

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATE:

NORTHERN CALIFORNIA

Tuesday, September 26, 2017

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

ELECTRONIC DOCUMENTATION AND
AUTHORIZATION

SECTIONS AFFECTED:

Within Chapter 1, Division 33, Title 16,
California Code of Regulations: (1)
Amending Article 1, Section 3303; (2)
Amending Article 7, Sections 3352-3353;
(3) Adopting Article 7, Sections 3353.1-
3353.2; (4) Amending Article 7, Sections
3354-3356; (5) Repealing Article 7, Section
3356.1; (6) Amending Article 7, Sections
3357-3358; (7) Repealing Article 7, Section
3359; and (8) Amending Article 9, Section
3371.

PURPOSE/RATIONALE OF REGULATORY PROPOSAL:

In 1971, the Legislature adopted the Automotive Repair Act (Business and Professions Code (BPC) §9880 et seq.) to protect consumers from fraud and ensure their ability to make informed choices in automotive repair transactions. The Act established the Bureau of Automotive Repair (Bureau) within the California Department of Consumer Affairs to interpret and enforce its requirements. A critical means by which the Bureau protects consumers seeking automotive repairs is its oversight of the documents and disclosures provided to consumers before, during, and after a repair transaction.

Business and Professions Code sections 9884.8, 9884.9, and 9884.11 set forth general requirements for invoices and estimates, and the maintenance of business records. These statutes leave to the Bureau the discretion to, among other things, specify procedures related to customer authorization and adopt regulations regarding records to be maintained by automotive repair dealers (ARDs). The regulations implementing these statutes were promulgated several decades ago, during a time when records such as estimates and invoices, as well as customer signatures, were primarily in writing.

The proposed regulatory action modernizes these requirements, particularly in response to the use of information and communication technologies in automotive repair businesses and their potential for improving efficiency and transparency.

The proposed action also reorganizes sections within Article 7 and makes minor clarifying edits to make it easier for repair business owners and consumers to read and

understand the regulations and to more closely align with the chronology of an automotive repair transaction.

NECESSITY OF REGULATORY PROPOSAL:

The necessity of each amendment is as follows:

I. Changes Throughout

A. Various changes in wording/syntax were made throughout, for example:

1. Add “automotive repair” before “dealer”: “Dealer” and “automotive repair dealer” have the same intended meaning; however, “automotive repair dealer” is a more accurate term.
2. Terms such as “write,” “written,” “in writing,” etc., have been removed where such term conveyed a written document was required by default. For example, within the term “written estimate,” as defined in section 3352, the word “written” was deleted.

Such changes are necessary to allow for transactions conducted through electronic media. Thus, the proposed change in the definition of “estimate” recognizes estimates may be not only handwritten but created on and transmitted by a computer.

3. Where applicable, remove the term “work order” or replace the term “work order” with “estimate.”

Consistent with the definitions in CCR section 3352, this change clarifies the document that is authorized by the customer is an estimate, not a work order. Although the terminology applied to estimates and work orders in everyday practice may vary from business to business, the Bureau’s enforcement efforts are guided by the terms “estimate” and “work order” as defined in regulation.

4. Where applicable, change the term “work” to “diagnosis or repair,” or substantially similar language.

This change promotes clarity and consistency in the regulations by replacing a general term with a more precise term already used in the Automotive Repair Act (in referring to the work of an automotive repair dealer), and other parts of Article 7.

5. Other minor grammatical, syntactical, or organizational edits that are non-substantive within the meaning of Title 1, CCR section 100(a)(1).

B. Revise the organization of sections within Article 7, mainly sections 3353 and 3354:

1. Proposed changes:

- a. Retitle and reorganize section 3353 to reflect only those subject areas pertaining to the provision of an estimate to the customer. This includes the disclosure of subletting, so that provision was moved from section 3359 to section 3353.
- b. Create new section 3353.1 for content from existing section 3353 relating to authorization of documents requiring customer authorization.
- c. Create new section 3353.2 for provisions from existing section 3353 relating to “unusual circumstances” under which a consumer drops off a vehicle at a repair facility.
- d. Amend section 3354, which includes the subject areas within existing section 3353 pertaining to authorization obtained after estimates have been provided due to additional or different repairs. Existing section 3354 was previously repealed, so BAR is repurposing the section number as part of its ‘clean-up’ of Article 7.

2. Benefit:

- a. This restructure makes it easier to read and understand the regulations by ensuring the provisions more closely track with the sequence of repair transactions. The restructure itself is a non-substantive change because it is part of an effort to renumber, reorder, and/or relocate regulatory provisions within the meaning of Title 1, CCR section 100(a)(1). Changes to the content of each section are explained below.

II. Amend Section 3303, “Definitions.”

A. Delete section 3303(j), which defines “authorization,” and renumber subsequent sections to reflect this deletion.

1. In the proposed regulation, “authorization” is defined in Title 16, CCR section 3352 of the California Code of Regulations. The definition was moved so that it will be read alongside other definitions applicable to customer disclosure requirements.

III. Amend Section 3352, “Definitions.”

- A. Definitions from different regulatory sections have been moved here to consolidate definitions in one place. Moving definitions relevant to repair transaction disclosure requirements to the same section was necessary to ensure the clarity of the regulations. Definitions were moved as follows:
1. Moved definition of “authorization” from section 3303(j) to section 3352.
 2. Moved definition of “tear down” from current section 3353(d) to section 3352 (language substantially the same)
 3. Deleted definitions of “oral,” “written,” “electronic” in current section 3353(h) (Unusual Circumstances) and added definitions for “oral” and “electronic” in section 3352.

B. Amending definitions

1. Add “written or electronic” to definitions of estimate, work order, and invoice.

Adding this language is necessary to clarify that estimates, work orders, and invoices may exist in either written or electronic form.

2. Revise definition of “authorization.” While the proposed definition of “authorization” retains the fundamental concept of consent, the following changes to the definition are proposed:
 - a. The definition is reworded to more clearly convey that authorization may be provided either in the form of a written signature or ‘orally or electronically.’
 - b. This proposed change is necessary to improve awareness among the regulated industry that certain methods of obtaining authorization besides a written signature are permitted.
 - c. The “written signature” option requires the signature be “executed with the intent to authorize a specific job.” This requirement is necessary to ensure electronic signatures are not replicated for repair jobs that have not been authorized.
 - d. A “statement of intent” option is added. The statement must indicate intent to authorize a specific job to ensure the statement is appropriately deemed an authorization. The statement may be communicated to the automotive repair

dealer either orally or electronically. This increases flexibility for both shops and consumers by recognizing a wide range of authorizations that may occur, for example, orally in person or in the form of a text message. Regardless, given the documentation requirements provided in the proposed regulation, shops must still demonstrate that consumers have consented to specific repair jobs.

3. Remove definition of “written.”

This change is necessary because the term “written” is a common term generally understood to mean a handwritten or typed document on paper. Further definition may create more confusion than understanding of the regulation.

4. Revise definition of “electronic.”

The existing definition is limited to only email and fax. The proposed definition is necessary to encompass all forms of electronic communication.

5. Revise definition of “oral.”

The proposed definition is necessary to clarify the definition of “oral communication” is any form of voice communication. The existing regulation defines “oral” communication as communication that takes place “either in person or telephonically.” This definition is not entirely clear since it does not describe the means by which “oral” communication can truly be distinguished from “electronic” communication as that is proposed to be defined. With the proposed definitions, as an example, a video conference would be a form of oral communication, while an email would be a form of electronic communication.

IV. Amend Section 3353, “Written Estimate Required for Repair or Maintenance; Exceeding Estimate.”

A. Retitle section as “Estimate/Work Order Requirements.”

The new title is necessary to accurately reflect the proposed content contained in the section.

B. Revise the preamble to this section as follows:

1. Remove language relating to “specific authorization.”

This change is necessary to promote clarity of the regulations generally, as this section relates to estimate requirements. The deleted language was moved to new section 3353.1 (“Authorization”), which addresses the subsequent authorization of the estimate.

2. Clarify the estimate must be provided to and authorized by the customer before diagnosis or repair begins.

The existing language provides no “work” or charges for such work shall occur without authorization. The proposed wording retains this concept while more precisely stating the requirement that automotive repair dealers provide an estimate and obtain authorization before commencing any diagnosis or repair.

3. Provide the estimate shall meet the requirements of Business and Professions Code section 9884.9.

This provision promotes clarity by referencing the existing law pertaining to estimates.

C. Subsection (a), “Estimate for Parts and Labor”

1. Add “prior to obtaining authorization.”

This change is necessary to clarify that, particularly in the event an estimate is provided electronically, the customer shall have seen the estimate for the specific job he or she is authorizing, and is authorizing only that job.

2. Add “all parts included in the estimate shall be new unless specifically stated otherwise.”

This change is necessary to enable consumers to make an informed decision when authorizing the work. Existing regulations require the automotive repair dealer to document on the invoice whether the parts are used, rebuilt, or reconditioned. This change allows the consumer to know what types of parts are being used prior to authorization.

D. Subsection (b), “Estimate for Auto Body or Collision Repairs”

1. Change “a written estimated price” to “an itemized estimate...”

The term “written” was removed, as explained above, to allow for electronic documents.

The word “itemized” was added to further clarify that estimates for auto body or collision repairs are itemized. Existing regulation, which specifies what must be included in an auto body or collision repair estimate, already requires itemization. Auto body estimates must be itemized because auto body repairs involve components of the vehicle essential to its safe operation. Thus, there is a heightened interest in providing consumers information bearing on the nature and quality of the parts involved in such repairs.

E. Subsection (c), “Estimated Price to Tear Down, Inspect, Report, and Reassemble”

1. Change title to “Teardown Estimates,” which promotes clarity in the proposed regulation by simplifying the subject matter heading.
2. To promote clarity in the proposed regulation, organize the subsection to list each requirement in a separate numbered paragraph and create a preamble that clearly states all listed requirements must be met in the event of a teardown.
3. Throughout subsection (c), add the word “vehicle” as necessary to ensure consistent application of this subsection to “vehicle(s) or vehicle component(s).”
4. In the preamble of subsection (c), replace “prepare a written estimated price for required repair” with “diagnose.”

This change is necessary because the latter term more accurately describes what occurs prior to the requirements listed in subsection (c).

5. In subsection (c)(1), add “and obtain authorization for teardown.”

This change clarifies the estimate for the teardown must be authorized by the customer.

6. In subsection (c)(1)(B), provide the dealer shall give the customer an estimate that includes “the cost of *all* parts and labor *necessary*” to replace items normally destroyed by teardown. (Emphases added) This change adds the word “all” and moves the word “necessary” from before to after the word “labor.”

These changes clarify a shop must provide a good faith estimate of all the parts that may need to be replaced upon completion of the teardown. A shop cannot charge the consumer for additional parts after reassembling the vehicle component that it should reasonably have known required replacement during the teardown.

7. In subsections (c)(1)(C)-(D):

- a. Provide the vehicle shall be restored to the condition “in which it was provided to the automotive repair dealer by the customer” rather than the “former” condition, and the vehicle shall be reassembled within the time period “specified in the teardown estimate.”
- b. These changes clarify the intended meaning of the regulation, that the vehicle must be restored to the condition in which it was brought by the customer and that the required reassembly time is in accordance with the estimate. The changes clarify the intended meaning by replacing general terms with specific explanatory language.
- c. Delete “the dealer shall write that information on the work...before [it] is signed by the customer.”
- d. This language is no longer necessary in light of the reorganization of subsection (c).
- e. Delete “repair dealer shall notify the customer orally and conspicuously in writing on the teardown estimate.”
- f. This language is no longer necessary in light of the reorganization of subsection (c). Also, the Bureau has determined that for purposes of consumer protection, it is sufficient that a teardown estimate meeting the requirements of this subsection is provided to the customer. Certain existing laws and regulations already capture situations in which customers are not clearly notified of information on an estimate. Finally, the notification need not be “in writing” as the proposed regulation is intended to allow for electronic documentation.
- g. Delete “if the customer elects not to proceed with the repair or maintenance.”
- h. This change removes language that is not necessary to understand the regulation.

8. In subsection (c)(2):

- a. Provide the ARD shall, upon completion of the teardown, give the customer an *itemized* estimate for the labor and parts

necessary for any repair deemed to be necessary. Delete “All parts required for such repair shall be listed on the estimate.”

These changes clarify the estimate that is prepared after the teardown to repair the vehicle must not only include the cost of parts and labor, but separately list all parts, the cost of each part, and the cost of the labor necessary to conduct the repair. Although the Bureau has historically required that parts and labor be listed separately on the repair estimate following a teardown, it is now adopting a term more universally associated with such requirement.

The requirement to list repairs on the estimate is deleted as unnecessary language, since this requirement is encompassed by the term “itemized.”

b. Add “or charges accrue.”

This change ensures consistency, for example with proposed section 3354(a), and further clarifies the customer provide authorization of services before they are charged for those services.

9. Add subsection (c)(3), providing the dealer must, if applicable, document on the work order that the customer declined repair or reassembly of the vehicle or component after the teardown.

This requirement is necessary to ensure adequate documentation of a customer’s choice not to proceed with a repair or reassembly in the event of a dispute.

10. Add subsection (c)(4), providing the dealer must provide the customer a copy of the itemized estimate.

This requirement is necessary to clarify the estimated price for the teardown includes all work related to a teardown, including the completion of the itemized estimate for repairs following the teardown. The customer’s purchase of the teardown entitles the customer to all estimates related to the teardown. This requirement furthers the purposes of the Automotive Repair Act by ensuring consumers are adequately informed of costs involved in automotive repair transactions and receive the products and services they have purchased.

11. Other syntactical edits have been made as necessary to ensure regulatory requirements are clear and concise.

F. Subsection (d), “Sublet Disclosure”

1. Add language to this provision from Business and Professions Code section 9884.9(b), which addresses subletting.

This addition is necessary because the existing section 3359, when read by itself and not alongside Business and Professions Code section 9884.9(b), is susceptible to the interpretation that disclosure of subletting is only required upon request of a customer. The proposed language makes clear the full requirements pertaining to subletting, including that such must be disclosed on the estimate (or work order, as subletting can also occur at that stage) and authorized by the customer.

2. Add language requiring the ARD to disclose the name of the sublettee in addition to the sublettee’s location, if the customer wants to identify the sublettee.

This additional information is consistent with the goal of the existing regulation. It makes the disclosure more useful to consumers, who would be able to identify a sublettee more easily and thus make a more informed choice as to whether to approve the sublet.

V. **Adopt Section 3353.1, “Authorization”**

- A. This new section adapts the requirements currently contained in section 3353(c) for recording authorization obtained orally, by fax, or by email. New section 3353.1 provides the recording requirements for authorization obtained in writing, orally, and electronically. Creation of this section promotes clarity of the regulations by having a single place for the recording requirements applicable to all customer authorizations and minimizing redundancy throughout the estimate, work order, and invoice requirements of Article 7.
- B. Add subsection (a)(1), stating requirements for recording written authorization from a customer.
 1. This subsection is necessary to provide guidance in situations in which customers choose to sit and wait for repairs at the shop, and thus are available to provide authorization with a signature.
 2. The requirement to record the date and time of signing is necessary to provide additional protection for both consumers and shops in the event disputes arise over authorization of repairs.

- C. Add subsection (a)(2), stating requirements for recording oral authorization from a customer.
1. The requirement to record “the date, time, name of the person authorizing repairs, and the telephone number called, if any” is substantially the same as that contained in existing section 3353(c)(1). Housing this recording requirement in proposed section 3353.1, as noted above, clarifies the requirement applies to both initial and additional authorizations.
 2. Subsection (a)(3), stating requirements for recording electronic authorization from a customer.
 - a. This subsection modifies existing requirements for documentation of electronic customer authorization on the work order by deleting provisions stating requirements specific to authorization by email and fax, and instead stating requirements for any “electronic” media as defined in section 3352. Subsection (a)(3) requires that electronic authorization be recorded either by documenting specified information on the work order or retaining documents showing the authorization.

These changes are necessary to capture a broader range of technology that may be used in automotive repair transactions and that may or may not involve physical documents that can be “signed and dated” by a customer or “printed and attached” to a work order.

VI. Adopt Section 3353.2, “Unusual Circumstances; Authorization Required”

- A. This new section sets forth the requirements governing recording of initial authorization in the context of unusual circumstances. It contains content substantially similar to that of existing section 3353(g), “Unusual Circumstances.”
1. Modifications to the existing content are non-substantive:
 - a. Stating the requirements in active rather than passive tense.
 - b. Updating section references in light of the reorganization of Article 7 and adding references to applicable sections of regulation and law throughout.
 - c. Removing specific methods by which information must be provided to the customer (e.g. telephone) or by which

authorization must be received from the customer (e.g. oral). These methods are still permitted by the proposed regulation, which is made clear in other regulatory sections. For example, the definition of authorization already specifies that authorization is consent in written, oral, or electronic form.

- d. Removing provision concerning separate authorization of charges in excess of the original estimated price. Such authorization is covered by proposed section 3354, making this provision redundant.

VII. Amend Section 3354, “Unusual Circumstances; Authorization Required.”

- A. Remove the title from this previously repealed section and replace with “Additional Authorization.” This newly created section encompasses requirements related to authorization of work that exceeds or changes what was originally estimated, including the authorization of additional repairs, authorization of revised work orders, and the designation of persons to authorize additional repairs. While these subject areas are part of existing regulation, the content of the provisions have been modified as described below.

B. Subsection (a), Exceeding Estimate

1. Provide that an ARD give the customer an estimate before any additional work is done or additional charges accrue.

This provision is necessary to ensure consistency between initial authorization and additional authorization. That is, before an automotive repair dealer can obtain authorization for additional repairs not contained in the initial estimate, the dealer must first inform the consumer what additional repairs, and associated costs, are being authorized by presenting a detailed estimate to the consumer.

2. Require documentation of the “specification and cost of the additional parts and labor, and total revised cost” instead of the “specification of the additional repairs, parts, labor and the total additional cost.”

The requirement to document the *cost* of the additional parts and labor, and not simply specify *what* parts and labor are needed, is being required to make it easier for consumers to understand the financial impact of the additional parts and labor.

The requirement to specify “parts and labor” as opposed to “repairs, parts, labor” is necessary to remove the redundancy of “repairs” because repairs include parts and labor.

The requirement to document the “total revised cost” instead of the “total additional cost” is necessary to ensure the consumer is informed of the full cost after the additional repairs are performed. The Bureau has received complaints from some consumers who mistake the total additional cost for the total revised cost and thus end up authorizing additional repairs without knowledge of the total cost of all the repairs to their vehicle.

C. Subsection (b), Revising an Itemized Work Order

1. The reference to “subsection (c)” was changed to “subsection (a)” due to the section reordering, but refers to the same section (additional authorization) as before.

D. Subsection (c), Designation of Person to Authorize Additional Work or Parts

1. The proposed subsection retains substantially the same requirements should a separate designation form be used; however, it allows that such form need not have the same “form” as an image provided in regulation. Rather, the designation form need simply contain the information specified.

This change provides businesses additional flexibility in how they record a designation of a different person to authorize additional repairs.

2. The subsection is amended as necessary to modernize the regulations, including deleting requirements that the form “be completed in duplicate” and “attached” to the work order.
3. The subsection is amended as necessary to make more clear the intended meaning of the regulations, including by adding subparagraph (4) (“An automotive repair dealer may accept authorization for additional work from either the customer or the customer’s designee”); and adding to subparagraph (5), “a *customer’s* designee” and “[authorization must obtained before] *costs accrue to the customer.*”
4. In subparagraph (5), the reference to “subsection (c)” was changed to “subsection (a)” due to the section reordering, but refers to the same section (additional authorization) as before.

VIII. Amend Section 3355, “Replaced Parts That Are Not Returnable”

- A. To promote clarity in the proposed regulation, organize the section to list requirements in separate numbered paragraphs.
- B. Retitle the section as “Replaced Parts.”
 - 1. This language is necessary to accurately reflect the amended contents of the section, which now contain the requirements relevant to replaced parts generally, rather than focusing solely on requirements related to replaced parts that cannot be returned to the customer.
- C. “Upon authorization of the estimate and if requested by the customer” is added to the beginning of proposed subsection (a).
 - 1. This language is necessary to clarify the customer’s authorization of the estimate and request for return of replaced parts occurs before the ARD is required to return the parts in accordance with the Bureau’s interpretation of Business and Professions Code section 9884.10.
- D. Add language to section 3355 from Business and Professions Code section 9884.10, which addresses the return of replaced parts.
 - 1. Addition of this language is necessary because the existing section 3355 by itself addresses only circumstances in which replaced parts are not returnable. It may be misunderstood by some as comprising the only requirements applicable to replaced parts. The proposed language promotes clarity by stating the full requirements pertaining to returning (or not returning) replaced parts.
 - 2. While Business and Professions Code section 9884.10 requires the dealer to offer to show a part “at the time the work order is taken,” the proposed regulation requires the dealer to show a part “upon authorization of the estimate.” These statements have the same meaning, as “work order” is defined in regulation as an authorized estimate.
- E. Both the exemption of “parts and components that are replaced and sold on an exchange basis” (aka core parts) and the requirement to state orally and on the work order and invoice that a part is not returnable are in existing regulation and are being retained.
 - 1. These provisions remain necessary to ensure adequate consumer protection when parts are replaced.

IX. Amend Section 3356, “Invoice Requirements”

- A. Modify/restructure the section overall as follows:

1. Delete the letter heading “(a),” as current subsection 3356(a) in fact applies to all the subsequently lettered requirements in the section, and renumber subsequent subsections accordingly.
 2. Add to this section invoice requirements associated with delivery of a vehicle to a shop under unusual circumstances and with additional authorizations, for reasons stated below.
- B. In new proposed section 3356(a)(2)(C), add provision that part kits may be listed as a single part on the invoice and how they may be identified.

This addition is necessary to ensure the invoice requirements provide the least restrictive regulation consistent with the public welfare. Parts manufacturers and vendors provide part kits to encompass all parts necessary to perform common repairs such as automatic transmission rebuilds. It is more cost effective for the automotive repair dealer and the consumer to utilize a part kit rather than to purchase and itemize on the invoice each individual part.

- C. In new proposed section 3356(a)(2)(C), add language that if a kit is listed on the invoice, the automotive repair dealer must notify the customer both orally and on the invoice and offer the customer any unused components from the kit are to be offered to the customer.

The disclosure to the customer is necessary to ensure the customer is aware of they have purchased a part kit. Requiring this disclosure both orally and on the invoice ensures consistency with disclosure requirements in other situations involving the return of parts to a customer (e.g., Section 3355).

The requirement to offer the customer unused parts from the kit is necessary because part kits often contain parts for a wide variety of applications and many individual parts within the kit will not be needed for one specific repair. Consequently, parts will be left over after the repair is complete. Because the consumer has paid for the entire part kit, they have paid for any part remaining and should be offered the opportunity to take those parts.

- D. Add new subsection (c), addressing invoice requirements in the event vehicle was delivered to automotive repair dealer under unusual circumstances per section 3353.2.

Pursuant to Business and Professions Code section 9884.9, the Bureau has historically required documentation of certain information on an invoice in the event of additional authorization, because the customer’s initial consent to repairs did not occur in person. Such situations have traditionally required documentation of information such as date and time of authorization and name of person authorizing to ensure the customer’s consent is adequately

documented. Addition of subsection (c) is necessary to extend this documentation requirement to other situations in which a customer's initial consent to repairs did not occur in person, namely "unusual circumstances."

- E. Add new subsection (d), addressing invoice requirements in the event additional authorization was obtained pursuant to section 3354(a).

This change creates a new subsection for provisions substantially similar to the invoice requirements of existing section 3353(c). These documentation requirements were moved to section 3356 to promote clarity by locating requirements on the same subject matter (invoices) in the same place.

Rather than list separate invoice requirements depending on whether additional authorization was obtained orally, by fax, or by email, this subsection provides uniform documentation requirements for all additional authorizations. The subsection includes an additional option for authorizations obtained orally, in accordance with Business and Professions Code section 9884.9. These changes ensure the regulations are clear and can easily be followed regardless whether authorization occurs orally or electronically.

- F. In proposed section 3356(f), add "electronic communication fees to the smog check database."

A Smog Check cannot be performed without electronic communication between a station's Smog Check inspection equipment and the Bureau's vehicle information database (VID). Because it is a mandatory component of each inspection, it is not discretionary for the consumer. Thus, the added language is necessary to clarify the fee for this communication is included in the advertised price of a Smog Check and cannot be itemized out as a separate charge on top of the price of a Smog Check.

- G. Delete "and shall retain a legible copy...pursuant to Section 9884.11 of the Business and Professions Code and Section 3358 of this article."

This deletion is necessary to reduce unnecessary duplication in the regulations. Section 3358 is titled "Maintenance of Records," contains all recordkeeping requirements, and references the applicable statute. Thus, Business and Professions Code section 9884.11 and CCR section 3358 need not be mentioned here.

X. Repeal Section 3356.1 and Amend Section 3357

- A. This change is non-substantive because it is part of an effort to renumber, reorder, and/or relocate regulatory provisions within the meaning of Title 1, CCR section 100(a)(1). BAR is repealing Section 3356.1 and renumbering the

provisions within to existing section 3357, which does not contain any regulation, as part of its ‘clean-up’ of Article 7.

XI. Amend Section 3358, “Maintenance of Records”

- A. In the preamble, add “Pursuant to Section 9884.11 of the Business and Professions Code” and “in either written or electronic form” and change “*not less than three years*” to “*at least three years.*” (Emphases added).

The reference to Business and Professions Code section 9884.11 is necessary to orient the reader to the statute on which the recordkeeping regulations are based.

The “written or electronic” language is necessary to promote awareness that records may kept in either written or electronic form.

Replacing “not less than” with “at least” is necessary to promote recordkeeping practices that best enable the Bureau to investigate consumer complaints.

- B. In subsection (b), add “including all records created to obtain authorization from the customer for the initial estimate.”

This addition is necessary to make clear that the records retained must include any faxed documents, emails, texts, or any other document or electronic transmission created as part of the initial authorization process.

- C. In subsection (c), add “including all records supplementing the work order and created to obtain additional authorization from the customer for any additional repairs estimated.”

This addition is necessary to make clear that the records retained must include any faxed documents, emails, texts, or any other document or electronic transmission created as part of the process of estimating and obtaining authorization for additional repairs.

- D. Add subsection (e), “All records as specified in this section associated with an individual transaction shall have a unique identifier linking the records to that specific transaction.”

This addition is necessary to ensure that all records associated with a specific transaction can be identified and provided as such upon request of the Bureau or other law enforcement entity.

XII. Repeal section 3359

- A. Repeal section and repurpose language in provision addressing subletting disclosure in section 3353.

This repeal is necessary because the existing section 3359, when read by itself and not alongside Business and Professions Code section 9884.9(b), is susceptible to the interpretation that disclosure of subletting is only required upon request of a customer. The proposed reorganization places the sublet disclosure provision in section 3353, which has been reorganized to reflect only those subject areas pertaining to the provision of an estimate to the customer.

XIII. Amend section 3371

- A. In subsection (b), delete language requiring that the business telephone number correspond to a telephone directory and instead require the number to correspond to the Bureau's records.

This change is necessary to correct an outdated requirement. Today it is far less common to rely on a telephone directory as a central source of contact information than it was when this provision was originally promulgated. It is sufficient that the telephone number match Bureau records.

UNDERLYING DATA:

No technical, theoretical, or empirical studies or reports relied upon in developing the proposed regulation.

BUSINESS IMPACT

BAR has made an initial determination the proposed regulatory action will not have a significant adverse economic impact on businesses. First, when developing the regulation, BAR held a series of public workshops well-attended by representatives of various segments of the automotive repair industry. BAR considered their input regarding any adverse impacts on the industry in drafting the regulation. Second, the proposed amendments allow businesses the flexibility to disclose information to and obtain authorization from consumers through a wide variety of electronic means while ensuring these practices provide adequate consumer protection. Businesses benefit to the extent these electronic methods of conducting business improve productivity, efficiency, and consumer satisfaction.

It is possible some businesses that currently use point of sale systems will incur some costs to update those systems to ensure compliance with the updated regulations. These costs are indeterminable, as systems vary from business to business. Nonetheless, the Bureau anticipates any fiscal impact directly resulting from the proposed regulatory

action will be minimal. At a July 2016 workshop conducted by the Bureau, several representatives of small, independent automotive repair businesses discussed their point of sale systems and expressed support for the regulation.

ECONOMIC IMPACT ASSESSMENT:

EFFECT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS OR BUSINESSES:

BAR has made an initial determination the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of jobs or businesses in the State of California. The proposed regulation expands the ability of businesses to conduct transactions electronically and promotes overall clarity in the regulations. Businesses adopting technologies in accordance with the regulations may experience greater productivity; however the magnitude of such impact is difficult to estimate.

IMPACT ON THE HEALTH AND WELFARE OF CALIFORNIA CITIZENS:

BAR has made an initial determination the regulation may have a positive impact on the health and welfare of California citizens to the extent it promotes more efficiency and/or transparency in automotive repair transactions.

IMPACT ON WORKER SAFETY:

BAR has made an initial determination the proposed regulatory action does not affect worker safety in the State of California, as the proposal does not change the occupational scope of individuals employed by affected businesses.

IMPACT ON THE STATE'S ENVIRONMENT:

BAR has made an initial determination the proposed regulatory action may have a positive, though indeterminable, effect on the environment. The regulatory action allows documentation of authorization and the retention of such documentation to become a paperless process. It may thereby reduce the usage of paper, ink, toner, and other such consumable business products and in turn reduce the waste entering California's landfills.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of any specific technologies or equipment.

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.