

BUREAU OF AUTOMOTIVE REPAIR
FINAL STATEMENT OF REASONS

HEARING DATE:

NORTHERN CALIFORNIA
Tuesday, January 19, 2016

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

WINDSHIELD REPLACEMENT STANDARDS

SECTIONS AFFECTED:

Adopt §3365.1 within Article 8, Chapter 1,
Division 33, Title 16, California Code of
Regulations

UPDATED INFORMATION

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The 45-day public comment period began on December 4, 2015 and ended on the date of the regulatory hearing, January 19, 2016. The Bureau of Automotive Repair (Bureau) received four written comments regarding the proposed regulation during this comment period and one comment at the hearing.

The text was modified in response to a written comment. On February 17, 2016, the Bureau mailed a 15-day Notice of Availability of Modified Text to the Bureau's interested parties' mailing list. The notice period ran from February 18 to March 3, 2016. The Bureau received one written comment during the 15-day notice period. The regulatory text was not modified in response to that comment.

The changes subject to the 15-day notice include the following:

1. Remove the word "minimum" from the term "minimum cure time," such that the term is simply "cure time."

This change was made in response to a written comment. The comment underscored the Bureau's need to reinforce the fact that, above all, the main goal of the regulation is to ensure consumer safety. Defining "cure time" instead of "minimum cure time" reduces the use of technical terms that are not necessary and potentially distract from this goal.

2. Create a new section for definitions and move the definition of "cure time" to this new section.

This change promotes clarity in the regulation. Definitions in regulations are generally contained in a section apart from other provisions, since they serve as a reference in the reading of the other provisions.

3. Amend the customer notification required at the time of the estimate. Instead of requiring the automotive repair dealer (ARD) to notify the customer of a cure time, the Bureau is requiring the ARD to notify the customer: 1) that he or she will be prevented from driving the vehicle for a period of time following the windshield installation; and 2) of whether the windshield is an original equipment manufacturer part (OEM) or a nonoriginal equipment manufacturer (non-OEM) part.

These disclosures maintain consumer protection while making it more feasible for auto body repair shops that sublet glass repair to comply with disclosure requirements.

With the above amendment, auto body shops that sublet, or outsource, the replacement of damaged windshields are not required to disclose “minimum cure times,” as they may not know at the time of the estimate what the minimum cure time will be. Minimum cure times are dependent on the brand and type of adhesive used, as well as the environmental conditions at the time of installation. Instead, auto body shops are required to disclose the fact there will be a period of time following installation of the windshield in which the consumer will not be able to drive the vehicle. This notification ensures consumers are aware that driving their vehicles immediately following installation presents a safety risk, and can plan accordingly. The notification required at the time of the invoice (which follows installation) remains the same, allowing the consumer to know exactly when it is safe to drive their vehicle.

Notification of whether the windshield is an OEM or non-OEM part allows the consumer to make informed decisions about a critical safety component of their vehicle prior to the repair of that component.

LOCAL MANDATE

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT

This regulation will not have a significant adverse economic impact on small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau has made a determination with supporting information that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective than the proposed action in carrying out the purpose for which the regulation is proposed, 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.

RESPONSES TO COMMENTS SUBMITTED DURING 45 DAY PUBLIC COMMENT PERIOD

Four written comments were received during the 45-day public comment period.

Comment 1

Commenter: Jack Molodanof, on behalf of Automotive Services Councils of California and the California Auto Body Association

Comment:

Mr. Molodanof stated a concern that ARDs that sublet glass repair work would have difficulty complying with the originally proposed estimate disclosure requirement. This section would have required ARDs to state on the estimate the minimum time the windshield needs to cure before it can properly and safely function.

Specifically, Mr. Molodanof expressed concern that:

At the time of estimate, the ARD may not know the type of adhesive systems used by the specific vendor, especially if dealing with several trusted repair providers and may not know the specific adhesive cure times. More importantly, factors such as weather/temperature conditions may vary at the time the windshield is actually installed (which could be days or weeks later) as opposed to when the estimate was provided to the customer. Temperature conditions affect cure times and could create a situation where an ARD is simply forced to "guess" at a cure time which wouldn't serve the shop nor consumer's best interests. [sic]

He recommended that language be added for sublet situations that would allow an ARD to state on the estimate that a cure time is necessary, rather than state a minimum cure time.

Response: This comment is accepted.

The text has been modified to provide that at the time of the estimate, an ARD must notify the consumer that he or she will be prevented from driving the vehicle for a period of time following the windshield installation. The proposed modification ensures consumers are provided information relevant to their safety while making it more feasible for shops to comply.

Comment 2

Commenter: Johan Gallo, on behalf of California Automotive Business Coalition (CalABC)

Comment:

The comment asks, in the event a shop sublets windshield replacement, what needs to be listed on an invoice to meet the requirements of the proposed regulation.

Response:

As stated in the regulation, the invoice must list the cure time, the date and time upon which the installation was completed, and whether the windshield is an original equipment manufacturer part or a nonoriginal equipment manufacturer part. A shop will need to state the above even if they have subletted the glass repair work. Generally speaking, a shop would be able to ascertain the cure time and date and time of installation through communication with their subletter and then state such information on the invoice.

Comment 3

Commenter: Larry Laskowski, on behalf of Independent Automobile Dealers Association of California (IADAC)

Comment:

Mr. Laskowski provided a written comment as well as an oral comment at the public hearing. Both comments had similar content, summarized below.

First, Mr. Laskowski noted while the IADAC has every interest in public safety, the initial statement of reasons does not establish there is a safety problem to be addressed by the proposal. The National Highway Traffic Safety Administration (NHTSA) data cited in the initial statement of reasons has certain limitations. The 2003-2007 data is national data that is over a decade old, and thus may not reflect current statistics specific to California. Also, the data does not indicate that fatalities resulted from ejection through a windshield or that a defective windshield or faulty installation was to blame, nor does it indicate how seat belts did not successfully restrain vehicle occupants.

In contrast, he notes his own research has yielded the following information:

- In California, penalties for not using seatbelts have resulted in a 25% greater use of seatbelts as compared to other states.
- In the last decade, California data states overall fatalities have declined by 30%.
- Accidents involving fatalities more often involve ejection of occupants through the rear or side windows rather than the windshield.

Second, Mr. Laskowski argues additional requirements only serve to increase liability and cost for businesses that install windshields, and that the regulatory proposal would increase the existing burden on such businesses of frivolous lawsuits. Each new law merely serves to provide additional causes for litigants to file suit or add charges to complaints which already typically allege a number of violations. The defendant dealer or glass vendor then has the burden to disprove each alleged violation.

Response:

While this comment raises valid issues, it is rejected for the following reasons.

First, it is indeed difficult to find crash statistics that isolate fatalities resulting specifically from windshield ejections in California, and the Bureau was not able to independently confirm Mr. Laskowski's research findings. Even assuming the California data cited by Mr. Laskowski is accurate, the Bureau has identified a need to proactively clarify in regulation that windshield installers must adhere to certain standards and provide certain disclosures in the interest of consumer safety.

The business of mobile windshield repair has grown increasingly popular in recent years. Without a significant investment of capital, people can learn the basics of automotive glass repair and set up a tent to deliver this service at gas stations, car washes, or on the side of the road. While this service model increases convenience for consumers, it also increases risks of unsafe or misleading repair practices. Repairs may not be performed by skilled windshield repair technicians, or may be misleadingly advertised as "free" although they are purchased through an insurance claim. To the extent these businesses are mobile and transient, enforcement of consumer protection violations against them may be hindered.

The Bureau has determined, given the critical safety function of windshields and risks attendant on the delivery of windshield replacement services, there is an increased need to clarify safety standards and promote informed consumer choice within this type of repair.

Second, it is true laws and regulations can generally be enforced in administrative, civil, or criminal tribunals. Beyond that, the Bureau is unable to predict at this time the effect of the proposed regulation on or its correlation with litigation activity. Even if the regulation were to result in greater inconvenience for windshield businesses, the Bureau could not forego the proposal to reduce such burden given the proposal's goal of promoting consumer safety. Business and Professions Code section 9880.3 requires that "protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Comment 4

Commenters: Marvin Reed Jr. and Wesley Roddy

Comment:

The comment objects to the regulation as a whole and argues the Bureau currently "has more than enough authority to regulate [safety] standards now," citing the following statutory provisions:

- Business and Professions Code section 9884.7(a)(7) – Allows the Bureau to deny, suspend, revoke, or place on probation an ARD registration for, among other things, "any willful departure from or disregard of accepted trade standards for good and

workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.”

- Business and Professions Code section 9884.15 – Provides the Bureau “may file charges with the district attorney or city attorney against any automotive repair dealer who violates the [Automotive Repair Act].”
- Business and Professions Code section 9880.3 – Provides that “protection of the public shall be the highest priority for the Bureau of Automotive Repair in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

Why hasn't the Bureau applied these laws to current windshield replacement practices?

Response:

This comment is rejected for the reasons below.

The Bureau regulates specific types of repair to ensure such repairs meet accepted trade standards. *See* Title 16, CCR sections 3360-3368. These regulations protect consumers and promote transparency by clarifying for the industry the standards enforced by the Bureau for such repairs as installation of ball joints, engine changes, and auto body and frame repairs, among others. These regulations state proper procedures or standards for procedures as well as specific consumer disclosure requirements. For example, when installing a ball joint, an ARD must record on the invoice the measurement of wear of the ball joint being replaced and the maximum allowable wear permitted by the manufacturer. The disclosure requirement was intended to reduce the overselling of ball joints.

There are currently no regulations specifically related to windshield replacement. Like other trade standard regulations, the proposed regulation states the applicable repair standards and sets forth consumer disclosure requirements. Like the disclosure requirements for ball joint installation, the disclosure requirements for windshield installation are intended to discourage dishonest behavior in repair transactions. They ensure consumers are aware before being sold the windshield installation: (1) a wait time will be involved in that repair; (2) the type of part used in the repair; and (3) when they can safely drive their vehicle following the installation.

The remaining questions in the comment relate to the overall purpose of the proposal, which is addressed above and in the initial statement of reasons.

RESPONSES TO COMMENTS SUBMITTED DURING 15 DAY PUBLIC COMMENT PERIOD

One comment, from Safelite AutoGlass, was received during the 15 day comment period. The portion of the comment pertaining to the definition of “cure time” was within the scope of the changes subject to the 15 day notice. The remaining portion of the comment was not within the scope of those changes. Nonetheless, the Bureau addresses all portions of the comment below, which include the following recommendations:

§3365.1(b)(1): Definition of “cure time”

Recommendation: Define “drive away time” instead of “cure time” and remove references to the federal safety standards and vehicle manufacturer specifications.

“Cure time” is the time it takes the adhesive used in windshield replacement to completely cure. The appropriate standard is “drive-away time,” which is the time it takes the adhesive to cure to a point where the windshield will perform as a safety device for the vehicle.

Response: This recommendation is rejected because the term “cure time” is used simply for purposes of this regulation. Although “cure time” as defined in the proposed regulation may be essentially the same as the industry term “drive-away time,” the former is used in the proposed regulation to emphasize the safety issue associated with the curing of windshield adhesive. Regardless of the term defined, auto glass businesses will be required to inform customers of the time it takes the adhesive to cure for the windshield to perform as a safety device, rather than the time it takes for an adhesive to completely cure.

It would not be appropriate to remove reference to the Federal Motor Vehicle Safety Standards and the vehicle manufacturer’s specifications from this provision. These standards ensure the “crashworthiness” of a vehicle, or the ability of the vehicle to protect its occupants during an impact. As such, they provide a reference point for what it means for the windshield to “properly function as a safety device.”

§3365.1(c)(1): Windshield use

Recommendation: Remove “vehicle manufacturer specifications” from this provision; in other words, do not require replacement auto glass to meet vehicle manufacturer specifications.

Vehicle manufacturers are held to the Federal Motor Vehicle Safety Standards, which are currently cited in this provision, when installing vehicle glass.

Response: This recommendation is rejected because, even assuming the federal and vehicle manufacturer standards for windshields are duplicative, the Bureau cannot predict at this time whether vehicle manufacturers will provide additional safety standards for windshields in the future. More importantly, manufacturers are in the best position to provide specifications that ensure the consumer’s safety, as they engineer and test the vehicles they produce and are liable to the consumer for defects.

§3365.1(c)(2): Adhesive use

Recommendation: Strike “...and adhesives shall be applied in accordance with vehicle manufacturer specifications.”

The adhesives and glass installation processes used by vehicle manufacturers are not typically used by the vehicle glass repair and replacement (VGRR) industry, thus the VGRR industry should not be held to “vehicle manufacturer specifications.” Manufacturers can use slow curing

adhesives knowing newly manufactured cars will sit on the lot for many days. Consumers may not be willing to wait that long to be able to drive their vehicles following a windshield installation by an auto glass shop. Some consumers may choose to drive the vehicle much earlier than it takes for such adhesives to cure, and thereby put their own safety at risk. Also, the VGRR industry cannot emulate the glass installation processes used by certain vehicle manufacturers. For example, some use robotic equipment.

Although BAR's interpretation of the language would not require the VGRR industry to use similar adhesives or application processes as vehicle manufacturers, a change in interpretation could result in consumer safety and satisfaction issues.

Response: This recommendation is rejected because it is unnecessary. It is not intent of the Bureau to have the industry replicate the vehicle manufacturer's process for installing a windshield. The main purpose of this provision, and the regulation as a whole, is to promote consumer safety. Vehicle manufacturers do require that the beading of adhesive that is applied to the pinchweld during a windshield installation adhere to certain specifications of thickness. Meeting this specification ensures the vehicle will meet federal crash safety standards intended to hold occupants inside the vehicle. It is not necessary for auto glass businesses to use the exact adhesives and equipment used by vehicle manufacturers in order to ensure the vehicle will meet federal crash safety standards.

§3365.1(c)(3): Estimates and customer notifications

Recommendation: Amend the language of this provision to add the term "original equipment equivalent."

The VGRR industry often uses different terminology than the body or collision repair industry. The recommended term is used by the VGRR industry to refer to aftermarket vehicle glass.

Response: This recommendation is rejected because it is unnecessary. The terms used in the proposed regulation (original equipment manufacturer part and nonoriginal equipment manufacturer part) are essentially defined in Title 16, CCR section 3303 under "original equipment manufacturer crash part" and "non-original equipment manufacturer aftermarket crash part," respectively. A windshield is a crash part, as it is a critical safety device that is designed to protect vehicle occupants in the event of a crash. The term "original equipment equivalent" is not defined in BAR's regulations, but its intended meaning falls within the existing definition of "non-original equipment manufacturer aftermarket crash part." The Bureau has determined there is no substantial need to adopt and define a new and different term.

§3365.1(c)(4): Invoices and customer notifications

Recommendation: Add the following to this provision: (1) requirement that customer be notified of the appropriate drive-away time based on the adhesive manufacturer specifications, and (2) option of "original equipment equivalent."

Response: This recommendation is rejected because it is unnecessary. First, the requirement that the customer be notified of the drive-away time on the invoice is already included in the proposed section 3365.1(c)(4). Although the term “cure time” is used instead of “drive-away time,” the meaning is the same. Customers must be notified on the invoice of the length of time the windshield adhesive needs to cure until it meets federal safety standards. Second, as noted above, adding the option of “original equipment equivalent” is not necessary because this option is already included in existing regulation.

UNDERLYING DATA:

Federal Motor Vehicle Safety Standard 205 (Attachment A)

Federal Motor Vehicle Safety Standard 212 (Attachment B)