This is a change without regulatory effect because this Health and Safety Code subsection has been repealed.

Underlying Data

- Assembly Bill (AB) 471 (Low, Chapter 372, Statutes of 2021)
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB471
- Assembly Bill (AB) 1263 (Berman, Chapter 681, Statutes of 2023)
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1263

Business Impact:

BAR made the initial determination that the proposed regulations will not have statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other States. This proposal will reinstate definitions that are in CCR sections that will become inoperative six months after the effective date of the Vehicle Safety Systems Inspection program regulations, putting them into existing and current regulation sections in order to provide definitions for terms used throughout BAR’s regulations. This proposal will also add another definition for a term used in applications, and update cross-references (including removing references to outdated Health and Safety Code sections).

Economic Impact Assessment:

BAR has determined that this regulatory proposal will have no economic impacts to the state. This proposal will reinstate definitions that are in CCR sections that will become inoperative six months after the effective date of the Vehicle Safety Systems Inspection program regulations, putting them into existing and current regulation sections in order to provide definitions for terms used throughout BAR’s regulations. This proposal will also add another definition for a term used in applications, and update cross-references (including removing references to outdated Health and Safety Code sections).

This regulatory proposal will not create or eliminate jobs within the State of California because it reinstates definitions, adds another definition, and updates cross-references.

This regulatory proposal will not create new business or eliminate existing businesses within the State of California because it reinstates definitions, adds another definition,

and updates cross-references.

This regulatory proposal will not affect the expansion of businesses currently doing business within the State of California because it reinstates definitions, adds another definition, and updates cross-references.

This regulatory proposal does not affect the health and welfare of California residents because it does not relate to health and welfare.

This regulatory proposal does not affect worker safety because it does not involve worker safety.

This regulatory proposal does not affect the state's environment because it does not involve the environment.

Specific Technologies or Equipment:

This 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 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 or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the adopted regulation.

The Bureau only considered one alternative to the proposed regulations. The Bureau considered taking no action to re-establish the definitions and amend the applicable cross-references. However, if the Bureau took no action, the industry would not have definitions for important terms that the industry needs defined in order to understand their reporting requirements (such as reporting when material changes are made by licensees), and there will be inaccurate cross-references within the CCR.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.