

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATE:

NORTHERN CALIFORNIA

Tuesday, September 26, 2017

**SUBJECT MATTER OF
PROPOSED REGULATIONS:**

ELECTRONIC DOCUMENTATION AND
AUTHORIZATION

SECTIONS AFFECTED:

Within Chapter 1, Division 33, Title 16,
California Code of Regulations:

Amend: Article 1, Section 3303; Article 7,
Sections 3352, 3353, 3354, 3355, 3356,
3357 and 3358; Article 9, Section 3371

Adopt: Article 7, Sections 3353.1 and
3353.2

Repeal: Article 7, Sections 3356.1 and 3359

UPDATED INFORMATION

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

On August 4, 2017, the Bureau of Automotive Repair (BAR) issued a Notice of Proposed Regulatory Action in compliance with the dictates of Government Code section 11340.85, subdivisions (b) and (c) and section 11346.4, subdivision (a). The 45-day comment period began on August 4, 2017 and ended on September 18, 2017 and a public hearing was held on September 26, 2017. BAR received written comments from six individuals during the 45-day comment period and one individual made comments at the public hearing.

After the 45-day public comment period and public hearing, BAR modified the proposed regulations text and, on November 3, 2017, issued a 15-day Notice of Availability of Modified Text in compliance with the dictates of Government Code 11340.85, subdivisions (b) and (c), section 11346.8, subdivision (c) and California Code of Regulations, title 1, section 44. The 15-day comment period began on November 3, 2017 and ended on November 18, 2017. BAR received written comments from four individuals during the 15-day comment period.

After the 15-day comment period, BAR modified the proposed regulations text and, on December 4, 2017, issued a 15-day Notice of Availability of Second Modified Text in compliance with the dictates of Government Code 11340.85, subdivisions (b) and (c), section

11346.8, subdivision (c) and California Code of Regulations, title 1, section 44. The second 15-day comment period began on December 4, 2017 and ended on December 19, 2017. BAR received written comments from one individual during the second 15-day comment period.

After the second 15-day comment period, BAR modified the proposed regulations text and, on January 10, 2018, issued a 15-day Notice of Availability of Third Modified Text in compliance with the dictates of Government Code 11340.85, subdivisions (b) and (c), section 11346.8, subdivision (c) and California Code of Regulations, title 1, section 44. The third 15-day comment period began on January 10, 2018 and ended on January 25, 2018. BAR did not receive any written comments during the third 15-day comment period.

The modifications contained in the final proposed text are as follows:

Section 3352

Subdivision (e)(1)

The phrase “executed with the intent to authorize” has been replaced with the word “authorizing.” The modification was made in response to a comment, submitted by Alisa Reinhardt (on behalf of California New Car Dealers Association) during the 45-day public comment period, that stated the proposed language could be construed as creating a future intent to authorize work, as opposed to a clear intent to authorize work. The modification makes the regulation easier to read and comprehend by clarifying that a written authorization is an expression of a customer’s consent to the performance of work contained in a work order and is not an expression of a future intent to authorize the performance of such work.

Subdivision (e)(2)

The phrase “intent to authorize” has been replaced with the word “authorizing.” The modification was made in response to a comment, submitted by Alisa Reinhardt (on behalf of California New Car Dealers Association) during the 45-day public comment period, that stated the proposed language could be construed as creating a future intent to authorize work, as opposed to a clear intent to authorize work. The modification makes the regulation easier to read and comprehend by clarifying that an oral or electronic authorization is an expression of a customer’s consent to the performance of work contained in a work order and is not an expression of a future intent to authorize the performance of such work. The modified text also contains stylistic changes that make the regulation easier to read and comprehend.

Section 3353

The phrase “diagnosis and repair” has been removed and the regulations text have reverted to the existing word “work.” Business and Professions Code section 9884.9, subdivision (a) states that “[n]o work shall be done ... before authorization to proceed is obtained from the customer.” Reverting to the existing word “work” ensures that the regulation does not conflict with the statute.

Subdivision (a)

The sentence “[a]ll parts included in the estimate shall be new unless specifically stated otherwise[.]” has been updated to:

[e]ach part listed in the estimate shall be new unless specifically identified as a used, rebuilt or reconditioned part.

The modification was made in response to two comments: the first comment, submitted by Catalina Jelkh Pareja (for LKQ Corporation and Ebenezer SDG Group, Inc.), inquired whether the proposed parts disclosure requirement in subdivision (a) was the same as the existing parts disclosure requirement in section 3353, subdivision (b) and the second comment, submitted by Gavin McHugh (for State of California Auto Dismantlers Association), suggested that the language regarding the identification of parts used in subdivision (a) should be the same language regarding the identification of auto body and collision repair parts set forth in subdivision (b). Replacing a potentially ambiguous descriptor with explicit terms will make the proposed regulation easier to comprehend and comply with and will discourage the use of potentially misleading descriptive terms. The presumption that a part is new if it is not specifically identified as used, rebuilt or reconditioned will help ensure that all parts are clearly and accurately described in an estimate and will enable consumers to make informed decisions prior to authorizing repairs. It is BAR’s intent that subdivisions (a) and (b) require parts listed on an estimate to be “new” if not explicitly listed as “used”, “rebuilt” or “reconditioned.”¹ As a result, both subdivisions have been modified so that they contain identical language. This uniformity will make the regulations easier to comprehend, comply with and enforce.

Subdivision (b)

The sentence “[p]arts and labor shall be described separately and each part shall be identified and indicate whether the replacement part is new used, rebuilt, or reconditioned[.]” has been revised into two sentences as follows:

[p]arts and labor shall be described separately and each part shall be listed in the estimate. Each part listed in the estimate shall be new unless specifically identified as a used, rebuilt or reconditioned part.

Business and Professions Code section 9884.9, subdivision (c) requires all auto body and collision parts listed in an estimate to be identified as new, used, rebuilt or reconditioned. Using this requirement as a foundation, the modified regulation enhances the statutory consumer protections by creating a presumption, for use during enforcement and other proceedings, that a part listed on an estimate is new if it is not specifically identified as a used, rebuilt or

¹ The additional description requirement for new replacement crash parts set forth in subdivision (b) will not apply to the identification of parts required by subdivision (a).

reconditioned part. The modified regulation will be easier to comprehend and comply with and will discourage the use of potentially misleading descriptive terms.

In addition, the modified text corrects a grammatical error² and makes the subdivision's requirements easier to identify and comprehend by splitting the parts and labor listing requirement and the parts identification requirement into two separate sentences. Splitting the text into two sentences also facilitates the update to the parts identification requirement, so that it is the same text as contained in the subdivision (a) parts description requirement. It is BAR's intent that subdivisions (a) and (b) require parts listed on an estimate to be "new" if not explicitly listed as "used", "rebuilt" or "reconditioned." As a result, both subdivisions have been modified so that they contain identical language. This uniformity will make the regulations easier to comprehend, comply with and enforce.

In regard to the proposed additional identification requirement for crash parts contained in subdivision (b), the sentence "[t]he estimate shall also describe replacement crash parts as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket crash parts[]" has been updated to:

[e]ach new replacement crash part listed in the estimate shall be an original equipment manufacturer (OEM) part unless specifically identified as a non-OEM aftermarket crash part.

Business and Professions Code section 9884.9, subdivision (c) requires ARDs, when doing auto body or collision repairs, to list each crash part and indicate on the estimate whether the part is "an original equipment manufacturer [(OEM)] crash part or a nonoriginal equipment manufacturer [(non-OEM)] aftermarket crash part." Using this requirement as a foundation, the modified regulation enhances the statutory consumer protections by creating a presumption, for use during enforcement and other proceedings, that a new crash part listed on an estimate is an OEM part if it is not specifically identified as a non-OEM aftermarket crash part. The modified text will discourage the use of potentially misleading or confusing descriptive terms for new aftermarket crash parts such as "ALT-OEM", "OPT-OEM", etc. that may cause customers to believe that they are receiving a new OEM crash part when they are actually receiving a non-OEM aftermarket crash part. The presumption created by the modified regulation is limited to new crash parts because used crash parts may sometimes be difficult to identify as OEM or aftermarket due to manufacturer's markings being painted over, covered with body filler or wearing off. In addition, the standard practice in the auto body and collision repair industries is to not charge more for a used OEM part. Rather, both used OEM and aftermarket parts are typically sold as "used" for the same price. The modified regulation will discourage the use of potentially misleading or confusing descriptive terms for new crash parts and will not impact the existing Business and Professions Code section 9884.9, subdivision (c) requirement that ARD's identify used replacement crash parts as either OEM or non-OEM parts.

² *i.e.*: "... identified and indicate ..."

The modified text also contains non-substantive stylistic changes that make the regulation easier to read and comprehend.

Subdivision (c)(2)

The proposed subdivision (c)(4) has been stricken and its requirements have been moved to the modified subdivision (c)(2). In addition, the word “prepare” has been replaced with “give the customer” and the revised sentence will read as follows:

“[u]pon completion of the teardown, the automotive repair dealer shall give the customer an itemized estimate for labor and parts necessary for the required repair.

Since preparing an estimate is a necessary step in providing an estimate to a customer, the preparation requirement does not need to be explicitly stated in the regulation. The reduced verbiage and consolidated text make the teardown estimate requirements easier to identify and comprehend.

Subdivision (c)(3)

The sentence “[i]f applicable, the automotive repair dealer shall document on the work order a statement that the customer declined repair or reassembly of the vehicle or component after the teardown[]” has been updated to:

[i]f, after teardown, a customer declines repair or reassembly, the automotive repair dealer shall, as applicable, document on the teardown invoice that the customer declined repair or reassembly.

The modification was made in response to comments made by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) regarding potential problems with obtaining customer signatures on work orders for declined repairs or reassembly. A “work order” is a document containing an estimate and memorializing a customer’s authorization for a specific job (see, Cal. Code Regs., tit. 16, § 3352, subd. (b)) and would not ordinarily be prepared by an ARD because a customer declined repairs or services. BAR recognizes the potential problems associated with creating a work order for declined repairs and believes a better approach is to require an ARD to document a customer’s declination of post-teardown repair or reassembly on the teardown invoice. Documenting a declination of repairs or reassembly on the teardown invoice provides protections to both ARDs and consumers and will guard against ‘he said/she said’ disputes. As an ARD may document the declination by writing on the invoice with a pen, ARDs will incur minimal, if any, additional costs in complying with the modified requirement.

The modified text also contains stylistic changes that make the regulation easier to read and comprehend.

Subdivision (c)(4)

As fully described above, the proposed subdivision (c)(4) has been stricken and its requirements are contained in the modified subdivision (c)(2). The reduced verbiage and consolidated text make the teardown estimate requirements easier to identify and comprehend.

Subdivision (d)

The sentence “[a]n automotive repair dealer shall include with the estimate or work order a statement of any sublet repair to be performed on the vehicle[]” has been updated to:

[a]n automotive repair dealer shall include with the estimate
a statement of any sublet repair to be performed on the vehicle.

The proposed regulation has been modified to avoid conflict with the Business and Professions Code section 9884.9, subdivision (b) requirement that sublet automotive repair services be identified in an estimate.

The sentence “[i]f requested by the customer, an automotive repair dealer shall disclose and record on the estimate or work order the name and location of the facility at which the sublet repair will be done[]” has been revised to: “[i]f requested by the customer, an automotive repair dealer shall disclose the name and location of the facility performing the sublet repair.” The modification was made in response to comments made by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) that the recording requirement is unnecessary, will be an administrative burden on ARDs and may result in disciplinary action for verbally disclosing sublet information but failing to record it on the estimate or work order. After further considering this matter, BAR has concluded that the disclosure requirements of the modified regulation, in combination with the sublet protections provided by Business and Professions Code section 9884.9, subdivision (b)³, will provide consumers with adequate protections against potential misrepresentation or concealment of sublet work.

The modified text also contains stylistic changes that make the regulation easier to read and comprehend.

³ Business and Professions Code section 9884.9, subdivision (b) requires sublet work to be identified in the estimate for the sublet repairs.

Section 3353.1

Subdivision (a)

In the first sentence of the subdivision, “no charge” has been revised to “no-charge”. The modified text corrects an unintentional typographical error and clarifies that “no-charge ... repairs” means repairs made without charge to the customer.

Subdivisions (b - d) (previously subdivision (a)(1 - 3))

Paragraphs (1 - 3) of subdivision (a) contain specific requirements for the different forms of customer authorization that are independent of the dictates of subdivision (a). For ease of reference and understanding, paragraphs (1 – 3) of subdivision (a) have been renumbered as subdivisions (b – d) of section 3353.1.

Subdivision (b) (previously subdivision (a)(1))

The modified text removes the requirement that an ARD record the time a customer provided a written authorization. The modification was made in response to comments made by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) that the requirement may create a "gotcha" with BAR enforcement, may result in a customer avoiding payment for repair services where an ARD fails to record the time of authorization, may require ARD's to make costly changes to their point of sale systems and that the requirement creates another layer of unnecessary administrative work without any consumer benefit. After further considering of this matter, BAR has concluded that recording the time a customer makes a written authorization will be of minimal, if any, benefit to consumers because, unlike e-mails and telephone records, written authorizations do not contain time stamps that can be corroborated by recording the time they were made. The current practice of obtaining written authorizations without recording the time they are made is effective and has not resulted in harm to consumers.

The addition of the phrase “or on documents that supplement the estimate” was made in response to comments submitted by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) that ARDs should be allowed to record written authorizations on documents supplementing an estimate in a manner similar to the authorization process set forth in subdivision (d) (previously subdivision (a)(3)) of this section. Upon further consideration of this matter, BAR has concluded that allowing supplemental documentation for all types of authorizations will maintain consumer protections while benefitting ARDs and consumers by increasing flexibility in the authorization process.

Subdivision (c) (previously subdivision (a)(2))

The addition of the phrase “or produce this information on documents relating to the authorization that supplement the estimate” was made in response to comments submitted by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof that ARDs should be allowed to record oral authorizations on documents supplementing an estimate in a manner similar to the authorization process set forth in subdivision (d) (previously subdivision (a)(3)) of this section. Upon further consideration of this matter, BAR has concluded that allowing supplemental documentation for all types of authorizations will maintain consumer protections while benefitting ARDs and consumers by increasing flexibility in the authorization process.

Subdivision (d) (previously subdivision (a)(3))

The proposed regulation has been modified to require an ARD to record “the telephone number or electronic mail address contacted, if any.” Recording this information will protect consumers and ARDs by preserving information that may be used to verify whether a customer provided an oral authorization. The modified text also contains stylistic changes that make the regulation easier to read and comprehend.

Subdivision (e)

The lack of numeration was an unintentional typographical error. The modification makes the regulations easier to search and comprehend. The addition of the phrase “of this Article” clarifies that “section 3358” refers to California Code of Regulations title 16, section 3358.

Section 3353.2

The phrase “... the diagnosing or repairing of the motor vehicle, including no charge and warranty repairs ...” has been revised to remove the extra space after “motor vehicle” and to insert a hyphen between the words “no” and “charge”. The unintentional typographical errors were pointed out in a comment submitted to BAR. Removing the extra space makes the text easier to read and insertion of the hyphen clarifies that “no-charge ... repairs” means repairs made without cost to the customer.

Subdivision (c)

The addition of the phrase “and 3356 of this Article” provides a reference to California Code of Regulations title 16, section 3356, which sets forth invoice documentation requirements for vehicles delivered to an ARD under unusual circumstances. The modified text will make the regulations easier to comply with and comprehend.

Section 3354

Subdivision (a)

The word “original” was added to distinguish the requirements for revised estimates from the requirements for initial estimates. The modification will make the regulation easier to comply with and comprehend.

Subdivision (a)(1) and (2)

Subdivision (a) has been restructured and the estimate and authorization requirements were split into two numerated paragraphs ((a)(1) and (2)) to clearly communicate the two steps an ARD must undertake prior to performing any diagnosis or repairs not included in the original estimate. The modifications clarify the regulation’s requirements and make the regulation easier to comply with and comprehend.

Subdivision (a)(1)

In response to a comment submitted by Alisa Reinhardt (for California New Car Dealers Association) the word “specification” was removed from the proposed text. The modified text is clearer and more concise than the original proposed text and makes the regulation easier to comply with and comprehend.

Subdivision (a)(2)

In the new subdivision (a)(2), the word “section” was replaced with “sections” and “3356 of this Article” was added to the text. The added reference to section 3356 (*i.e.*: California Code of Regulations title 16, section 3356) directs the reader to relevant invoice documentation requirements for oral and electronic additional authorizations. The modified text utilizes the word “sections” to clearly convey that the regulation references two sections of BAR’s regulations that contain documentation requirements applicable to additional authorizations. The addition of the phrase “of this Article” clarifies that sections 3353.1 and 3356 are references to BAR regulations contained in the California Code of Regulations and also helps distinguish the regulatory references from the reference to the Business and Professions Code. The modifications make the regulations easier to comply with and comprehend.

Subdivision (c)(1)(A - G)

To clarify that the information described in items (A – G) must be included in a designation of authorization, the phrase “all of” was inserted into subdivision (c)(1).

The phrase “on a separate form or section of the work order” has been removed from subdivision (c)(1)(A) because this requirement is contained in subdivision (c)(1). The requirements of subdivision (c)(1) apply to items (A - G) and removing the same requirement from item (A) eliminates redundancy and makes the regulation easier to read and comprehend.

Semi-colons have been added to items (A) through (G). Also, the word “and” has been added immediately after item (F). These unintentional typographical errors were pointed out in a comment submitted by Alisa Reinhardt (for California New Car Dealers Association). The modifications clarify that all items described in subdivision (c)(1)(A - G) must be included in a designation of authorization. The inclusion of a period at the end of subdivision (c)(1)(G) corrects an unintentional typographical error and makes the minimum requirements for a designation of authority easier to delineate and comprehend.

Section 3355

Subdivision (a)

The phrase “[u]pon authorization of the estimate and if requested by the customer ...” has been revised to: “[i]f requested by the customer at the time of authorization of the estimate” The stylistic changes make the regulation easier to read and comprehend.

Subdivision (c)

The term “replacement” part has been updated to “replaced” part. The text was modified in response to comments from Alisa Reinhardt (for California New Car Dealers Association), Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) pointing out that an ARD would show replaced (old) parts and not replacement (new) parts to a customer. As surmised by the commenters, the use of the term “replacement” was an unintentional typographical error. In this regard, the section is titled “Replaced Parts” and the term “replaced” is used throughout subdivisions (a), (b) and (c) to describe old parts that must be given or shown to a customer upon request. The modified text corrects the typographical error and clearly conveys BAR’s original intent that ARDs be required to show replaced parts to customers.

In response to a comment from Alisa Reinhardt opposing the requirement that ARDs offer to show customers parts at the time of authorization of an estimate, BAR modified the proposed regulation to require an ARD to show replaced parts specified in subdivision (b) if requested by the customer at the time of authorization of the estimate. Upon further consideration of this matter, BAR agrees with the commenter’s assertion that most customers are not interested in seeing replaced parts and, if they are interested, they will ask to see them. Enforcing an affirmative duty to ask customers if they wish to view replaced parts will prolong the estimate and authorization process and may result in unintentional violations of the regulation that will do little, if anything, to protect the public. The modified text requires ARDs to show replaced parts if requested by the customer at the time of authorization of the estimate. The modified text preserves a customer’s ability to view replaced parts while seeking to prevent unintentional violations of the proposed regulation. The requirement to show parts upon request is consistent with the requirement for returned parts set forth in the proposed revisions to section 3355, subdivision (a). This consistency will make the regulations easier to comply with and comprehend.

Subdivision (c)(1)(A)

The term “replacement” part has been updated to “replaced” part. The text was modified in response to comments from Alisa Reinhardt (for California New Car Dealers Association), Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) pointing out that an ARD would show replaced (old) parts and not replacement (new) parts to a customer. As surmised by the commenters, the use of the term “replacement” was an unintentional typographical error. In this regard, the section is titled “Replaced Parts” and the term “replaced” is used throughout subdivisions (a), (b) and (c) to describe old parts that must be given or shown to a customer upon request. The modified text corrects the typographical error and clearly conveys BAR’s original intent that ARDs be required to show replaced parts to customers. The modified text also contains grammatical and structural modifications that make the regulation easier to read and comprehend.

Subdivision (c)(1)(B)

The word “final” has been removed from the text. Although an ARD may prepare revised estimates and work orders, there would only be a single invoice for all work performed. Accordingly, the text was modified to prevent the use of potentially misleading preliminary or partial invoices and to make the regulation easier to comply with and comprehend.

Section 3356

Subdivision (a)

BAR has stricken subdivision (b) of section 3371 from title 16 of the California Code of Regulations. As a result, the reference to section 3371, subdivision (b) has been removed.⁴

Subdivision (b)(2) and (3)

After considering commenters’ assertions that keeping track of every leftover kit part would be an administrative burden, and that many kits are universal and may contain parts that are not usable on a customer’s vehicle, BAR removed subdivision (b)(3) from the proposed regulations. After considering comments submitted during the 45-day comment period and subsequent 15-day comment period in support of regulatory language permitting ARDs to list parts kits as a single part on an invoice, BAR determined that such language is necessary to ensure parts kits are listed, and invoice requirements are enforced, in a uniform and consistent manner.⁵ The modified text re-inserts this proposed language into the regulations as the last sentence of section 3356, subdivision (b)(2) and omits the requirement to offer customers unused part kit components.

⁴ See discussion regarding striking of section 3371, subdivision (b), set forth below.

⁵ This determination is in addition to the applicable necessity statement contained in the initial statement of reasons.

Subdivision (b)(3 - 5) (previously subdivision (b)(4 - 6)

With the removal of the proposed paragraph (3), paragraphs (4 - 6) have been renumbered as paragraphs (3 - 5).

Subdivision (b)(6)

BAR has added a requirement that an invoice contain the total cost for all for all service and repair work, parts supplied and applicable sales tax. Business and Professions Code section 9884.8 and BAR regulations currently require ARD invoices to separately list the subtotal for service and repair work, the subtotal for parts and applicable sales tax. By requiring a tally of these items, the proposed regulation will help ensure invoice accuracy in addition to promoting sound, standardized business practices.

Subdivision (c)

The word “also” and the phrase “additional information” have been added to the proposed regulation to clarify that invoice requirements for unusual circumstances are in addition to the standard invoice requirements set forth in section 3356, subdivisions (a) and (b). The reference to Business and Professions code section 9884.9 was removed because that statute does not address invoice requirements where vehicles are delivered to an ARD under unusual circumstances.⁶ The statutory reference was an unintentional typographical error. The modified text makes the regulation easier to comply with and comprehend.

Subdivision (c)(2)

The word “and” was inserted to clarify that the additional information required to be recorded on an invoice when a vehicle is delivered to an ARD under unusual circumstances includes the information described in paragraphs (1), (2) and (3). The modified text makes the regulation easier to comply with and comprehend.

Subdivision (c)(3)

The proposed regulations permit oral and electronic authorizations⁷ and BAR intended to require ARDs to record both telephone numbers and electronic mail addresses contacted to obtain customer authorizations in unusual circumstances. The omission of electronic mail address from the additional recording requirements was an unintentional error. Recording this information will protect consumers and ARDs by providing a way to corroborate an authorization communicated via electronic mail. As electronic authorizations may be communicated via text and electronic mail messages, the word “called” was replaced with the word “contacted.” The phrase “to obtain

⁶ i.e.: The customer cannot deliver the vehicle to an ARD during normal business hours or the vehicle is towed to an ARD without the customer and customer requests the ARD to take possession of the vehicle. See, proposed BAR regulation section 3353.2.

⁷ See, proposed BAR regulation section 3352(e).

the authorization” provides meaning to the telephone number and electronic mail address recording requirement and makes the requirement easier to comply with and comprehend.

Subdivision (c)(4)

Subdivision (c) contains additional invoice requirements when a vehicle is delivered to an ARD under unusual circumstances. Section 3356, subdivision (b) requires that the items set forth in subdivision (c)(4) be included in every invoice. Removing the duplicative language clarifies that the requirements of subdivision (c) are addition to, and not in replacement of, the standard invoice requirements set forth in section 3356, subdivisions (a) and (b). The modified text makes the regulations easier to comply with and comprehend.

Subdivision (d)

The sentence “[i]f additional authorization was obtained per section 3354(a), the automotive repair dealer shall record the authorization on the invoice in accordance with section 9884.9 of the Business and Professions Code” has been updated to:

“[i]f additional authorization was obtained per section 3354(a), and the authorization was made orally or electronically, the automotive repair dealer shall record the oral or electronic authorization on the invoice.”

It is BAR’s intent that the invoice recording requirements for electronic authorizations mirror the requirements for oral authorizations contained in Business and Professions Code section 9884.9. The modified language clarifies this intent by referencing both oral and electronic authorizations. The phrase “in accordance with section 9884.9 of the Business and Professions Code” was removed because the statute does not specifically address electronic authorizations and, as a result, the reference may be confusing to readers. The modified text will make the regulation easier to comply with and comprehend.

Subdivision (d)(1)

The phrase “additional information” has been added to the proposed regulation to clarify that the invoice requirements for oral and electronic authorizations contained in subdivision (d)(1)(A – D) are in addition to the standard invoice requirements set forth in section 3356, subdivisions (a) and (b). The modified text will make the regulations easier to comply with and comprehend.

Subdivision (d)(1)(C)

“[E]mail” has been replaced with “electronic mail.” “Electronic mail” is used throughout BAR’s regulations and the proposed regulatory revisions. Using a uniform term makes the regulations easier to comply with and comprehend.

Subdivision (d)(1)(D)

The sentence “[t]he specification and cost of additional repairs, parts and labor, and total revised cost[]” has been updated to: “a description of all additional parts and labor, the cost for the additional parts and labor and the total price for all repairs.” The modified text is clearer and more concise than the original proposed text and makes the regulation easier to comply with and comprehend.

Subdivision (g)

The additional text provides a reference to California Code of Regulations title 16, section 3353, which sets forth documentation requirements for ARDs performing teardown of a vehicle, including invoice requirements if a customer declines post-teardown repair or reassembly. The modified text will make the regulations easier to comply with and comprehend.

Subdivision (h)

The additional text provides a reference to California Code of Regulations title 16, section 3355, which sets forth invoice requirements for replaced parts that cannot be returned to a customer. The modified text will make the regulations easier to comply with and comprehend.

Subdivision (i) (previously subdivision (g))

With the addition of subdivisions (g) and (h) to section 3356, the existing text was renumbered subdivision (i). The modified text will make the regulation easier to reference and comprehend.

Section 3371

In response to a comment submitted by Tim Chang (for Automobile Club of Southern California), the word “dealer” has been updated to “automotive repair dealer”. The modified text clarifies to whom the regulation’s restrictions and requirements apply and will make the regulation easier to comply with and comprehend.

With the striking of subdivision (b), there is no need for an independent subdivision (a). The requirements of subdivision (a) have been moved to the main body of section 3371 and combined with existing language regarding advertisements and advertising signs. Although the requirements regarding the display of an ARD’s name and address have been moved and reworded, the requirements remain unchanged. The reduced verbiage, stylistic changes and consolidated text make the name and address requirements for advertisements and advertising signs easier to identify and comprehend.

Subdivision (a)

With the striking of subdivision (b), there is no need for an independent subdivision (a). The requirements of subdivision (a) have been moved to the main body of section 3371. The

consolidated text makes the name and address requirements for advertisements and advertising signs easier to identify and comprehend.

Subdivision (b)

In response to a comment submitted by Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) during the first 15-day comment period, BAR has determined that the listing of telephone numbers on advertising or on signage does not need to be regulated beyond Section 3371's general prohibition against publishing or making false or misleading statements or advertisements. As a result, subdivision (b) of section 3371 has been stricken from the regulations. An ARD may have multiple phone numbers for different parts of its business operations and listing all numbers on an ARD registration application would be impractical. With the widespread use of cell phones and remote call centers, a telephone number may not be easily traceable to the location where an ARD is performing motor vehicle repairs. There are now numerous companies providing a variety of telecommunications services and the annual publication of a directory listing all telephone numbers in a geographical service area is a thing of the past. As customers often telephone ARDs to schedule automotive services and repairs, it is in an ARD's best interest to display accurate telephone numbers in its signage and advertisements. An ARD registration number, name and address are sufficient for BAR and customers to identify and locate ARDs for investigation and enforcement purposes. Removing this archaic advertising requirement will be of benefit to ARDs without diminishing consumer protections.

LOCAL MANDATE

The proposed regulations will not impose any mandate(s) on local agencies or school districts.

SMALL BUSINESS IMPACT

The proposed regulations will not have a significant adverse economic impact on small businesses.

CONSIDERATION OF ALTERNATIVES

BAR has determined that no alternative it considered or that was otherwise identified and brought to its attention 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 proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed revisions are the only regulatory provisions identified by BAR that will accomplish the goals of protecting consumers; updating the authorization, estimate, work order and invoice requirements to take advantage of technological advances and making the regulations easier to read and comprehend. Except as set forth and discussed in the summary

and responses to comments, no other alternatives have been proposed or otherwise brought to BAR's attention.

COMMENTS SUBMITTED DURING 45-DAY PUBLIC COMMENT PERIOD

BAR received written comments from six individuals during the 45-day comment period and one individual made comments at the public hearing.

Section 3352

Subdivision (e)

Commenters:

Johan Gallo for California Automotive Business Coalition

Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

This is a much-needed change in current law and will help streamline the authorization process for both shops and consumers. We support this new section.

Response:

Your support is noted and appreciated.

Subdivision (e)(1) and (2)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

The "intent" language should be changed to allow a customer to grant a clear authorization for repair work instead of a future "intent" to authorize repair work. Subdivision (e)(1) of the proposed regulation should be amended to read "a written signature memorializing the customer's consent for repair work to commence," "a written signature executed in order to authorize a specific job," or "a written signature executed to grant permission for repair work to commence." Similarly, subdivision (e)(2) of the proposed regulation should be amended to read "[a] statement authorizing a specific job...". This unequivocal language would make it clear that upon the customer's authorization, repair work can begin immediately.

Response:

The comment is accepted. The recommendation for revisions to section 3352(e)(2) removes any confusion that an “authorization” is an expression of a customer’s consent to the performance of work contained in a work order and is not an expression of a future intent to authorize the performance of such work. BAR will utilize “authorizing a specific job” for both (e)(1) and (2). BAR declines to utilize the suggested revisions for subdivision (e)(1) because they not as succinct as the modified language.

Subdivision (f)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

There needs to be further clarification regarding the reference to electronic documentation because we are in a “meld” between paper and electronic documents. Subsection (f) would be better stated as: “Electronic” in this context refers to section (a) above where it is defined as: “Estimate means a paper or electronic document provided to the customer”. Electronic means the electronic version of the same paper document that would otherwise be provided to a consumer, but is now provided in an electronic format based on the available technology at the time. The electronic document may be provided in an electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Response:

The comment is rejected because it would needlessly limit electronic authorizations to the transmission of copies of paper documents. The proposed regulation is intentionally open ended to permit a customer to communicate a statement of consent using any current technology (*e.g.*: electronic mail, text message, etc.) or future technology meeting the definition of “electronic.”

Section 3353

Commenter:

Tim Chang for Automobile Club of Southern California

Comment:

The proposed regulation should be revised as follows to make it clear that it only applies to ARDs:

An estimate from an automotive repair dealer shall be provided to and authorized by the customer before any diagnosis or repair commences....`

Response:

The comment is rejected. Section 3353 is contained in Article 7 of BAR's regulations. Article 7 is entitled "Disclosure Requirements for Automotive Repair Dealers" and provides sufficient notice that section 3353 will only apply to ARDs. In addition, the proposed revisions would make the text stilted and more difficult to comprehend.

Subdivision (a)

Commenters:

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

The proposed language "all parts included in the estimate shall be new unless specifically stated otherwise" is unnecessary and should be removed. Under current law, automotive repair dealers are required to give each customer a written estimate and parts are required to be described separately and each part shall be identified, indicating whether the replacement part is new, used, rebuilt or reconditioned. Current law also requires that crash parts be described as original equipment manufacturer (OEM) crash parts or non-OEM aftermarket crash parts. Current law allows consumers to know what type of parts are being used prior to authorization and there are no problems that would necessitate such a new requirement. There is neither a need nor a justification to change current law.

Response:

The comment is rejected. The identification requirements cited by the commenters only apply to parts listed in auto body and collision repair estimates. See, Business and Professions Code section 9884.9, subdivision (c). The presumption that a part is new if it is not specifically identified on an estimate as used, rebuilt or reconditioned will help ensure that all parts are clearly and accurately described in an estimate and will enable consumers to make informed decisions prior to authorizing repairs.

Commenter:

Catalina Jelkh Pareja for LKQ Corporation and Ebenezer SDG Group, Inc.

Comment:

Is the proposed parts disclosure requirement in subdivision (a) the same as the existing parts disclosure requirement in section 3353, subdivision (b)?

Response:

Although subdivision (b) specifically applies to auto body or collision repairs, it is BAR's intent that subdivisions (a) and (b) require parts listed on an invoice to be "new" if not explicitly listed as "used", "rebuilt" or "reconditioned". Both subdivisions have been modified so that they contain identical language.

Commenter:

Gavin McHugh for State of California Auto Dismantlers Association

Comment:

Subdivision (a) should be consistent with the language in subdivision (b). Subdivision (a) should be revised to: "all parts included in the estimate shall be identified as new, used, rebuilt, or reconditioned."

Response:

The comment is accepted. It is BAR's intent that subdivisions (a) and (b) require parts listed on an invoice to be "new" if not explicitly listed as "used", "rebuilt" or "reconditioned". Although the exact recommended language was not utilized, both subdivisions have been modified so that they contain identical language.

Subdivision (c)(3) and (4)

Commenters:

Johan Gallo for California Automotive Business Coalition

Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

Subdivision (c)(3) states: "[i]f applicable, the automotive repair dealer shall document on the work order a statement that the customer declined repair or reassembly of the vehicle or component after teardown." Subdivision (c)(4) states: "[t]he automotive repair dealer shall provide the customer a copy of the itemized estimate for repair after teardown." There may be circumstances where a consumer does not feel comfortable signing an estimate when declining repairs. ARD's will be required to create a process that verifies the customer did in fact receive the itemized estimate, if repairs are declined. This may create unnecessary costs to an ARD for estimating and software changes. The new requirement also places the ARD in the position of a "he said/she said" dispute if they cannot obtain a signature from the customer acknowledging receipt. An ARD should provide a copy of the itemized estimate for repairs after a teardown to the customer, however, an ARD should not have the burden to prove that it

provided a copy to the customer, if a customer declines repairs. Subdivision (c)(3) and (4) should be removed.

Response:

In response to the commenters' concerns about a customer being reluctant to sign an estimate if they decline post-teardown reassembly or repairs, BAR has modified subdivision (c)(3) to require that an ARD document a customer's declination of post-teardown repair or reassembly on the teardown invoice. To the extent that the commenters are advocating the removal of any requirement to document a customer's declination of post-teardown reassembly or repairs, that portion of the comment is rejected. Documenting the declination on the post-teardown invoice will provide protections to both ARDs and consumers and ARDs will incur minimal, if any, additional costs in complying with the modified requirement.

Subdivision (d)

Commenters:

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

Current law requires an ARD to disclose 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 employee. The new section requires the shop to record on the estimate both the name and location of the facility at which the sublet work will be done, if requested. Although this documentation may be considered a best practice, it places another unnecessary administrative burden on the ARD resulting in possible disciplinary action for verbally disclosing the sublet information to the customer but failing to record on the estimate. The requirement to record the sublet information on estimate is unnecessary and should be removed.

Response:

The comment is accepted. The modified regulation will require an ARD to disclose, upon customer request, the name and location of the facility performing the sublet repair but will not require an ARD to record that information on the estimate or work order.

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

A lot of shops sublet work and there is often a markup to a consumer for providing that service. Requiring disclosure of the name and location of the facility at which the sublet work will be done may result in customers having buyer remorse and being unhappy with the referring shop's price markup.

Response:

The comment is rejected. A customer may not want work performed by certain facilities. Providing, upon customer request, the name and location of the facility performing sublet work will permit the customer to make an informed decision about whether to authorize the sublet work.

Section 3353.1

Subdivision (a)

Commenter:

Tim Chang for Automobile Club of Southern California

Comment:

The proposed regulation should be revised as follows to make it clear that it only applies to ARDs:

No diagnosis or repair, including no charge and warranty repairs, shall commence by, and no charges shall accrue from, an automotive repair dealer without specific authorization from the customer....”

Response:

The comment is rejected. Section 3353.1 will be contained in Article 7 of BAR's regulations. Article 7 is entitled “Disclosure Requirements for Automotive Repair Dealers” and provides sufficient notice that section 3353.1 will only apply to ARDs. In addition, the proposed revisions would make the text stilted and more difficult to comprehend.

Subdivision (b) (previously subdivision (a)(1))

Commenters:

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

Although capturing date and time may be considered a best practice, this may create a "gotcha" with BAR enforcement if a shop fails to capture date and time of the written authorization on estimate. Additionally, this new requirement may result in a customer avoiding payment for repair services where a written signature was obtained but the ARD failed to record the time. The new language may also require ARD's to make costly changes to their point of sale systems. If a customer is present to sign an estimate it is not necessary to capture the date and time of signature. This creates another layer of unnecessary administrative work without any consumer benefit. This new requirement should be removed.

Response:

The portion of the comment advocating for removal of the time recording requirement is accepted. The time recording requirement has been removed from the proposed regulation. The portion of the comment advocating for removal of the date recording requirement is rejected. Having a record of the authorization date will assist BAR in verifying that an ARD obtained customer authorization before work was commenced, as is required by Business and Professions Code section 9884.9, subdivision (a). Recording the date of a written authorization is also consistent with the proposed recording requirements for oral and electronic initial authorizations, and with existing recording requirements for additional authorizations that are made orally, by facsimile transmission or by electronic mail. Requiring an ARD to record the date of a written authorization will promote uniformity in the estimate and approval process.

Subdivision (c) (previously subdivision (a)(2))

Commenters:

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

An ARD should also be allowed to capture the oral authorization information on a separate document. An ARD should be permitted to record an oral authorization by documenting on the invoice or a separate document (which can be uniquely identified and maintained as part of the same transaction in accordance with section 3358) the date, time, name of the person

authorization the repairs, and telephone number called, if any. This recommended change is similar to the new section for electronic authorization. It provides additional options and flexibility for an ARD while maintaining consumer protection.

Response:

The comment is accepted. The proposed regulations have been modified to permit recording all types of authorizations on documents that supplement the estimate.

Section 3353.2

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

“[N]o charge” should be changed to “no-charge” because the language may be interpreted to mean “**no** charge and warranty repairs” (emphasis in original). Also, the extra space between the comma and “motor vehicle should be removed.

Response:

The comment is accepted. Omission of the hyphen and the extra space were unintentional typographical errors.

Section 3354

Subdivision (a)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

The proposed language states, in pertinent part, “...the automotive repair dealer shall give to each customer an estimate containing the specification and cost of any additional parts and labor, and total revised cost, and obtain authorization from the customer...”. For clarity of the section, because “specification” is somewhat unclear, we recommend re-wording the sentence to read:

...the automotive repair dealer shall give to each customer an estimate describing the additional repairs, parts, labor and the total revised cost, and obtain authorization from the customer....

Response:

In response to the comment, the word “specification” has been removed and the text has been restructured to clarify the regulation’s requirements and make them easier to comprehend. BAR’s additional modifications precluded the exact use of Ms. Reinhardt’s proposed text.

Subdivision (c)

Tim Chang for Automobile Club of Southern California

Comment:

The proposed regulation should be revised as follows to make it clear that it only applies to ARDs:

Designation of Person to Authorize Additional Diagnosis, Repair, or Parts. When a customer at an automotive repair dealer, pursuant to subdivision (d) of section 9884.9 of the Business and Professions Code,

Response:

The comment is rejected. Section 3354 is contained in Article 7 of BAR’s regulations. Article 7 is entitled “Disclosure Requirements for Automotive Repair Dealers” and provides sufficient notice that section 3354 only applies to ARDs. In addition, the proposed revision would make the text stilted and more difficult to comprehend.

Subdivision (c)(1)(A - G)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

Semi-colons should be added after all items described in items (A) through (G). The word “and” should be added immediately after item (F). These revisions will indicate that all items described in sections (A) through (G) are required.

Response:

The comment is accepted. Omission of the semicolons and the word “and” were unintentional typographical errors.

Section 3355

Subdivisions (c) and (c)(1)(A)

Commenter:

Alisa Reinhardt for California New Car Dealers Association
Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

It appears that “replacement” part is a typo and should be “replaced” part. An ARD would show a customer the replaced part (old part), not the replacement part (new part). It does not appear that the intent was to have the ARD show all new parts to customer before being installed.

Response:

The commenters are correct, “replacement” part was an unintentional typographical error. The regulation has been modified to require an ARD to show a customer a replaced part.

Subdivision (c)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

ARDs should not be required to offer to show a replaced part to every customer. Adding a preemptive duty on the part of ARDs to make the offer to every customer is unnecessary. Few customers are interested in seeing replaced parts, and when they are interested, they will ask the ARD to do so. The regulation should be changed to read: “upon a customer’s request to see a replaced part, the automotive repair dealer shall provide the customer a reasonable opportunity to do so.”

Response:

BAR recognizes that few customers may be interested in seeing replaced parts and it is not necessary to require ARDs to preemptively offer to show customers replaced parts. The text has been modified to require ARDs to show replaced parts if requested by the customer at the time of authorization of the estimate. This requirement is consistent with the one for returned parts set forth in the proposed revisions to section 3355, subdivision (a).

Section 3356

Commenter:

Tim Chang for Automobile Club of Southern California

Comment:

The regulation should be revised as follows to make it clear that it only applies to ARDs:

All invoices for service and repair work performed, and parts supplied, by an automotive repair dealer as provided for in Section 9884.9 of the Business and Professions Code....

Response:

The comment is rejected. Section 3356 is contained in Article 7 of BAR's regulations. Article 7 is entitled "Disclosure Requirements for Automotive Repair Dealers" and provides sufficient notice that section 3356 only applies to ARDs. In addition, the proposed revision would make the text stilted and more difficult to comprehend.

Subdivision (b)(2) and (3)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

Requiring ARDs to inform customers, both orally and via the invoice, that a part kit was used is duplicative and unnecessary. This requirement opens the door to possible claims by customers that, although the part kit is itemized on the invoice, they were not informed orally that one was used. This is impossible to prove either way and is unworkable in terms of any possible enforcement. The invoice is the preferred means for disclosure. Good service managers will walk customers through the invoice, but they will not necessarily discuss each itemized part individually – nor should they be required to do so in situations where part kits are used. Additionally, this requirement would be an administrative nightmare for dealership service technicians. To require techs to keep track of every single small part from a part kit in order for the service manager to then offer it to the customer, when their vehicle clearly did not require use of the part, does not serve an important business or consumer purpose. This section is rife with difficulty from a business operations standpoint.

Commenters:

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

The portion of 3356(b)(3) that allows kits containing several components to be listed as a single part on the invoice and identified by brand name and corresponding part number or similar designation provides clarity to BAR's regulations. However, the proposed requirement that ARDs offer to the customer any unused components from a parts kit should be removed from the proposed regulation. Some part kits are universal kits, meaning that extra components may be included to allow repair of various vehicle model/year types. Why would a customer need or want an extra unused rubber washer that wouldn't even fit their vehicle? This requirement is an unnecessary burden to ARD's and provides little or no benefit to consumers.

Response:

In response to the above-listed comments, subdivision (b)(3) was deleted from the proposed regulations. In response to supportive comments submitted by Alisa Reinhardt (for California New Car Dealers Association) during the 45-day comment period and by Johan Gallo (for California Automotive Business Coalition) and Jack Molodanof (for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association) during the subsequent 15-day comment period (see, below), the proposed language permitting ARDs to list parts kits as a single part on an invoice was re-inserted into the regulations as the last sentence of section 3356(b)(2).

Subdivision (d)(1)(D) (previously subdivision (d)(1))

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

As a clean-up measure, the language should be changed from “[t]he specification and cost of additional repairs, parts and labor, and total revised cost” to “the specification and cost of additional repairs, parts, labor, and total revised cost.”

Response:

The comment is rejected. BAR has modified the text in a different manner that makes the regulation clearer and more concise.

Subdivision (d)(2)

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

As a clean-up measure, the language should be changed from "...notice of and consent to the additional repairs, parts, and labor, and total revised cost" to "...notice of and consent to the additional repairs, parts, labor, and total revised cost."

Response:

The comment is rejected. The proposed text is sufficiently clear and understandable without the proposed modification.

Section 3371

Commenter:

Tim Chang for Automobile Club of Southern California

Comment:

The term "dealer" should be revised to "automotive repair dealer" to make it clear that the regulation only applies to ARDs.

Response:

The comment is accepted and the text has been revised.

Subdivision (b)

Commenters:

Alisa Reinhardt, California New Car Dealers Association

Johan Gallo for California Automotive Business Coalition

Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and the California Autobody Association

Comment:

ARDs use multiple phone numbers for different parts of their businesses that are different from the repair shop phone number. This section should be revised to take into account that ARDs

may use several telephone numbers and the language should contain flexibility for land lines, IP phones, cell phones and other communications that are tied to an ARD.

Response:

BAR recognizes that an ARD may have multiple phone numbers for different parts of its business operations and listing all such numbers on an ARD registration application is unnecessary and impractical. During the first 15-day comment period, BAR revised the regulation to require that telephone numbers in advertising and signage be the same as listed in the telephone directory or in the telephone company records if such number is assigned to the dealer subsequent to the publication of such telephone directory. However, after reviewing comments received during the first 15-day notice period, BAR determined that the listing of telephone numbers in advertising or on signage does not need to be regulated beyond Section 3371's general prohibition against publishing or making false or misleading statements or advertisements. Subdivision (b) of section 3371 has been deleted from the regulations.

COMMENTS SUBMITTED DURING 15-DAY PUBLIC COMMENT PERIOD

BAR received written comments from four individuals during the 15-day comment period.

Commenter:

Alisa Reinhardt for California New Car Dealers Association

Comment:

California New Car Dealers Association supports BAR's revised proposal to allow electronic documentation and authorization in the vehicle service and repair context.

Response:

The comment is noted and appreciated.

Section 3303

Subdivision (l) (previously subdivision (m))

Commenter:

Gene Lopez for Seidner's Collision Centers

Comment:

The definition of "section or sectioning" should encompass OEM guidelines. It may be time to review body shop regulations and perhaps revise some of the definitions to protect consumers, repairers and the collision industry.

Response:

The comment is noted. In regard to the instant rulemaking package, the comment is rejected because it does not address any proposed action encompassed by the 15-day notice or the rulemaking procedures followed by BAR.

Section 3352

Subdivision (f)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

We continue to struggle with a lack of definition of the term “electronic” and that fact that it should include “texting” and other future forms of “electronic” communications. The definition of “electronic” should be revised to:

‘[e]lectronic’ means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. This includes, but is not limited to, text messaging or future electronic methods of sending or receiving information.

Response:

The comment is rejected because it does not address any proposed action encompassed by the 15-day notice or the rulemaking procedures followed by BAR. Furthermore, texting is a form of communication encompassed by BAR’s proposed definition of “electronic” and, to the extent future communications technologies meet the definition, they would also be encompassed by the definition.

Section 3353

Subdivisions (c) and (c)(1)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

The deleted text should be added back into the regulations and the following section 3353, subdivision (c)(2 - 4) should be added to the regulations text:

(2) If the authorization from the customer for additional repairs, parts, or labor in excess of the written or electronic estimated price is obtained by electronic communications such as electronic mail (e-mail), text message or other forms of electronic communication, the dealer shall attach to the work order and the invoice a document that converts those text messages and communications to print form, which is signed and dated by the customer, shows the date and time of transmission, and describes the additional repairs, parts, labor and the total additional cost.

(3) If the authorization from the customer for additional repairs, parts, or labor in excess of the written or electronic estimated price is obtained by electronic communications such as electronic mail (e-mail) or text message or other forms of electronic communication, the dealer shall print and attach to the work order and invoice, the e-mail and/or text message authorization, which shows the date and time of transmission and describes the additional repairs, parts, labor and the total additional cost.

(4) The additional repairs, parts, labor, total additional cost, and a statement that the additional repairs were authorized either orally, by e-mail or text messaging shall be recorded on the final invoice pursuant to Section 9884.9 of the Business and Professions Code. All documentation must be retained pursuant to Section 9884.11 of the Business and Professions Code.

Response:

The comment is rejected because it does not address any proposed action encompassed by the 15-day notice or the rulemaking procedures followed by BAR. Furthermore, the revised regulations regarding additional authorizations to be contained in section 3354, and the proposed definition of "electronic" to be contained in BAR regulations section 3352, subdivision (f), have been drafted in a manner to permit authorizations via text message and future electronic communication technologies.

Section 3356

Subdivision (b)(2) and (3)

Johan Gallo for California Automotive Business Coalition
Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association

Comment:

The sentence "[p]arts kits containing several components may be listed as a single part on the invoice and identified by brand name and corresponding part number or similar designation" should remain. This sentence is important because it will formalize policy permitting an ARD to list part kits on the invoice and identify by brand name, part number or similar designation. Keeping the sentence in the regulations will also prevent BAR representatives from requiring an ARD to list every single component of the kit (e.g. rubber washer, etc.) as a part. This sentence provides clarity and consistency and should remain.

Response:

The proposed language has been re-inserted into the regulations as the last sentence of section 3356(b)(2).

Section 3371

Subdivision (b)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

The regulation should be revised as follows:

“The automotive repair dealer shall maintain a telephone number that is identified on its valid registration held on file with the Bureau of Automotive Repair. If an alternate internet telephone number is used by the Automotive Repair Dealer in an advertisement or advertising signs, this number shall refer to the automotive repair dealer's place of business that's registered with the Bureau of Automotive Repair.”

Response:

The comment is rejected. BAR has determined that the listing of telephone numbers in advertising and on signage does not need to be regulated beyond Section 3371's general prohibition against publishing or making false or misleading statements or advertisements. Section 3371 will be deleted from the regulations.

Commenter:

Jack Molodanof for Automotive Service Councils of California, California Automotive Business Coalition and California Autobody Association.

Comment:

Section 3371, subdivision (b) refers to telephone directories such as the outdated "yellow pages". Many ARD's use several different phone numbers in advertising (*e.g.*: internet, online sites, direct mail, print ads, marketing pieces, etc.). These phone numbers are used for tracking purposes and will be different from the telephone number filed with BAR. Although subdivision (b) has been revised to eliminate the requirement that all these phone numbers be reported to BAR, it does not clarify the use of multiple phone numbers for internet and web based advertising and tracking purposes. We suggest either eliminating subdivision (b) as an outdated requirement or in the alternative, replace the existing language with the following: "[i]f a telephone number appears in advertising, the number shall be assigned to the dealer and listed in a marketing directory, online source or similar designation".

Response:

The portion of the comment advocating the deletion of subdivision (b) is accepted. BAR has determined that the listing of telephone numbers in advertising and on signage does not need to be regulated beyond Section 3371's general prohibition against publishing or making false or misleading statements or advertisements.

COMMENTS SUBMITTED DURING SECOND 15-DAY PUBLIC COMMENT PERIOD

BAR received written comments from one individual during the second 15-day comment period.

Section 3352

Subdivision (f)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

We continue to struggle with a lack of definition of the term "electronic" and that fact that it should include "texting" and other future forms of "electronic" communications. The definition of "electronic" needs more specificity to enable shops to comply with the law. The definition should be revised to:

'[e]lectronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. This includes, but is not limited to, text messaging or future electronic methods of sending or receiving information.

Response:

The comment is rejected because it does not address any proposed action encompassed by the second 15-day notice or the rulemaking procedures followed by BAR. Furthermore, texting is a form of communication encompassed by BAR's proposed definition of "electronic" and, to the extent future communications technologies meet the definition, they would also be encompassed by the definition.

Section 3356

Subdivision (i)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

The regulation should be revised as follows:

“The automotive repair dealer shall give the customer a legible paper or electronic copy of the invoice.”

Response:

The comment is rejected because it does not address any proposed action encompassed by the second 15-day notice or the rulemaking procedures followed by BAR. Furthermore, the “invoice” definition has been revised to include “paper or electronic” documents.⁸

Section 3371

Subdivision (b)

Commenter:

Johan Gallo for California Automotive Business Coalition

Comment:

The regulation should be revised as follows:

“Telephone Number. The automotive repair dealer shall maintain a telephone number that is identified on its valid registration held on file with the Bureau of Automotive Repair. If an alternate internet telephone number is used by the Automotive Repair Dealer in an advertisement or advertising signs, this number shall refer to the automotive repair dealer's place of business that's registered with the Bureau of Automotive Repair.”

Response:

The comment is rejected. BAR has determined that the listing of telephone numbers in advertising and on signage does not need to be regulated beyond Section 3371's general prohibition against publishing or making false or misleading statements or advertisements.

⁸ See BAR regulation section 3352(c).