

**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and input from the participants of several industry and public workshops, BAR developed a proposal to replace the outdated "one-size-fits-all" licensing structure, which specified technician license designations based on areas of the state where Basic two-speed idles tests or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.

A summary of the proposed changes are 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.

*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."

#### **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, and to describe the Bureau's authority to continue a disciplinary proceeding or to apply an administrative disciplinary action against a redesignated license.

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.

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."

**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).

## **§ 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 includes 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 necessary to incorporate legislative and regulatory changes that have occurred since the last revision in May 1997; to ensure consistent use of titles and terms; to remove outdated and unnecessary terms and conditions of probation; to incorporate new changes necessary to ensure rehabilitation of the licensee or registrant; and, to meet the Bureau's consumer protection mandates.

A summary of the proposed changes are 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. General Considerations**

The proposed changes include the addition of this new section to clarify the different steps taken or applied by the administrative process. These include: Accusations, Denials/Statement of Issues, Probationary Registrations and Licenses, Proposed Decisions, Stipulated Settlements,

Petitions for Reinstatement/Reduction of Discipline, and Violation of Probation.

The Accusations subsection addresses BAR's basis for filing an accusation. The Denials/Statement of Issues subsection addresses BAR's action to deny a registration or license application by written notice. The Probationary Registrations and Licenses subsection details the issuance of probationary registrations/licenses and probationary orders for registrants/licensees. The Proposed Decisions subsection addresses BAR's requests for decisions to include, but not limited to: specific code sections violated with their definitions, clear description of the violation, and respondent's explanation of the violation if he or she is present at the hearing. The Stipulated Settlements subsection addresses BAR's policy for all matters to be resolved by stipulation including agreement for cost recovery. The Petitions for Reinstatement/Reduction of Discipline subsection addresses the petitioner's burden of demonstrating that he or she has the necessary and current qualifications and skills to obtain the registration/license at issue. The Violation of Probation subsection addresses discipline for violating the terms and conditions of a probation.

## **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 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.

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

The proposed changes would move the Disciplinary Order Guidelines section, previously placed after the Standard Terms and Conditions, prior to the Standard Terms and Conditions section.

The specifics of the Standard Terms and Conditions of Probations section will be discussed in a later portion of this document. This proposed action would provide reorganization and structure to the Disciplinary Guidelines for the purposes of improving the flow, clarity, and readability of the document. In addition, the proposed changes would include a description of how the disciplinary recommendations are laid out and an explanation as to how the recommendations should be evaluated and imposed. Further, the proposed changes clarify that the maximum discipline for all violations is revocation of the applicable registration or license and an order for recovery of the Bureau’s reasonable costs of investigation. As such, the reorganized tables will not need to specify the maximum discipline for each code section.

#### **Disciplinary Order Tables**

Currently, the Disciplinary Order Guidelines section is organized according to statutory or regulatory categorization and numerical reference. In addition, each violation is structured to coincide with the recommendations in the Standard Terms and Conditions of Probation section.

In the May 1997 Disciplinary Guidelines, 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) that would cross-reference to the various 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 also be organized by statutory or regulatory categorization. However, each statutory or regulatory category will be reflected in a separate table. This proposal would eliminate the somewhat complex lettering system and replace it with the direct listing of the minimum discipline, including a specific probationary time period and optional terms and conditions of probation as applicable, subsequent to each code section, without reference to the previously mentioned lettering scheme. After identifying the minimum discipline and the appropriate probationary period, the user would then refer to the Standard Terms and Conditions section to obtain the standard terms for inclusion in a probationary order and to review the recommended optional terms that also warrant inclusion. The new organization of the disciplinary orders will provide greater consistency to the execution of the discipline where previously each code section was read with varied interpretation.

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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to impose disciplinary action for failure of a licensee to pay a fine within 30 days of the date of assessment. The Bureau has determined that a three-year probation term is an appropriate disciplinary recommendation for violation of this section.

#### **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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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

BPC 496 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 place licensees on notice that disciplinary action may be imposed for violation of BPC 123 pertaining to subversion of licensing examinations. 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 place licensees on notice that disciplinary action may be imposed upon persons who secure a license by fraud, deceit, or misrepresentation. The Bureau has determined that a five-year probation term is an appropriate recommendation for violation of this section.

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

BPC 499 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 place 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place persons on notice that disciplinary action may be imposed upon individuals who, for compensation, perform the duties of an automotive repair dealer 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.

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." Given the severity of the offense, 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. This section was not included

in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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.” The Bureau has determined that the current probation term of five-years remains an appropriate recommendation for violation of this section.

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.” 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, because violations of this section result in substantial risk to the motoring public.

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.” The Bureau has determined that the current probation term of two-years remains an appropriate recommendation for violation of this section.

13. BPC 9884.7 (a) (7) Willful Departure/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.” Given the severity of the offense, 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, because willful departure from accepted trade standards compromises the safety of consumers; although 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.” Given the severity of the offense, 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, because misleading a consumer to induce a sale is an egregious act.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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 has 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 two-year probation term is an appropriate recommendation for violation of this section.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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 been convicted of a violation of Section 551 of the Penal Code. 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.” The Bureau has determined that the current probation term of three-years remains an appropriate recommendation for violation of this section. In general, consumer disclosure requirements for repair transactions remain a critical means of protecting consumers from fraud under the Automotive Repair Act.

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.” Given the severity of the offense, 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, because this violation is similar to 9884.8 which currently carries a three-year term.

19. BPC 9884.10 Failure to Return Replaced Parts When Requested

BPC 9884.10 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 place automotive repair dealers on notice that disciplinary action may be imposed for failure to comply with the requirement regarding the return of replaced parts as specified. 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. Given the severity of the offense, 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, 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place persons on notice that disciplinary action may be imposed upon any person who operates or acts as an “official” lamp or brake adjusting station without a current and valid brake adjuster 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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 their license. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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 regulation promulgated by the director. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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.

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

BPC 9889.3 (f) 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 place licensees 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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 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.

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

BPC 9889.3 (i) 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 place licensees 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. 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 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 probationary 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 compromises 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees on notice that disciplinary action may be imposed for failure to charge the appropriate fee for a lamp and brake adjustment certificate. 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.

33. BPC 17500 False or Misleading Statements Generally

BPC 17500 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 place registrants and licensees on notice that disciplinary action may be imposed for violations involving false or misleading statements. 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.

## **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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees on notice that disciplinary action may be imposed upon a licensed technician or authorized representative who fails to comply with the requirements for complete and partial pretests including 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 that a two-year probation term is an appropriate recommendation for violation of this section.

### **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.” 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, because a proper inspection is essential to the success of the Smog Check program and California’s ability to meet emissions reduction goals.

### **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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees on notice that disciplinary action may be imposed upon a licensed Smog Check station that 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.

### **5. HSC 44014.5 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.” The Bureau has determined that a three-year probation term remains an appropriate recommendation for violation of this section.

6. HSC 44015 Improper Issuance of Certificates of Compliance

The proposed Disciplinary Guidelines retains this section. However, the Bureau has determined that given the severity of the offense, a probation term of five-years is a more appropriate recommendation for violation of this section than the existing two-year term, because violation of this code degrades the effectiveness of the Smog Check program.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees on notice that disciplinary action may be imposed upon Smog Check stations which conduct the improper issuance of a certificate of compliance or certificate of noncompliance to 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. 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, because violation of this code degrades the effectiveness of the Smog Check program.

8. HSC 44016 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 place registrants and licensees on notice that disciplinary action may be imposed upon licensed repair stations failing to perform repairs in accordance with established specifications and procedures. The Bureau has determined that 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.” 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, because violation of this code degrades the effectiveness of the Smog Check program.

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

HSC 44017.3 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 place registrants and licensees 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees on notice that disciplinary action may be imposed upon stations failing to properly inspect specially constructed vehicles. The Bureau has determined that 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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 for unlicensed activity 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 for unlicensed activity 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. The increased probationary term is appropriate because a five year probation term is appropriate for acts that constitute unlicensed activity. Such acts compromise 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. This section was not included in

the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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

HSC 44033 (b) 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 place 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.

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

HSC 44033 (c) 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 place 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.

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

HSC 44033 (d) 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 place 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.

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

HSC 44033 (e) 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 place 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 Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

20. HSC 44035 Failure to Provide Access to License Station

HSC 44035 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 place 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 two-year probation term is an appropriate recommendation for violation of this section.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

22. HSC 44036.5 (b) Uncertified Blend, Fill, or Sell of TAS Calibration Gases

HSC 44036.5 (b) 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 place persons on notice that disciplinary action may be imposed upon those who blend, fill, or sell any TAS calibration gases that are not certified by the Department or who use in TAS calibration, gases which are not certified. The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

23. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

24. 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.

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

HSC 44060 (g) 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 place 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.

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

HSC 44072.2 (a) 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 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.

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

HSC 44072.2 (b) 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 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. 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.

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

HSC 44072.2 (c) 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 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 three-year probation term is an appropriate recommendation for violation of this section.

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

HSC 44072.2 (d) 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 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. 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.

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

HSC 44072.2 (e) 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 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.

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

HSC 44072.2 (f) 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 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.

32. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion 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.

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

HSC 44072.2 (h) 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 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.

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

HSC 44072.10 (c) 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 place 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. The Bureau has determined that the appropriate recommendation for violation of this section is invalidation/revocation of the applicable registration/license.

**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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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

CCR 3305 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 place registrants and licensees on notice that disciplinary action may be imposed for any adjusting, inspecting, servicing, and repairing of brake systems for the purpose of issuing any certificate of compliance or adjustment that is not performed at official stations, by official adjusters, 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.

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

CCR 3307 (a) 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 place official 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place registrants and licensees 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 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.

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

CCR 3307 (c) 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 place official 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.

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

CCR 3307 (d) 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

place official 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 two-year probation term is an appropriate recommendation for violation of 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place official 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 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place official 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place official 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place official 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place official 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.

12. CCR 3309 Failure to Post Official Station Sign

CCR 3309 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 place official 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.

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

CCR 3316 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 place 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.

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

CCR 3321 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 place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

17. CCR 3340.15 (c) Failure of Smog Check Station to Comply with Intern Technician Requirements

CCR 3340.15 (c) 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 place Smog Check stations on notice that disciplinary action may be imposed for employing more than two intern technicians at any given time and failing to have a supervising technician on the premises while repairs or adjustments to emissions control systems on vehicles subject to the Smog Check Program are made by intern technicians. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

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

CCR 3340.15 (d) 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 place 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 Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

19. CCR 3340.15 (e) Failure of Smog Check Station to Post List of Prices

CCR 3340.15 (e) 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 place 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.

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

CCR 3340.15 (f) 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 place 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.

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

CCR 3340.15 (g) 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 place 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.

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

CCR 3340.15 (h) 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 place Smog Check stations on notice that disciplinary action may be imposed for failure to afford the Bureau access during normal business hours to the station for the Bureau's quality assurance efforts 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.

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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. 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.

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

CCR 3340.22 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 place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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

CCR 3340.23 (a) 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 place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place licensed Smog Check technicians on notice that disciplinary action may be imposed for failure to comply with inspection, testing, and repair requirements as specified. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in

the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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

CCR 3340.35 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 place registrants and licensees on notice that disciplinary action may be imposed for failure to comply with requirements for 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.

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 (c) 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.

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 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 false information into the Emissions Inspection System compromises the effectiveness of the Smog Check Program and the health and safety of consumers.

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.” 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 improper repair procedures compromise the effectiveness of the Smog Check Program and the health and safety of consumers.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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. 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 (e) Failure to Comply with Work Area Requirements

CCR 3340.50 (e) 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 place 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 two-year probation term is an appropriate recommendation for violation of this section.

48. CCR 3340.50 (f) Testing, Repairing, or Certifying a Non-Fleet Vehicle by a Fleet Facility

CCR 3340.50 (f) 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 place 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.

49. CCR 3340.50 (g) Failure to Facilitate Onsite Inspection

CCR 3340.50 (g) 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 place 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.

50. CCR 3340.50 (h) Failure to Display Station License and Technician Licenses

CCR 3340.50 (h) 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 place fleet facilities on notice that disciplinary action may be imposed 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.

51. CCR 3351.3 Failure to Comply with Display Requirements

CCR 3351.3 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 place 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.

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

CCR 3351.5 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 place auto body repair shops on notice that disciplinary action may be imposed for failure to comply with equipment requirements 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.

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

CCR 3351.6 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 place 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.

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

CCR 3353 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 place 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.

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

CCR 3355 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 place registrants and licensees on notice that disciplinary action may be imposed for failure to comply with requirements for replaced parts that are not returnable. The Bureau has determined that a two-year probation term is an appropriate recommendation for violation of this section.

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

CCR 3356 (a) – (c) 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 place registrants and licensees on 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.

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

CCR 3356 (d) 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 place 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.

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

CCR 3356.1 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 place 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.

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

CCR 3358 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 place 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.

60. CCR 3359 Failure to Comply with Sublet Disclosure Requirement

CCR 3359 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 place 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.

61. 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." The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

62. 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." The Bureau has determined that a three-year probation term is an appropriate recommendation for violation of this section.

63. CCR 3362.1 Failure to Comply with Engine Changes Requirements

CCR 3362.1 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 place 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.

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

CCR 3363.4 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 place 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.

65. CCR 3364 Defacing/Removing Vehicle Identification and Information

CCR 3364 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 place 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.

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

CCR 3365 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 place 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.

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

CCR 3366 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 place 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.

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

CCR 3367 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 place 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. 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.

69. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

70. 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.

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

CCR 3372.1 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 place 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.

72. CCR 3373 False or Misleading Records

CCR 3373 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 place registrants and licensees 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.

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

CCR 3374 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 place

registrants and licensees 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.

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

CCR 3375 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 place 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.

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

CCR 3376 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 place 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.

76. CCR 3377 False and Misleading Pro-Rata Guarantee

CCR 3377 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 place 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.

77. 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. This section was not included in the original May 1997 version of the Disciplinary Guidelines, but its inclusion is necessary to place 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.

#### **IV. Model Disciplinary Orders**

The proposed changes would include the addition of this new section. Currently, the Model Disciplinary Orders section is not present in the Disciplinary Guidelines and its inclusion would provide prescriptive language necessary to issue an order of revocation, probation, issuance of a new probationary registration or license, or to order cost recovery to a corporation, partnership, or Limited Liability Corporation as well as implementing standard stay orders for registrants and

licensees. This language is to be used in the first paragraph of disciplinary orders and would be written with the objective of providing 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.

As previously stated, the current Disciplinary Guidelines places the Standard Terms and Conditions section prior to the Disciplinary Order Guidelines section. The proposed changes would relocate this section immediately following the Disciplinary Order Guidelines section. This proposed change would provide reorganization and structure to improve the flow, clarity, and readability of the Disciplinary Guidelines.

Additionally, 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 would be intended to foster uniformity of discipline and inform registrants and licensees of the potential consequences of violations. The proposed changes would provide textual clarification to what is currently in the Standard Terms and Conditions section including: additional information of what the imposed terms of probation are, greater detail of 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 were renumbered to reflect changes and new terms that will 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”) - This term is being renumbered and modified to include a title and revised language to require the Respondent to provide BAR unrestricted access to all 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”) - This term 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 over 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 24 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 orders that would be 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 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.

### **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.

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.

Legislation that went into effect January 1, 1996<sup>2</sup>, required licensing agencies, like BAR, who utilize administrative Disciplinary Guidelines, 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

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

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

California Code of Regulations by the Office of Administrative Law.

Currently, the Bureau registers approximately 36,000 automotive repair dealers and licenses 3,000 lamp and brake adjusters, 2,000 lamp and brake stations, 7,000 Smog Check stations, and 20,000 Smog Check technicians. The Bureau is also responsible for managing the statewide Smog Check Program (Program) to reduce vehicle emissions.

### ***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.

The Bureau's Disciplinary Guidelines are used to assist Administrative Law Judges (ALJ) 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 served to assist the Attorney General's Office (AG) in shaping appropriate terms and conditions for stipulated settlement agreements in contested cases.

The Bureau made revisions to its Disciplinary Guidelines in order to comply with current statute. These changes are considered non-substantive. The Bureau has not received any complaints challenging its Disciplinary Guidelines. The Bureau has acted on these guidelines since its inclusion and they have proven to be reasonable and effective.

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.

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. In addition to revisions needed in response to regulatory changes, 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 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 Administrative Law Judge (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 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 an indeterminable 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.

## **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.

**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 provide clarity to 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.