

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATE:

NORTHERN CALIFORNIA

Monday, March 14, 2016

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

MOBILE AUTOMOTIVE REPAIR

ADVERTISING

SECTIONS AFFECTED:

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

UPDATED INFORMATION

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

The 45-day public comment period began on January 22, 2016 and ended on the date of the regulatory hearing, March 14, 2016. The Bureau of Automotive Repair (Bureau) received three written comments regarding the proposed regulation during this comment period and one comment at the hearing.

The text was modified in response to a written comment and to further clarify the regulation. On August 16, 2016, the Bureau emailed to the Bureau's interested parties' mailing list, and mailed to the same as well as posted on its website the 15-Day Notice of Availability of Modified Text and the Modified Text. The notice period ran from August 16 to August 30, 2016. The Bureau received three written comments during the 15-day notice period. The regulatory text was not modified in response to those comments.

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

1. Create new section 3351.7.1, entitled "Scope," strike section 3351.7.1(b), and include in new section 3351.7.1 substantially the same content as the section that was stricken. Throughout, in references to a "mobile automotive repair dealer," amend language to instead refer to a person or automotive repair dealer that is engaged in the business of mobile automotive repair.

These changes were made to clarify the proposed regulation does not create a special type of business license for a so-called "mobile automotive repair dealer." It is simply that the regulation applies only to those automotive repair dealers who choose to engage in the business of mobile automotive repair and do not use a brick and mortar facility to do so.

2. Section 3351.7.3(a) (formerly section 3351.7.2(a)) provides that a person who engages in the business of mobile automotive repair “that is not considered a minor service per Business and Professions Code section 9880.1(e)” must register with the Bureau.

The added language makes it more clear businesses that perform only minor mobile repair services would not have to register with the Bureau. Generally speaking, under Business and Professions Code section 9880.1(e), services are not minor if the Bureau finds performance of the service: (1) requires mechanical expertise; (2) has given rise to a high incidence of fraud or deceptive practices; or (3) involves a part of the vehicle essential to its safe operation.

LOCAL MANDATE

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

SMALL BUSINESS IMPACT

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

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

RESPONSES TO COMMENTS SUBMITTED DURING 45 DAY PUBLIC COMMENT PERIOD

Three written comments and one comment at the public hearing were received during the 45-day public comment period.

Comment 1

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

Comment:

This comment makes several recommendations, including:

- (1) **Recommendation #1:** The regulation should include more guidelines regarding what tools and equipment an exclusively mobile automotive repair business is required to have in order to be a qualified ARD.

Response: This recommendation is rejected.

Existing regulations do not require that ARDs have certain tools or equipment to perform automotive repairs. Repair services offered will vary from business to business, and the Bureau has historically let automotive repair dealers determine what is required to fix a vehicle to industry standards.

- (2) **Recommendation #2:** BAR should have an inspection program for mobile ARDs as part of their ARD registration. The regulation should address whether or not mobile ARDs are going to be inspected, i.e. to make sure they have the proper equipment, before being issued registration.

Response: This recommendation is rejected.

Under current regulation, businesses offering mobile repair services that are not minor services must be registered as ARDs. The proposed regulation clarifies the registration requirement applies to these businesses. The same inspection practices that currently apply to ARDs generally will be applied to ARDs engaged in the business of mobile repair. ARDs that have a station license, either as a Smog, Brake, or Lamp station, must comply with certain equipment requirements and do receive station inspections, while ARDs that only perform general repairs are typically not inspected. However, the Bureau administers the Education First Program, in which BAR field staff visit newly registered businesses and educate the owners about estimate, invoice, and recordkeeping requirements.

- (3) **Recommendation #3:** BAR should consider adding a new section to address the use of telematics in automotive repair. This involves repairs made via software changes uploaded to vehicles using the vehicle's own CDMA (Code Division Multiple Access) or GSM (Global System for Mobiles) networks.

Response: This recommendation is rejected with respect to the proposed regulation.

The comment raises an issue that warrants further discussion with the Bureau's advisory group, consisting of representatives of various industry and consumer groups, and other stakeholders. If such a proposal were to be pursued through additional regulations at a later date, it would need to apply to all registered automotive repair businesses, not just businesses engaged in mobile automotive repair.

Comment 2

Commenters: AAA Northern California, Nevada & Utah and Auto Club of Southern California

Comment: The comments received from these commenters were substantially similar and are addressed jointly below.

The comments note, "AAA provides roadside services to its members through [a] network of independent service providers. Such services are not, and have not been, regulated by the BAR, because they either consist of towing, lockout service, fuel delivery and other services which do

not fall within the scope of the definition of Section 9880.1(e) or the type of services described in such Section which are expressly excluded from the definition of the ‘repair of motor vehicles.’”

The comments recommend amending the definition of “mobile automotive repair” to explicitly exempt roadside services performed by or on behalf of licensed motor clubs from regulation by BAR. This exemption is justified because: (1) the regulation ought to be consistent with the existing Business and Professions Code section 9880.1(e) (excluding certain minor services from BAR regulation) and the proposed AB 873 (Jones) (excluding minor roadside towing services from BAR regulation); and (2) enforcement of the regulation against AAA would not serve the purpose of the regulation.

Response: This recommendation is accepted.

Historically, the Bureau has never considered the types of emergency roadside services typically provided by automotive insurance carriers as automotive repair, and therefore has never required registration with or regulation by the Bureau. However, in response to the comment, the Bureau inserted language in proposed subsection 3351.7.3(a) of the current draft of the regulation to clearly show its intent not to regulate these types of minor services that may be provided in response to a roadside emergency for a vehicle. The added language serves to emphasize the proposed regulations only apply to those mobile repairs that are not considered minor services per Business and Professions Code section 9880.1(e). As defined in that section, minor services are those that do not involve mechanical expertise, a high incidence of fraud, or a part of a vehicle essential to its safe operation.

Comment 3

Commenter: David Bauld, H Mobile Services

Comment: Mr. Bauld provided a comment at the public hearing in which he expressed support for the regulation overall but raised the following questions:

- Is there going to be any legal authority to require someone to post his or her ARD registration number on an online advertisement? For example, newspapers will not publish an advertisement for a contractor unless it contains the contractor’s license number – is there a mechanism to do the same for mobile ARDs?

Response: Yes, the legal authority is provided under proposed section 3351.7.3(c)(3). To implement this proposed regulation, the Bureau plans to move forward with a public information campaign, which will include reaching out to the automotive repair industry about this requirement. It will also include the Bureau posting notices on Craigslist and other social media sites to advise consumers to make sure the repair provider has included their ARD number in the Internet advertisement, and also advise consumers to verify the license number and its status on the Bureau’s website prior to entering into a contract for repairs to their vehicle.

- The regulation requires ARDs to register their vehicle with BAR. Is there a space on the ARD form to indicate registration of the vehicle used for mobile repair to BAR so it can be processed?

Response: Upon adoption of this regulation, the Bureau intends to update its ARD application in order to document the vehicle license plate number tied to the registration, similar to the address requirement for brick and mortar based ARDs. Any change in vehicles would require the ARD to update this information, as is currently required of ARDs upon change of business address.

RESPONSES TO COMMENTS SUBMITTED DURING 15 DAY NOTICE PERIOD

The Bureau received three written comments during the 15 Day Notice period, provided by Jack Molodanof, Johan Gallo on behalf of California Automotive Business Coalition, and Dennis Montalbano (as forwarded by Gloria Peterson) on behalf of Automotive Service Councils of California. The comments make several of the same points, and some of the issues raised are not within the scope of the 15 Day Notice. Nonetheless, we address each point made in the comments below.

Comment 1: SB 788 (Allen) defines and creates a new registration type for Automotive Maintenance Providers. Both SB 778 and AB 873 (Jones) authorize the Bureau to adopt regulations defining minor services. The Bureau should put the regulation on hold given the possibility the regulation could change if the bills are enacted.

Response: This recommendation is rejected because: (1) it is not germane to the regulatory changes that prompted the additional 15-day public comment period; (2) the legislation to which it refers is irrelevant to the purpose of this regulation, to place advertising requirements on automotive repair dealers with strictly mobile operations. This purpose has remained unchanged since it was originally discussed with the industry; and (3) both bills failed to be enacted – SB 778 was vetoed on September 30, 2016, and AB 873, though signed by Governor Brown, was contingent upon the enactment of SB 778.

Comment 2: The current regulation draft should address mobile technicians that work independently and do not operate a brick and mortar business. Deleting the term “mobile” throughout means that all ARDs, including “brick and mortar” ARDs, will have to separately register with BAR each of their mobile vehicles that perform mobile repairs, including warranty work.

Response: This recommendation is rejected.

The change in wording does not alter the original purpose or scope of the regulation. As before, the regulation applies only to those mobile repair providers that do *not* operate a “brick and mortar” automotive repair business. The scope of the proposed regulation, consistent with its original intent and the draft published for the 45 day public comment period, states the regulation applies to automotive repair dealers that “*do not operate a currently registered place of business*”

where the diagnosis or repair of motor vehicles is performed.” Such a place of business is also known colloquially as a “brick and mortar” repair facility. In the current draft, this provision has been moved from the definitions section to a new section setting out the scope of the regulation. The reason for this move and the deletion of the term “mobile” is explained above.

Comment 3: In the automotive repair industry, registered businesses may find themselves subject to unfair competition from businesses that use the Internet to connect customers with third party unlicensed technicians. These technicians would not be subject to BAR oversight. The regulation should address this type of business model by requiring the sublet technicians to obtain a license to do repairs.

Response: This recommendation is rejected as it is not germane to the regulatory changes that prompted the additional 15-day public comment period. The Bureau also rejects this recommendation because it would require legislation giving the Bureau authority to license general automotive repair technicians.

This regulation was always designed, through discussion with the industry, merely to hold mobile providers to advertising standards that would allow a consumer to check the status of a license and hopefully eliminate unlicensed activity at private residences.

To the extent this comment refers to sublet repairs between ARDs and providers of specialized services, we note this regulation was never intended to address that issue, and it would be unnecessary to do so. Sufficient protections for sublet repairs already exist in Business and Professions Code section 9884.9(b) and Title 16, CCR section 3359, which require ARD notification of and consent by the consumer to the sublet, and also hold the ARD responsible for the sublet repairs.

Comment 4: A mobile ARD who owns a fleet of service vehicles registered to that mobile ARD’s business name should not be required to register each company owned service vehicle with a separate ARD number.

Response: This comment is rejected as it is not germane to the regulatory changes that prompted the additional 15-day public comment period. The comment also is rejected for a more substantive reason.

A critical part of the Bureau’s mission is to ensure a fair and competitive automotive repair marketplace. This comment, if adopted, would put traditional brick and mortar ARDs at a disadvantage with providers of mobile automotive repair. As noted in the ISOR:

Allowing a primarily mobile automotive repair business to operate multiple motor vehicles engaged in automotive repair and maintain only one registration for all such vehicles would provide an unfair advantage to mobile businesses vis à vis “brick and mortar” businesses. To the extent a motor vehicle used to perform the business of automotive repair provides the same services offered at a given repair facility, the vehicle must be subject to the same registration requirements.

BUREAU OF AUTOMOTIVE REPAIR

ADDENDUM TO FINAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS:

**MOBILE AUTOMOTIVE REPAIR
DEALER ADVERTISING
REQUIREMENTS**

SECTIONS AFFECTED:

Adopt §§ 3351.7.1, 3351.7.2, 3351.7.3
within Article 6.1 and amend § 3371.1
within Article 9, Chapter 1, Division 33,
Title 16, California Code of Regulations

The Final Statement of Reasons for the Mobile Automotive Repair Dealer Advertising rulemaking file, OAL File Number 2017-0417-04, is incorporated by reference as if set forth herein in its entirety.

UPDATED INFORMATION

The rulemaking package was submitted for review by the Office of Administrative Law (OAL) on April 17, 2017 and was disapproved on May 30, 2017. As set forth in OAL's June 6, 2017 Decision of Disapproval of Regulatory Action, the grounds for disapproval included the absence of authority and reference citations for proposed secs. 3351.7.1 and 3351.7.2 and the improper illumination of modified text in sec. 3351.7.3(b) during the second 15-day public comment period.

In order to correct the aforementioned deficiencies, the Bureau, on June 15, 2017, issued a Third 15-Day Notice and Third Modified Text. The third notice period ran from June 15, 2017 to June 30, 2017. The Bureau received three written comments during the third 15-day notice period. The regulatory text was not modified in response to those comments.

LOCAL MANDATE

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

SMALL BUSINESS IMPACT

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

CONSIDERATION OF ALTERNATIVES

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

the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

RESPONSES TO COMMENTS SUBMITTED DURING THIRD 15-DAY NOTICE PERIOD

The Bureau received three written comments during the third 15-day notice period, two comments from Susan Ward and one from Johan Gallo on behalf of the California Automotive Business Coalition. The issues raised in each of the comments are outside the scope of the Third 15-Day Notice. Nonetheless, each issue raised in the comments is addressed below:

Susan Ward Comments

Comments dated June 15, 2017:

Ms. Ward asked whether the Bureau requires automotive repair dealer (ARD) applicants to provide local business license application prior to issuing an ARD registration. Ms. Ward also asked whether it is possible for the proposed regulations to require an ARD engaged in mobile automotive repair to display its local business license number(s) on its mobile repair vehicles.

Response:

To the extent that Ms. Ward's questions may be construed as comments recommending additional revisions to the proposed regulations, the comments are not accepted because they are outside the scope of the Third 15-Day Notice and Third Modified Text. The Bureau issued the Third 15-Day Notice and Third Modified Text in order to correct an illustration deficiency in the Second Modified Text, as noted in the Office of Administrative Law's Decision and Disapproval of Regulatory Action dated June 6, 2017. The Bureau has a 120-day window within which to cure the illustration deficiency. Requiring ARDs to possess a local business license and business license display requirements for mobile repair vehicles would be major changes to the proposed regulations and would require the Bureau to start the regulatory notice and review process anew, causing further delay in the implementation of the proposed regulations.

Furthermore, for informational purposes, question 9b of the ARD Application (9c for LLC applicants) asks an applicant to provide the business license number issued to them by their local jurisdiction, or a written statement where there is no requirement for a business license in their city/county. Although collected by the Bureau during the application process for internal use, business license information is not included in the list of items subject to public disclosure by the Bureau (see, BAR Regulations sec. 3303.1). Additionally, business license requirements are typically contained in city or county ordinances unique to a given locality. In deference to local requirements, and due to potential conflict with the home rule provisions of the California Constitution, the Bureau is not inclined to adopt rules requiring an ARD to possess a local business license or requiring the display of business license information on mobile repair vehicles. The Bureau may revisit these issues as necessary.

Comment dated June 21, 2017:

Ms. Ward asked whether the Bureau requires an ARD engaged in mobile automotive repair to possess local business licenses for each jurisdiction in which it performs mobile repairs.

Response:

To the extent Ms. Ward's question may be construed as a comment recommending additional revisions to the proposed regulations, the comment is not accepted because it is outside the scope of the Third 15-Day Notice and Third Modified Text. Requiring an ARD engaged in mobile automotive repair to possess local business licenses for each jurisdiction in which it performs mobile repairs would be a major change to the proposed regulations and would require the Bureau to start the regulatory notice and review process anew, causing further delay in the implementation of the proposed regulations.

Additionally, for informational purposes, although business license information is solicited in the ARD application as an additional means to identify and locate ARDs for enforcement purposes; the Bureau does not verify business license information provided by ARDs and does not regulate compliance with business license requirements of local jurisdictions. The Bureau lacks the authority to require an ARD engaged in mobile automotive repair to hold a business license in every jurisdiction in which the ARD performs mobile repairs. Such authority, including business licensure requirements, enforcement and violations resides with the municipalities in which an ARD performs mobile repair services. The Bureau may revisit this issue as necessary.

Johan Gallo Comments

Comment 1

The proposed language in § 3351.7.1(a), dealing with the scope of Article 6.1, should be changed to:

The provisions of this article shall apply to anyone who is engaged in performing automotive repairs for hire and owns and/or operates a mobile automotive repair business and does not operate a currently registered place of business where the diagnosis or repair of motor vehicles is performed.

Comment 2

The proposed definition of 'mobile automotive repair' set forth in § 3351.7.2(a) should be changed to:

"Mobile automotive repair" means the repair of motor vehicles as defined in Business and Professions Code section 9880.1, which uses a motor vehicle to transport an automotive technician as defined in that same section, and or any tools and equipment necessary to perform the repair on motor vehicles at the consumer's location.

- i. This shall exclude those “emergency” repairs performed by Emergency Roadside Services to get a vehicle temporarily operable.

Comment 3

Mobile automotive repair providers are changing oil, oil filters and other fluids. This needs to be addressed in the proposed regulations because of the EPA concerns and risks of spills, proper disposal and safety.

Comment 4

The proposed regulations should require mobile automotive repair dealers to have all of the following permits noted in section 9 of the current ARD application: seller permit number, city/county business license, hazardous waste number and federal employer identification number.

Response

The comments are not accepted because they are outside the scope of the Third 15-Day Notice and Third Modified Text. The Bureau issued the Third 15-Day Notice and Third Modified Text in order to correct an illustration deficiency in the Second Modified Text, as noted in the Office of Administrative Law’s Decision and Disapproval of Regulatory Action dated June 6, 2017. The Bureau has a 120-day window within which to cure the illustration deficiency. The revisions proposed in the comments would be major changes to the proposed regulations and would require the Bureau to start the regulatory notice and review process anew, causing further delay in the implementation of the proposed regulations.

For informational purposes, in regards to Comment 3 regarding oil changes performed by mobile ARDs, pursuant to Business and Professions Code (BPC) secs. 9880.1(e) and (g), replacing oil and oil filters are minor services and, as such, are outside the scope of the Bureau’s regulatory authority.

For further informational purposes, in regards to Comment 4 regarding ARDs engaged in mobile automotive repair being required to meet the documentation and permit requirements noted in section 9 of the current ARD application, please note that neither existing law or regulations, nor the proposed regulations, create a separate “mobile ARD” registration. Rather, mobile ARDs are a subset of ARDs and mobile ARDs will be required to use the same application and provide the same documents and information as fixed location ARDs. However, it should be noted that while the Bureau solicits information regarding business licenses, hazardous waste ID numbers, and EINs during the application process for internal use, the Bureau does not have the authority to enact or enforce any such licensure requirements because they are outside the scope of the Automotive Repair Act. For example, employer identification numbers are a federal matter and compliance authority resides with the IRS. Similarly, the authority to enforce seller permit number and hazardous waste ID number requirements resides with the Board of Equalization and

USEPA/CalEPA, respectively, and business licenses fall under the authority of municipalities whose ordinances may be subject to the home rule protections of the California Constitution.

The Bureau may revisit the issues addressed in the public comments as necessary.