

## **TITLE 16. BUREAU OF AUTOMOTIVE REPAIR**

### **DEPARTMENT OF CONSUMER AFFAIRS**

#### **INITIAL STATEMENT OF REASONS**

Hearing Date: No hearing scheduled.

**Subject Matter of Proposed Regulations:** Citation and Remedial Training Programs for Automotive Repair Dealers

**Articles/Sections Affected:** California Code of Regulations (CCR), Title 16, Division 33, Chapter 1:

Amend Article 11.1

Article 11.1, sections 3394.25, 3394.26, and 3394.27

Amend Article 11.2

Sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46

Add Article 11.3

Article 11.3, sections 3394.50, 3394.51, 3394.52, 3394.53, 3394.54, and 3394.55

Add Article 12.5

Article 12.5, sections 3395.7, 3395.8, 3395.9, and 3395.10

#### **Background and Statement of the Problem:**

The Department of Consumer Affairs (DCA), Bureau of Automotive Repair (BAR or Bureau) is the state agency charged with licensing automotive repair dealers (ARDs), smog check stations, STAR stations, brake and lamp stations, and their respective inspectors, repair technicians, and adjusters. The Bureau is responsible for issuing citations to licensees who conduct smog checks for violations of Health & Safety Code (HSC) 44000 *et seq.* The Bureau, as a designee of the Director of DCA, is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and/or administrative fines for violations by a licensee or contractor of HSC section 44000 *et seq.* and any regulations adopted pursuant those statutes. (Cal. Code Regs., tit. 16, § 3394.25.)

- I. In the event of misconduct such as negligent acts, violations of trade standards, or other violations of concern, the Bureau may issue a citation to an ARD for applicable violations under Business and Professions Code (BPC) section 9882. Though BPC section 125.9 authorizes the Bureau to establish an ARD citation program, the Bureau has not yet implemented this statute in regulation. Currently, when these violations do not rise to a level warranting discipline through an administrative action, the Bureau addresses these violations with the ARD through education efforts such as notification on a Station Inspection Report, and/or various conferences with Bureau representatives. The Bureau needs a tool to address more serious violations of the Automotive Repair Act (Act) that do not rise to the level of an administrative action. When BAR issues a citation, consumers will be able to access this information when BAR posts information to the internet pursuant to BPC section 27. This information will assist consumers in making a more informed decision when choosing a repair facility.

Assembly Bill (AB) 471 (Low, Chapter 372, Statutes of 2021), enacted in 2021, authorizes the Bureau, on or after July 1, 2023, to establish an informal citation appeal process for citations issued to ARDs for violations of the Act. The bill authorizes BAR to create a three-member panel appointed by the Bureau chief to conduct informal citation review conferences. The panel must consist of three members, one representative from the Bureau, one from the public, and one from the automotive repair industry. (Bus. & Prof. Code, § 9882 subd. (a)(2)(A).)

Additionally, AB 471 authorizes the Bureau to create a remedial training program, and process for certifying providers of remedial training, for ARDs that receive a citation for a violation of the Act the Bureau defines as minor in nature. (Bus. & Prof. Code, § 9884.7, subd. (d)(2).) An ARD that successfully completes the remedial training will be able to prevent disclosure of the citation on the internet. (Bus. & Prof. Code, § 9882, subd. (a)(2)(B)(i).) This non-disclosure may be used once every 18 months. (Bus. & Prof. Code, § 9882, subd. (a)(2)(B)(ii).)

In this rulemaking proposal, the Bureau proposes to: (1) amend Article 11.1 and existing sections 3394.25, 3394.26, and 3394.27 of Article 11.1 of Division 33 of Title 16 of the California Code of Regulations (CCR) and sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 of Article 11.2 of the CCR; and (2) adopt sections 3394.50, 3394.51, 3394.52, 3394.53, 3394.54, and 3394.55 in a new Article 11.3, and adopt sections 3395.7, 3395.8, 3395.9, and 3395.10 in a new Article 12.5 of Title 16 to the CCR, as follows:

- Article 11.1 and sections 3394.25, 3394.26, and 3394.27 (Article 11.1). The Bureau will correct gendered pronouns and make clarifying changes to differentiate the smog check citation program in Article 11.1 from the unlicensed activity citation program, and the proposed ARD citation program.
- Sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 (Article 11.2). The Bureau will correct gendered pronouns and make clarifying changes to differentiate the unlicensed activity citation program in Article 11.2 from the smog check citation program, and the proposed ARD citation program.
- The Bureau will create a new Article 11.3 to establish a citation program for Act violations by registrants.
- Section 3394.50 will establish the Bureau's authority to issue fines and orders of abatement for violations of the Act and establish the required contents of citations.
- Section 3394.51 will establish the factors the Bureau will consider when issuing a fine and the amount thereof if a fine is issued.
- Section 3394.52 will establish how registrants shall comply with citations and orders of abatement.
- Section 3394.53 will establish how registrants may contest citations and detail the process for requesting an informal citation review conference.
- Section 3394.54 will establish how the informal citation conference panel is appointed, the process for objecting to members of the panel, disqualification of panel members, and the informal citation review conference hearing process.

- Section 3394.55 will establish registrants' eligibility for nondisclosure of citations on the internet.
- The Bureau will create a new Article 12.5 to establish the remedial training program for cited registrants.
- Section 3395.7 will establish the required elements of the remedial training course required to prevent citation Internet disclosure for eligible registrants.
- Section 3395.8 will establish the application requirements to obtain Bureau certification to teach remedial training courses.
- Section 3395.9 will establish the general course requirements for courses taught by certified remedial training course providers.
- Section 3395.10 will establish the grounds for denial or revocation of certification of remedial training providers.

**Anticipated Benefits from this regulatory action:**

The Bureau's establishment of an ARD citation program for violations of the Act will enhance public protection of the by incentivizing good behavior by registrants. It will deter violations and educate violators of the act when registrants attend remedial training. The establishment of an informal citation conference review process will add a second layer of review for citations and will eliminate unnecessary administrative appeals.

The Bureau's establishment of a remedial training program will enhance public protection by incentivizing violators to obtain additional training on the Bureau's laws and regulations. The Bureau expects training to result in greater adherence to the Bureau's laws and regulations. To ensure the training is effective and beneficial, the Bureau will establish a training provider certification process to make sure that only those with the appropriate expertise offer remedial training.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

A detailed explanation of the proposed amendments follows.

**I. Amendments Common to Multiple Sections.**

**(1.) Capitalize "bureau."**

The Bureau proposes to capitalize "bureau" in sections 3394.40, 3394.42, 3394.44, 3394.45, and 3394.46. This is necessary for consistency throughout the regulations.

**(2.) Replacement of "his/her" with "their."**

The Bureau proposes to capitalize "bureau" in sections 3394.40, 3394.42, 3394.44, 3394.45, and 3394.46. This is necessary for consistency throughout the regulations.

The Bureau proposes to replace “his/her” with “their” in sections 3394.25, 3394.27, 3394.40, 3394.42, and 3394.45. The Bureau proposes this amendment to comply with Assembly Concurrent Resolution (ACR) 260, adopted in 2018, which encourages state agencies to engage in similar efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.

## **II. Amendments to Particular Sections.**

### **(1.) Article 11.1, Administrative Citations and Fines for Motor Vehicle Inspection Program (“Smog Check”) Violations.**

The Bureau proposes to amend the title of Article 11.1, to add “Administrative” before “Citations,” strike the term before “Fines,” add “Motor Vehicle Inspection Program (“Smog Check”) Violations,” and strike “Licensees.”

The purpose of the amendment is to differentiate Article 11.1 for smog check citations from Article 11.2 for unlicensed activity citations, and proposed Article 11.3 for Automotive Repair Act citations.

The Bureau proposes to amend sections 3394.25, 3394.26, and 3394.27 to clarify they apply to violations by smog check licensees. Accordingly, it is necessary to amend the title of Article 11.1 to accurately characterize the content of the sections within it.

### **(2.) Amend section 3394.25, Authority to Issue Administrative Citations and Fines for Smog Check Violations.**

The Bureau proposes to amend the title of the section to add “Administrative” before “Citations,” strike “Administrative” before “Fines,” and add “for Smog Check Violations.”

The purpose of the amendment is to differentiate this smog check citation section from the sections for unlicensed activity citations in section 3394.40 and the proposed Act citations in 3394.50.

This amendment is necessary to clarify the section applies to smog check licensees, as opposed to ARDs or unlicensed individuals. It is necessary to narrow the subject matter in the title because this rulemaking will create another citation program in addition to those addressed in sections 3394.40 and 3394.50. The amendment will eliminate confusion for the public and facilitate charging efforts when initiating discipline.

### **(3.) Amend section 3394.26, Administrative Fine Amounts for Violations by Smog Check Licensees.**

The Bureau proposes to amend the title of the section to add “for Violations by Smog Check Licensees.”

The purpose of the amendment is to differentiate this section from the fine amounts for unlicensed activity in section 3394.43 and the proposed Act citations in section 3394.51.

This amendment is necessary to clarify the section applies to smog check licensees, as opposed to ARDs or unlicensed individuals. It is necessary to narrow the subject matter in the title because this rulemaking will create another citation program in addition to those addressed in sections 3394.43 and 3394.51. The amendment will eliminate confusion for the public and facilitate charging efforts when initiating discipline.

**(4.) Amend section 3394.27, Compliance with Citations/Orders of Abatement Issued to Smog Check Licensees.**

The Bureau proposes to amend the title of the section to add “Issued to Smog Check Licensees.”

The purpose of the amendment is to differentiate this smog check citation compliance section from the compliance sections for unlicensed activity in section 3394.44 and the proposed Act citations in section 3394.52.

This amendment is necessary to clarify the section applies to smog check licensee violations. It is necessary to narrow the subject matter in the title because there will be three different citation programs. The amendment will eliminate confusion for the public and facilitate charging efforts when initiating discipline.

The Bureau proposes to amend subdivision (a) to strike “cited” before “person” and add “cited pursuant to section 3394.25.”

The purpose of the amendment is to clarify the licensee is being cited pursuant to the authority of the smog check citation program.

This amendment is necessary to clarify the regulation applies to persons cited under section 3394.25. As the Bureau is proposing to establish a third citation program, this amendment will clarify the persons to whom the section applies. The amendment will eliminate confusion for the public regarding to whom the regulation applies.

**(5.) Amend section 3394.40, Authority to Issue Citations and Fines for Unlicensed Activity.**

The Bureau proposes to strike “Practice” and add “Activity” to the title of the section.

The purpose of the amendment is to clarify the section applies to unlicensed activity.

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau seeks to replace “practice” with “activity” as it believes “activity” better describes the conduct of licensees’ trade and/or business, and “practice” is more associated with healing arts professions. This amendment is necessary for clarity of the regulation.

**(6.) Amend section 3394.41, Citation Format.**

The Bureau proposes to amend section 3394.1 to add “for unlicensed activity” before “shall be issued ...” in the first sentence of the regulation.

The purpose of the amendment is to differentiate this “citation format” section for unlicensed activity from the similar sections for smog check citation in HSC section 44050(d) and the proposed Act citations in section 3394.50(b).

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau clarifies the regulation by adding what the citation is for since the regulation does not currently state the conduct on which the citation is based. This amendment is necessary for clarity of the regulation.

**(7.) Amend section 3394.42, Citations for Unlicensed Activity.**

The Bureau proposes to strike “Practice” and add “Activity” to the title of the section.

The purpose of the amendment is to maintain consistency with other sections within article 11.2.

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau seeks to replace “practice” with “activity” as it believes “activity” better describes the conduct of licensees’ trade and/or business, and “practice” is more associated with healing arts professions. This amendment is necessary for clarity of the regulation.

**(8.) Amend section 3394.43, Fine Amounts for Unlicensed Activity.**

The Bureau proposes to strike “Practice” and add “Activity” to the title of the section.

The purpose of the amendment is to clarify the section applies to unlicensed activity.

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau seeks to replace “practice” with “activity” as it believes “activity” better describes the conduct of licensees’ trade and/or business, and “practice” is more associated with healing arts professions. This amendment is necessary for clarity of the regulation.

**(9.) Amend section 3394.44, Compliance with Citation/Order of Abatement for Unlicensed Activity.**

The Bureau proposes to add “for Unlicensed Activity” to the title of the section.

The purpose of the amendment is to differentiate this unlicensed activity citation compliance section from the compliance sections for smog check citations in section 3394.27 and the proposed Act citations in section 3394.52, and to clarify what the referenced citation will be issued for.

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau seeks to add “for Unlicensed Activity” as it believes “activity” better describes the conduct of licensees’ trade and/or business, and “practice” is more associated with healing arts professions. This amendment is necessary for clarity of the regulation and clarifies the activity to which the section applies.

The Bureau also proposes to strike “cited” and add “cited pursuant to section 3394.40” before “who” in subdivision (a).

The purpose of the amendment is to clarify the person is being cited pursuant to the authority set forth in section 3394.40.

This amendment is necessary to clarify that the regulation applies to persons cited under section 3394.40. As the Bureau is proposing to establish a third citation program, this amendment will clarify the persons to whom the section applies. The amendment will eliminate any confusion for the public regarding to whom the regulation applies.

**(10.) Amend section 3394.45, Contested Citations and Request for a Hearing or Informal Citation Conference for Unlicensed Activity.**

The Bureau proposes to add “for Unlicensed Activity” to the title of the section.

The purpose of the amendment is to differentiate this unlicensed activity citation “contested citations” section from the “contested citations” for the proposed Act citations.

This amendment is necessary for consistency with other sections to which the Bureau proposes amendments in Article 11.2. The Bureau seeks to add “for Unlicensed Activity” as it believes “activity” better describes the conduct of licensees’ trade and/or business, and “practice” is more associated with healing arts professions. This amendment is necessary for clarity of the regulation and clarifies the activity to which the section applies.

The Bureau also proposes to strike “cited” and add “cited pursuant to section 3394.40” before “may” in subdivision (a).

The purpose of the amendment is to clarify the person is being cited pursuant to the authority set forth in section 3394.40.

This amendment is necessary to clarify that the regulation applies to persons cited under section 3394.40. As the Bureau is proposing to establish a third citation program, this amendment will clarify the persons to whom the section applies. The amendment will eliminate any confusion for the public regarding to whom the regulation applies.

**(11.) Amend section 3394.46, Disconnection of Telephone Service.**

The Bureau proposes to amend section 3394.46 to add “for unlicensed activity” before “issued to any person.”

The purpose of the amendment is to clarify this “disconnection of telephone service” provision is specific to the unlicensed activity citation program.

This amendment is necessary to clarify the disconnection of telephone service is only applied to those committing unlicensed activity. BPC section 149 provides if the Bureau has probable cause to believe that a person is advertising the offering or performance of services, without being properly licensed by or registered with the Bureau, the Bureau may issue a citation under BPC section 148 containing an order of correction. The order of correction may require the violator to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. As

written, the regulation erroneously implies telephone service can be disconnected for any conduct. However, section 149 only authorizes disconnection for those participating in unlicensed activity.

**(12.) Adopt Article 11.3 Administrative Citations and Fines for Automotive Repair Act Violations by Registrants.**

The Bureau proposes to adopt a new Article 11.3 to establish a new citation program for ARDs.

The purpose of the amendment is to establish the new citation program for Act violations as required by AB 471.

This is necessary because the Bureau does not currently have a citation program for violations committed by ARDs, even though the Bureau has statutory authority to establish one in BPC sections 125.9 and 9882. Thus, the Bureau is proposing to adopt Article 11.3 to establish a section for regulations relating to this program. Creation of a new Article is necessary to maintain organization of the regulations and will provide clarity and eliminate confusion regarding how violations by ARDs are addressed.

Presently, when violations do not rise to a level warranting disciplinary action, the Bureau addresses these violations with the ARD through various education efforts and conferences. The purpose of these preliminary efforts is to discuss an allegation or violations identified usually through the investigation of consumer complaints. These education efforts are the Bureau's attempt to gain voluntary compliance before escalating the matter to discipline.

These education efforts have had mixed results as thousands of ARDs repeatedly violate the Act, leading the Bureau to conclude education may not be the most effective way to address the violations. The Bureau lacks a tool to address violations in the Act that do not rise to the level of an administrative action and an inability to provide consumers that important information so they can make an informed decision. Accordingly, it adopts this Article to establish a new citation program for these violations.

**(13.) Adopt section 3394.50, Authority to Issue Citations, Fines, and Orders of Abatement to Automotive Repair Dealers and Citation Format.**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide "The Bureau chief or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by registrants of the Act or any regulation adopted pursuant thereto in this Division."

The purpose of this subdivision is to establish who is authorized to issue citations and against whom citations may be issued.

This subdivision is necessary to establish who possesses the authority to issue citations to registrants for violations of the Act or the Bureau's regulations. BPC section 125.9 authorizes the Bureau to establish such a program, and to issue orders of abatement and fines. The issuance of fines and orders of abatement is necessary for protection of the public, and discouragement of violations by registrants. Fines also serve as a penalty for committing violations of the Act and a deterrent against future violations.

### **Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute(s) and/or regulation(s) alleged to have been violated. The citation shall inform the cited person of the right to contest the citation, the requirements for requesting an informal citation review conference or administrative hearing in section 3394.53, and the compliance requirements set forth in section 3394.52. The citation shall be served upon the cited person personally or by registered mail pursuant to Section 11505(c) of the Government Code.”

The purpose of this subdivision is to establish what information is required to be included on each citation.

BPC section 125.9 provides that citations “shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.” (Bus. & Prof. Code, § 125.9, subd. (b)(1).) Subdivision (b) of the regulation mirrors this statutory requirement and specifies the citation will contain a reference to either the statute or regulation violated. This ensures the registrant is placed on notice of the provision of law violated and can marshal a defense.

Section 125.9 also requires the citation to “inform the licensee that if the licensee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the [Bureau] within 30 days of the date of issuance of the citation or assessment.” (Bus. & Prof. Code, § 125.9, subd. (b)(4).) This subdivision implements that requirement, informs the cited person they have a right to request an informal review conference pursuant to newly adopted section 3394.53, and directs them where to find the Bureau’s rules regarding how to comply with a citation in new section 3394.52. This is necessary so cited persons know their rights to contest a violation, and how to comply with citation orders.

Finally, this subdivision states how the cited person will be served in accordance with Government Code section 11505(c). This ensures the cited person receives adequate notice of the citation so they may exercise the rights provided by the regulation.

**(14.) Adopt section 3394.51, Administrative Fine Amounts, Orders of Abatement, and Citation Factors for Registered Automotive Repair Dealer Violations.**

### **Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide “The citation shall include an order of abatement and may include a fine not to exceed the amount specified in Section 125.9 of the Code.”

The purpose of the amendment is to establish the required elements of a citation.

BPC section 125.9 requires a citation program provide for an order of abatement and for a fine not to exceed \$5,000 for each inspection or investigation. (Bus. & Prof. Code, § 125.9, subds. (b)(2) and (3).) This subdivision is necessary to implement the requirement to inform cited persons what orders citations may contain. The issuance of fines and orders of abatement is necessary for protection of the public, and discouragement of violations by registrants. Fines also serve as a penalty for committing violations of the Act and a deterrent against future violations.

### **Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to set forth the factors the Bureau will consider in determining whether to impose a fine and the amount thereof if imposed.

The purpose of this subdivision is to specify the facts and circumstances the Bureau will consider when determining whether to impose a fine in the amount thereof if imposed.

The Bureau specifies nine factors it will consider in deciding whether to impose a fine on a registrant and if issued, the amount thereof. It utilizes these factors to communicate to registrants the Bureau is not arbitrarily deciding to issue a fine and amounts but will base its decision on multiple factors. These factors are necessary to provide due process to registrants and for the Bureau to consider all aggravating and mitigating facts in assessing fines.

#### *The nature and gravity of the violation.*

This factor means the Bureau will consider the kind of violation and the seriousness of the conduct. For instance, if the violation is one that threatened the safety of consumers, the Bureau would be likely to find the conduct aggravated under this factor. To the extent the Bureau finds the conduct serious and more likely to cause such harm, this would weigh in favor of issuing a fine, and factor into the amount of such a fine if one is imposed.

#### *The registrant's history of violations and/or the number of violations found in the investigation.*

This factor means the Bureau will consider whether the registrant repeatedly violates the Bureau's statutes and regulations. To the extent a registrant has committed past violations, this would weigh in favor of issuing a fine, because they have shown an inability or unwillingness to conform their conduct to the law. Similarly, if the registrant has committed more than one violation, this is more blameworthy, and would weigh in favor of issuing a fine, and factor into the amount of such a fine if one is imposed.

#### *The good or bad faith of the registrant, including any training regarding the subject matter of the violation prior to the issuance of the citation.*

This factor means the Bureau will weigh whether the registrant acted in good or bad faith in committing the violation. For instance, if the registrant was trained in the relevant subject matter yet still committed a violation, this may weigh in favor of finding good faith on the part of a registrant and weigh against issuing a fine. Conversely, if the registrant committed a violation because of inadequate training, this may show bad faith and weigh in favor of issuing a fine and factor into the amount of such a fine if one is imposed.

By using the criteria to evaluate the good or bad faith of the licensee, the Bureau is evaluating the ARD's conduct of honesty and blameworthiness with respect to the violation when considering a fine. This factor will incentivize cooperation with the Bureau in attempts to comply with the Act. Additionally, by including any training regarding the subject matter of the violation prior to the issuance of the citation as a factor of mitigation or aggravation, the Bureau is evaluating any proactive attempts by the ARD to ensure compliance with the Act and what, if any, success the ARD has had in those attempts when determining the fine amount. This is intended to encourage ARDs to proactively train their personnel on BAR's laws and regulations, which will benefit the ARD, and their consumers.

*The failure to perform work for which money was received.*

This factor means the Bureau will consider whether the registrant failed to perform work for which they were paid. Typically, when money is exchanged for a service or repair work performed, or to be performed, there is a contractual agreement, and failure to perform when money is received is a breach of the contract. This conduct is considered a more serious violation as the registrant received money they were not entitled to, and the consumer paid for repair work they did not receive. This would weigh in favor of finding the conduct more serious and more deserving of a fine.

*The extent to which the registrant has made restitution to affected consumers, or mitigated or attempted to mitigate any damage or injury caused by the violation.*

This factor means the Bureau will consider whether the registrant made restitution to the consumer, e.g., refunded money to compensate the injured consumer, and whether they mitigated the damage or injury they caused by the violation. If the ARD took steps to correct the error and make the consumer whole, the Bureau would find this mitigating in imposing any fine and the amount of the fine. This factor is intended to encourage ARDs to remedy situations prior to Bureau involvement, and/or accept Bureau suggestions that would compensate for any damages suffered due to a violation.

*Whether the violation was a willful or inadvertent error.*

This factor means the Bureau will weigh whether the ARD's conduct was intentional. When the Bureau finds the registrant made an inadvertent error, this would be a mitigating factor as the violation was unintentional and may be corrected through education. However, if the Bureau finds the registrant intentionally committed a violation of the Act, then this would be an aggravating factor as it was not a mistake or a lack of education, but rather an intentional decision.

*The degree of negligence in the maintenance, care, custody and/or repair of any affected motor vehicle.*

This factor means the Bureau will weigh the degree of negligence involved in the registrant's violation. This is intended to encourage ARDs to perform repairs in a good and workmanlike manner in accordance with accepted trade standards, and to properly care for consumers' vehicles in their custody. When a registrant is negligent in the maintenance, care, custody and/or repair of a customer's vehicle, this demonstrates a disregard for their customer's property and safety and is considered an aggravating factor.

*The extent to which the registrant owners, directors, officers, partners, members, trustees, or responsible managing employee(s) performed any of the act(s) resulting in the violation(s).*

This factor means the Bureau will analyze who is responsible for engaging in the conduct. When the Bureau finds that the controlling individual's failure to exercise effective oversight of their employees or personally engaged in the conduct for which the ARD is being cited, this is an aggravating factor that the Bureau will consider when determining a fine amount. This is intended to encourage effective oversight of the ARD by these controlling individuals.

*The extent to which the registrant has cooperated with the Bureau's investigation.*

This factor means the Bureau will consider the extent to which the registrant has cooperated in and demonstrated good faith in the investigation. This is to evaluate the ARD's cooperation or obstruction in the Bureau's investigation of the issue that resulted in the issuance of the citation. The factor of mitigation or aggravation will be used by the Bureau to evaluate the amount of an administrative fine and is intended to incentive ARD cooperation with BAR investigations.

**(15.) Adopt section 3394.52, Compliance with Citation/Order of Abatement for Automotive Repair Dealers; Remedies for Non-Compliance.**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide "If a person cited pursuant to section 3394.50 who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond their control after the exercise of reasonable diligence, the cited person may request an extension of time in which to complete the correction from the Bureau chief. Such a request shall be in writing and made within the time set forth for abatement."

The purpose of this subdivision is to establish how a cited person may request an extension of time in order to comply with an order of abatement.

This subdivision is necessary to ensure cited persons understand how to request an extension of time to comply. Issues may arise to hinder or impact a registrant's ability to comply with the Bureau-issued order of abatement. The Bureau requires a registrant to demonstrate reasonable diligence in order to obtain such an extension to show good faith in attempts to comply with the order, e.g., some attempt to make payment of comply with an order. This subdivision is consistent with the existing citation programs for smog check and unlicensed activity at sections 3394.27(a) and 3394.44(a) respectively.

**Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide "If a citation is not contested as provided in section 3394.53, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a material failure to comply with the provisions of the Act or regulations for which the person was cited. If a hearing is not requested pursuant to this article, payment of any fine shall not constitute an admission of the violation charged."

The purpose of this subdivision is to establish the consequences of failure to comply with abatement orders and fines.

This subdivision is necessary to establish consequences of a registrant's failure to comply with abatement orders and fines. Failure to comply with an order of abatement and/or failure to pay the required fine will constitute a non-trivial, material violation of the Act that may result in disciplinary action under BPC section 9884.7(a)(6). The section provides the cited person's payment of the fine will not be considered an admission of guilt to incentivize timely payment of fines. This subdivision is consistent with the existing unlicensed activity citation program at section 3394.44(b).

### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide "In addition to any other fines, penalties, and other remedies available to the Bureau, failure to timely comply with an order of abatement or pay an assessed fine as provided in subdivision (b) shall constitute a ground for disciplinary action."

The purpose of this subdivision is to establish failure to comply with abatement orders and fines may result in disciplinary action.

This subdivision is necessary to implement BPC section 125.9(b)(5) and inform a cited person if the Bureau finds a material failure by failing to comply with an order of abatement or failing to pay the required fine, then the Bureau may take disciplinary action in accordance with BPC section 9884.7(a)(6). This subdivision places the registrant on notice that failure to comply with the citation/order of abatement may adversely impact their registration with the Bureau. This section is intended to encourage a cited person to comply with orders of abatement and pay fines in a timely fashion. This subdivision is consistent with the existing unlicensed activity citation program at section 3394.44(c).

### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide "An assessed fine shall be paid within 30 days of the date of receipt of a citation, or as applicable, a final affirmed or modified citation as provided in section 3394.53. If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license or registration renewal fee. A license or registration shall not be renewed without payment of the renewal fee and fine. "Final" for the purposes of this section shall mean: the Bureau's decision has become effective, the cited person did not submit a written request to contest the citation as required by section 3394.53, and the timeframe for submitting such a request under 3394.53 has passed."

The purpose of this subdivision is to establish when a fine must be paid and the consequences of failure to timely pay the fine after the citation is final.

This subdivision is necessary to implement BPC section 125.9(b)(5) and establish a 30-day timeframe for payment of the assessed fine. It establishes this timeframe by reference to the finality of affirmed or modified citations so a cited person knows when the fine must be paid if they have chosen to appeal a citation. The section implements the requirements of section 125.9(b)(5) by providing unpaid fines are added to a license renewal and provides that a license shall not be renewed without payment of the renewal fee and fine. These consequences incentivize timely payment of a fine and protect the public when the registrant

has not timely paid their fine. This subdivision provides the Bureau authority to hold the registrants accountable for their violations as well as encourage compliance. This subdivision is consistent with the smog check and unlicensed activity citation programs at sections 3394.27(b) and 3394.44(d) respectively.

**(16.) Adopt section 3394.53, Contested Citations; Informal Citation Review Conferences; and Hearings for Automotive Repair Dealers.**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (b) to provide “A cited person may contest the citation, request an informal citation review conference or administrative hearing, and obtain a decision on their appeal according to the procedures set forth in subdivisions (b)-(f).

The purpose of this subdivision is establishing the options available for contesting a citation.

This subdivision is necessary to establish how cited persons may contest citations and what pathways exist for contesting a citation.

**Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “The person cited may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation review conference to the Bureau chief or their designee.”

The purpose of this subdivision is to establish the timeframe in which a cited person may request an information citation review conference, if they wish, before requesting an administrative hearing.

This subdivision is necessary to provide the timeframe in which a registrant may contest a citation through an informal citation review. The Bureau adopts the same 30-day timeframe and the requirement the request must be in writing to be consistent with the smog check citation program HSC section 44051(b)(1). The Bureau chooses a 30-day timeframe for the request for consistency with BPC section 125.9 which requires compliance with a citation within 30 days.

**Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “Upon receipt of a written request for an informal citation review conference, the Bureau chief or their designee, shall within 90 days of receipt of the request, hold an informal citation review conference with the cited person. The cited person may be accompanied and represented by legal counsel and/or an authorized representative. The hearing shall be limited in scope to the time period, facts, and allegations specified in the citation served by the Bureau.”

The purpose of this subdivision is to establish when the Bureau will act upon a request for an informal citation review conference, who may accompany a cited person to the conference, and the scope of the conference.

This subdivision is necessary to establish the timeframe in which the Bureau will hold an informal citation review conference with the cited person. The Bureau establishes a 90-day timeframe for acting upon a registrant's request to provide the Bureau with sufficient time to perform the necessary administrative functions to schedule the conference, establish a conference panel, and provide the cited person with adequate time to prepare a defense. The 90-day timeframe to conduct the informal citation review conference is longer than the other existing citation programs, which have a 60-day timeframe to conduct informal citation review conference. This additional time is necessary due to the potential for scheduling conflicts occurring more frequently with a 3-person informal appeal panel rather than conferences held solely with the Bureau chief's designee. Additionally, more time may be needed to hold a citation review conference in cases where there are objections to one or more panel members. The Bureau provides the cited person the ability to be accompanied by a legal and/or other authorized representative to assist the cited person during the hearing and to ensure due process as the conference is a legal proceeding. The Bureau limits the scope of the conference to ensure the conference is focused on relevant factors and mitigating circumstances specific to the allegations included on the citation.

#### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide "When an informal citation review conference is held, the Bureau chief or their designee, may affirm, modify, or dismiss the citation, including any fine levied, order of abatement, or order of correction issued, at the conclusion of the informal citation review conference."

The purpose of this subdivision is to outline the possible results after an informal citation review conference is held.

This subdivision is necessary to establish what may potentially occur after an informal citation review conference is held. This subdivision provides the context for a cited person's options when a citation has been affirmed or dismissed, or is modified, as explained in subdivisions (e)(1) and (e)(2). This provision is consistent with the existing smog check citation program in HSC section 44051(b)(3) and the unlicensed activity citation program at section 3394.45(b).

#### **Subdivision (d)(1)**

The Bureau proposes to adopt subdivision (d)(1) to provide "If affirmed or dismissed, the Bureau chief or their designee shall state in writing the reasons for the findings and transmit within ten (10) days a copy of the decision to the cited person and the person's counsel and/or authorized representative, if any."

The purpose of this subdivision is to establish the content of the decision and timeframe for the Bureau's decision when the Bureau is affirming or dismissing a citation after holding the informal citation review conference.

This subdivision is necessary to afford due process to a cited person by explaining the Bureau's reasoning for affirming or dismissing a citation, and to communicate when such a decision will be provided. In the Bureau's experience, 10 days is a reasonable timeframe for the Bureau to prepare a written decision and send the decision to the cited person. This subdivision is consistent with the existing smog check citation program at HSC 44051(b)(3) as it relates to affirming or dismissing the citation.

### **Subdivision (d)(2)**

The Bureau proposes to adopt subdivision (e)(2) to provide "If modified, the citation originally issued shall be considered withdrawn and a new citation issued. The new citation, including reasons for the decision, shall be mailed within ten (10) days to the cited person and the person's counsel and/or authorized representative, if any."

The purpose of this subdivision is to establish what occurs if the Bureau modifies a citation after holding an information citation review conference, and what the cited person will receive and when the Bureau modifies the citation.

This subdivision is necessary to afford due process to a cited person by explaining the Bureau's reasoning for modifying a citation, and to communicate when a registrant will receive the new citation. In the Bureau's experience, 10 days is a reasonable timeframe for the Bureau to prepare a new citation with reasons for the decision and send it to the cited person. This provision is consistent with the existing smog check citation program at HSC section 44051(b)(3) and the unlicensed activity citation program at section 3394.45(c) as it relates to issuing a modified citation.

### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e)(2) to provide "If the cited person wishes to contest the decision or the new citation pursuant to Section 125.9 of the Code, the person shall, within 30 days after service of the decision or new citation, contest the decision or the new citation by submitting a written request for an administrative hearing to the Bureau chief or their designee. An informal citation review conference shall not be held on affirmed or modified citations."

The purpose of this subdivision is to establish how a cited person may challenge the decision made by the Bureau after the informal citation review conference.

This process derives from BPC section 125.9(b)(4), which provides a licensee, who desires a hearing to contest the finding of a violation, 30 days from the date of the issuance of the citation to request a hearing. The Bureau will not allow informal review of affirmed or modified citations for consistency with HSC section 44051(b)(4) and section 3394.45(c), and to bring finality to the matter as it would not be efficient for the Bureau to keep reconsidering the same facts.

### **Subdivision (f)**

The Bureau proposes to adopt subdivision (f) to provide "If the decision or new citation is not contested, then the informal citation review conference decision shall be deemed to be the final order with regard to the citation issued."

The purpose of this subdivision is to establish the informal citation review conference decision is final if the decision or new citation is not contested.

This is necessary to provide the decision is considered “final” if it is not contested. This establishes an end to the process and is consistent with section 3394.45(b) regarding unlicensed activity. This establishes the appeals process has come to an end, no further challenges to the citation may be made, and the registrant shall comply with all orders made in the citation.

**(17.) Adopt section 3395.54, Informal Citation Review Conference Panel**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide “For the purposes of conducting the informal citation review conference and rendering a decision pursuant to section 3394.53, a panel of three representatives (“panel”) shall be appointed by the Bureau chief. The panel shall be composed of one representative each from the Bureau, the public, and the automotive repair industry, which shall render a decision by majority vote. The members of the panel shall serve at no expense to the Bureau.”

The purpose of this subdivision is to establish the three-person panel required by BPC section 9882(a)(2)(A).

This subdivision is necessary because BPC section 9882(a)(2)(A) requires a three-member panel to preside at informal citation conferences, with one representative each from the bureau, the public, and the automotive repair industry. This subdivision implements this requirement. Those serving on the panel will be volunteers that receive no compensation for that service, as the statute does not authorize reimbursement. The panel will require a majority vote when rendering a decision on a citation review, to ensure there is agreement among at least two of the three members, and to allow for the possibility that one member may disagree. Requiring a majority vote ensures integrity, correctness, and a timely resolution. Requiring a unanimous vote may be difficult to achieve and could delay the informal citation review conference process.

**Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “Once a request for informal citation review conference has been received, the Bureau shall notify the cited person of the composition of the panel, including the name of each appointed panel member, within 14 days of the date of receipt of the request. The cited person may provide a written objection to the appointment of any panel member for any of the reasons set forth in subdivision (e) within 14 days of the date of receipt of the Bureau’s panel appointment notice. The objection shall include all of the following: the reason for the objection, copies of all evidence and argument on which the cited person relies when the written objection is filed, and the authorized signature, title, and contact information (telephone, email, or mailing address) of the person submitting the objection on behalf of the cited person, if any.”

The purpose of this subdivision is to establish a process for cited persons to object to informal citation conference review panels.

This subdivision is necessary to explain the process for objecting to panel members once a cited person requests an informal citation review conference. The Bureau notifies the registrant of the identity of panel members so the cited person can determine if they have any grounds for objection of those members. The Bureau provides registrants 14 days in which to

make a written objection to give them sufficient time to submit their objection and not unduly delay the conference. The objection must include the reason for the objection so the Bureau knows why the cited person is objecting and all evidence and arguments on which the objection is filed so that the Bureau can fully understand the background of the objection. The Bureau requires an authorized signature, title, and contact information so that Bureau can contact the person filing the objection.

#### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “All evidence and argument regarding the objection shall be considered by the Bureau chief. The Bureau chief shall make the final decision on the composition of the panel before the informal citation review conference is held and shall send written notice of their decision at least 14 days before the date set for the informal citation review conference. There shall be no oral hearing or further administrative review of this decision.”

The purpose of this subdivision is to establish a process for the Bureau chief’s consideration of objections to panel members.

This subdivision is necessary to outline what the Bureau chief will consider in evaluating an objection and that the Bureau chief makes the final decision regarding an objection. Fourteen days is adopted as the time for decision as this is sufficient time for the chief to provide the decision and does not unduly delay the conference. As the Bureau chief is independent of the panel, they can render a decision on the objection. Accordingly, the subdivision provides no hearing or administrative review is necessary.

#### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide “The Bureau chief may establish multiple panels as necessary to carry out the informal citation review conference process within the timeframes specified in section 3394.53.”

The purpose of this subdivision is to ensure the Bureau meets the timing requirements set forth in subdivision (c) of this section and section 3394.53(c).

This subdivision is necessary to ensure timely resolutions at informal citation review conferences. The statute is ambiguous as to how many panels can be established and appointed. This subdivision ensures availability of adequate panels in the event of an objection(s) to members.

#### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e) to provide “A panel member shall be subject to disqualification from participating in any informal citation review conference in which the member cannot accord a fair and impartial decision, including for the following reasons[.]”

The purpose of this subdivision is to establish the grounds on which panel members must disqualify themselves or registrants may make objections to panel members.

This subdivision is necessary to provide the bases on which an informal conference panel member may be disqualified from hearing a conference. Fair and impartial decision is the core of the informal citation review conference. If a panel member is unable to remain fair and/or impartial or accord a decision based on impartiality, then a registrant cannot be afforded due process.

### **Subdivision (e)(1)**

The Bureau proposes to adopt subdivision (e)(1) to provide a disqualification ground “for bias, prejudice, or interest in the proceeding as provided by Government Code section 11425.40 or Government Code section 87100;”

The purpose of this subdivision is to establish a panel member can be removed for bias, prejudice, or interest in the proceeding.

This subdivision is necessary because, if a panel member is biased, prejudiced, or has an interest in the informal citation conference, they should be subject to removal as a panel member so as not hinder a registrant's due process rights to a fair and impartial proceeding.

Government Code section 11425.40(a) provides “the presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.” Section 11425.40(b) explains what grounds would not alone or in itself be enough for disqualification. Government Code section 87100 provides “[a] public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” In citing these Government Code sections in this subdivision, the Bureau intends these concepts to inform potential removal of a panel member under this subdivision.

### **Subdivision (e)(2)**

The Bureau proposes to adopt subdivision (e)(2) to provide a disqualification ground “for receipt of an impermissible *ex parte* communication as provided in Government Code section 11430.10, the effect of which cannot be eliminated as provided in Government Code section 11430.40 and as determined by the Bureau chief;”

The purpose of this subdivision is to establish a panel member may be disqualified for engaging in impermissible *ex parte* communications.

This subdivision is necessary because, as with pending litigation, it is improper for one party to discuss a pending matter with the assigned judge without the other party(ies) present. If a matter is pending before the informal citation conference, the parties shall not communicate individually with the panel members collectively or individually unless notice is provided, and all parties are able to participate in that communication. This is to ensure fairness of the informal citation conference as well as establish confidence in the process. This lends credibility to the proceedings and mitigates any potential abuse of process, unfairness, and bias.

Government Code 11340.10(a) instructs that “[w]hile the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the

communication." Government Code section 11430.40 provides "[i]f, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50." In citing these Government Code sections in this subdivision, the Bureau intends these concepts to inform potential removal of a panel member under this subdivision.

### **Subdivision (e)(3)**

The Bureau proposes to adopt subdivision (e)(3) to allow disqualification "to maintain the separation of the adjudicative function from the investigative, prosecutorial, and advocacy functions as required by Government Code section 11425.30[.]"

The purpose of this subdivision is to establish a panel member may be disqualified for prior knowledge of the reason for citation.

This subdivision is necessary to disqualify any panel member who has served as investigator, prosecutor, or advocate in the proceeding or its pre-adjudicative stage. (Gov. Code, § 11425.30, subd. (b)(1); see also, Gov. Code, § 11425.30, subd. (c).) This would preclude anyone who participated in enforcement on the citation from acting as a panel member. To allow such a person to serve as both the investigator and informal appeal panel member would be unfair to the cited person due to the knowledge that person gained during investigation.

### **Subdivision (e)(4)**

The Bureau proposes to adopt subdivision (e)(3) to allow disqualification "for any of the grounds specified in Code of Civil Procedure section 170.1."

The purpose of this subdivision is to establish a panel member may be disqualified for any of the grounds set forth in Code of Civil Procedure section 170.1.

This subdivision is necessary to disqualify panel members if any of the grounds in section 170.1 apply. These grounds include, for instance, personal knowledge of the proceeding, a financial interest in the subject matter of the proceedings, and/or bias or prejudice against a lawyer in the proceedings. (Code Civ. Proc., § 170.1, subds. (a)(1)(A), (a)(3)(A), & (a)(6)(B).) The Bureau finds the grounds set forth in section 170.1 inclusive of the universe of potential grounds that would warrant removal of a panel member since their role as panel member is analogous to the role of judge in other legal proceedings.

### **Subdivision (f)**

The Bureau proposes to adopt subdivision (f) to provide "A panel member who is subject to disqualification shall voluntarily disqualify themselves from a proceeding. If a panel member is absent or unable to serve before an informal citation review conference is held, another panel member shall be assigned to the panel by the Bureau chief in order to maintain the composition of the panel as provided in this section. If the panel member is unable to participate after an informal citation review conference is held, but before a decision is rendered, the matter shall be reheard with a new panel appointed by the Bureau chief."

The purpose of this subdivision is to establish a panel member must disqualify themselves when the grounds set forth in subdivision (e) exist, and how the conference must proceed thereafter.

This subdivision is necessary to provide panel members must determine whether any grounds set forth in subdivision (e) exist and must self-disqualify without the need for a cited person's objection to their hearing a matter. This is necessary because there may be times when a panel member knows of grounds to disqualify themselves that the cited person may not know. Requiring a panel member to disqualify themselves ensures fairness in the proceedings in these instances. Because BPC section 9882(a)(2) requires a three-member panel, this subdivision is necessary to explain how vacancies will be filled to comply with that requirement. Additionally, if for any reason a panel loses a member during the informal citation conference process where a decision is not rendered, a new hearing is needed where there are three individuals in the panel. The statute requires matters to be heard by a three-member panel, so if three members do not hear a matter to its conclusion, the process must begin anew.

### **Subdivision (g)**

The Bureau proposes to adopt subdivision (g) to provide "For the purposes of this section "impermissible *ex parte* communication" shall include direct or indirect communication between any panel member and/or any party to the proceeding including investigative or prosecutorial staff of the Bureau and/or the cited person's legal counsel and/or authorized representative regarding any pending issue to be decided during the citation review conference without notice and opportunity for all parties to participate in the communication. As used herein, "pending" shall mean between the time the Bureau receives a written request for an informal citation review conference and the time the informal citation review panel affirms, modifies, or dismisses the citation. Communications involving matters not in controversy as specified in Government Code sections 11430.20 and 11430.30 shall not be considered impermissible."

The purpose of this subdivision is to define what conduct is considered an "impermissible *ex parte* communication" in subdivision (e)(2) means.

This subdivision is necessary to provide a definition of "impermissible *ex parte* communication" as used in subdivision (e)(2), and to define when an informal citation review conference is considered "pending" for the purposes of establishing when the defined conduct is impermissible. This subdivision also permits communications involving matters "of procedures or process" (Gov. Code, § 11430.20), and communication with the panel for the purposes of providing assistance or advice, such as a technical issue, or evaluating the evidence in the record, as long as that assistance or advice is not from someone otherwise prohibited to do so. (Gov. Code, § 11430.20.) This definition is necessary for clarity of this section.

### **Subdivision (h)**

The Bureau proposes to adopt subdivision (h) to provide "The Bureau chief has discretion to remove any member of the panel at any time and for any reason, including for absence or unavailability, failure to proceed in the manner required by this article, or for any of the reasons set forth in subdivision (e)."

The purpose of this subdivision is to authorize the Bureau chief to remove panel members on specified grounds and other grounds where removal appears necessary to maintain integrity of the process.

As the Bureau chief appoints panel members, the Bureau chief is authorized to remove any panel member should an issue arise that impedes the discharge of a panel member's duties and responsibilities to the panel. BPC section 9882(a)(2)(A) requires panel members to be "independent," which the Bureau interprets to require removal of members inability to be impartial or to follow the rules regarding their appointment. A panel member's neglect of their duties, incompetence, or unprofessionalism may constitute a threat to the integrity of the informal review process. Accordingly, the Bureau chief must be able to exercise their appointment authority to remove such a member and appoint a new member as necessary. This subdivision will also promote consumer protection as it ensures the panel is comprised of members who take their panel responsibilities seriously and who are committed to the integrity of the process.

#### **Subdivision (i)**

The Bureau proposes to adopt subdivision (i) to provide "This section shall become operative on [OAL Insert earliest quarterly effective date on or after July 1, 2023]."

The purpose of this subdivision is to establish when this section becomes operative.

This is necessary to establish the effective date of this subdivision after the regulations are adopted. BPC section 9882(a)(2)(A) provides the informal citation review conference may be included in the citation program on or after July 1, 2023.

**(18.) Adopt section 3394.55, Nondisclosure of Citation for Automotive Repair Dealers.**

#### **Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide "The Bureau shall offer an automotive repair dealer that is eligible remedial training to prevent public disclosure on the Internet of a citation that has become effective, as required by Section 27 of the Code, if the requirements in subdivision (b) are met. This offer of remedial training shall be included with the citation notice and shall describe the eligibility criteria and process for completing the training as specified in this section."

The purpose of this subdivision is to implement BPC section 9882(a)(2)(B)(i) which authorizes an ARD who attends remedial training to, upon successful completion of remedial training, to prevent disclosure of the citation on the internet as provided in BPC section 27.

This subdivision is necessary to establish the system by which an ARD may prevent disclosure of a citation after attending remedial training. Presently, under BPC section 27, when a licensee has received a decision, an accusation, or a citation, the matter is published on the Bureau's website as required by BPC section 27. The matter stays online in accordance with the Bureau's records retention schedule. As such, the licensee has no available option in removing the publication. This subdivision provides the offer will be included in the citation notice with the eligibility criteria so registrants will be aware of this right at the outset. This system will incentivize registrants to take the training to prevent disclosure, and this will further consumer protection by having a better trained licensee population.

## **Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “For an automotive repair dealer to be eligible for the remedial training set forth in subdivision (a), the following shall apply[.]”

The purpose of this subdivision is to enumerate the eligibility criteria for the remedial training.

This subdivision is necessary to enumerate the violations for which remedial training may not be taken. BPC section 9884.7(d)(2) requires remedial training to be available only for violations involving documentation or recordkeeping, or that the bureau determines to be minor in nature. This subdivision introduces the violations that are not eligible for remedial training.

### **Subdivision (b)(1)**

The Bureau proposes to adopt subdivision (b)(1) to provide “The citation shall not be for a violation of Section 9884.7(a)(1), with respect to the issuance of certificates of compliance under Section 9888.6(a), Section 9884.7(a)(4), or Section 9884.7(a)(5) of the Code.”

The purpose of this subdivision is to establish the violations for which remedial training is not available.

This subdivision is necessary to exempt from remedial training any violations the Bureau deems to be not minor in nature. Section 9884.7(d)(2) does not permit remedial training for a violation constituting fraud. The Bureau has also determined that a violation of section 9884.7(a)(5), “conduct constituting gross negligence,” and section 9884.7(a)(1) with respect to the issuance of certificates of compliance under Section 9888.6(a), are not minor in nature and remedial training should not be available to an ARD that violated those sections. Gross negligence is an extreme deviation from an ordinary standard of care. Issuance of a vehicle inspection certificate of compliance to a vehicle with safety systems that do not meet the inspection criteria and standards possess an extreme threat to the public. Therefore, in the case of these two sections, the Bureau has determined it is not in the public interest to prevent internet disclosure of the violation.

### **Subdivision (b)(2)**

The Bureau proposes to adopt subdivision (b)(2) to provide “The automotive repair dealer meets the requirements for remedial training pursuant to Section 9882(a)(2)(B)(ii) and the cited person is within the categories of eligible persons set forth in Section 9884.7(d)(1). The registrant and/or other persons who directly or indirectly controls or conducts the business as provided in Section 9884 of the Code and section 3351 shall attend and successfully complete the remedial training.”

The purpose of this subdivision is to define who is eligible to complete the remedial training for the ARD.

This subdivision is necessary to except ineligible persons from attending remedial training. To be eligible for citation nondisclosure, the automotive repair dealer shall not have attended remedial training in the prior 18-month period from the effective date of citation. (Bus. & Prof. Code, § 9882, subd. (a)(2)(B)(ii).) BPC section 9884.7(d)(1) provides the remedial training program is for automotive repair dealers who have violated the Act, employees of automotive repair dealers who have violated the Act, and persons identified pursuant to BPC section 9884 as directly or indirectly controlling or conducting an automotive repair dealer business that has violated the Act. The Bureau places all of these eligibility criteria in one place for clarity.

### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “An automotive repair dealer shall provide proof to the Bureau of attendance and successful completion of remedial training provided by a Bureau-certified provider pursuant to section 3395.8. Proof means a certificate of completion showing the person’s name, date of completion, Bureau-issued provider number, name of the course, and the course provider’s name.”

The purpose of this subdivision is to establish what proof an ARD must provide to the Bureau of attendance and successful completion of remedial training.

This subdivision is necessary to establish what an ARD is required to provide the Bureau to prove they attended remedial training. The Bureau needs such proof to determine whether the registrant took training from a certified remedial training provider, and for its own records to track the registrant’s attendance. The Bureau uses this information to ensure the registrant only uses the opportunity to prevent disclosure once in an 18-month period.

### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide “Each registrant and any other person identified pursuant to Section 9884(b)(3) of the Code who directly or indirectly controls or conducts more than one automotive repair dealer business is entitled to one citation nondisclosure per automotive repair dealer registration.

The purpose of this subdivision is to establish a person who is listed on multiple ARD applications as a registrant or one who controls or conducts an ARD business may attend training only once for each ARD they are associated with.

This subdivision is necessary because a registrant may have more than one ARD registration they are associated with. BPC section 9884 is ambiguous on eligibility for training when a registrant has multiple associated ARDs. The Bureau has decided to only allow one remedial training option for each of the ARDs the registrant may have. This allows a person who is listed on multiple ARD applications to attend training once every 18 months for each ARD with whom they are associated.

### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e) to provide “The registrant may not use the same remedial training course certification of completion for multiple automotive repair dealers.”

The purpose of this subdivision is to establish a registrant cannot not use one remedial training course certificate of completion for multiple ARDs.

This subdivision is necessary to establish a registrant may not use the same remedial training course certificate of completion for nondisclosure at one ARD and then apply the same certificate of completion at another ARD they own and/or control for the same purpose. Each registrant possesses one license for each ARD they own and/or control. Therefore, the Bureau requires a registrant to attend remedial training for each individually licensed ARD cited as each ARD file is tracked separately, with its own registration number. This ensures that each certificate of completion is applied to the correct ARD the Bureau cited.

**(19.) Adopt Article 12.5 Remedial Training for Automotive Repair Dealers and Course Provider Certification Program.**

The Bureau proposes to adopt a new Article 12.5 in which to establish regulations relating to remedial training for ARDs. This is necessary to organize all provisions relating to the remedial training and course provider certification in one place.

**(20.) Adopt section 3395.7 Remedial Training Course Content.**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide “Remedial training courses shall be administered by a certified provider in a classroom or online setting, including but not limited to, pre-recorded or live audio or video teleconferences, webinars, seminars, podcasts, broadcasts, or lectures via the internet. The training shall include instruction on automotive repair dealer compliance with the laws and regulations relating to all of the following areas[.]”

The purpose of this subdivision is to establish who may provide remedial training, and the means by which the remedial training may be provided.

This subdivision is necessary to identify who is qualified to provide remedial training and the methods by which the training may be provided. BPC section 9882(a)(2)(B)(i) requires a provider to be certified by the Bureau pursuant to section 9884.7(d). This subdivision introduces the laws and regulations the Bureau requires to be part of the remedial training curriculum. The Bureau authorizes these learning formats to be flexible, allow for asynchronous learning, and meet the needs of the training provider and the students should in-person learning not be practicable or convenient.

**(1). Subdivision (a)(1), Estimate Requirements (section 3353)**

This subdivision is necessary to include the estimate requirements set forth in section 3353 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are provided instruction on the importance of providing accurate and inclusive estimates to their customers, which is the first step in any automotive repair transaction. By providing estimates and receiving authorization from the customer, the repair facility ensures their ability to charge for enumerated repairs, and protects consumers by ensuring they are aware of the cost of repair before repairs are performed.

**(2). Subdivision (a)(2), Customer Authorization (sections 3353.1, 3353.2, and 3354)**

This subdivision is necessary to include the customer authorization requirements set forth in sections 3353.1, 3353.2, and 3354 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are provided instruction on when customer authorization must be obtained, and how authorization must be documented. Following the customer authorization regulations protects both the customer and a repair facility by creating a record of the agreed upon amount for the repair work.

(3). Subdivision (a)(3), Invoice Requirements (section 3356)

This subdivision is necessary to include the invoice requirements set forth in sections 3356 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are provided instruction on how to identify and document repair work performed on an invoice provided to customers after repairs are completed, and how to document parts supplied in such a manner the customer can understand what work was performed on their vehicle.

(4). Subdivision (a)(4), Accepted Trade Standards (Article 8)

This subdivision is necessary to include the accepted trade standards specified in Article 8, which includes ball joints, automatic transmissions, engine changes, ignition interlock devices, vehicle identifying information, autobody and frame repair, windshields, air conditioning, inflatable restraint systems, and towing services, as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are provided instruction on how to perform safe and correct repairs of these specified areas and systems.

(5). Subdivision (a)(5), Sublet Repair (section 3353(d))

This subdivision is necessary to include the sublet repair requirements as specified in section 3353(d) as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are educated on their responsibility to obtain authorization when subletting repairs of the customer's vehicle to another facility, and their responsibility for the sublet work performed.

(6). Subdivision (a)(6), Return of Parts (section 3355)

This subdivision is necessary to include the requirements for the return of parts as requested by the customer as specified in section 3355 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are educated on the circumstances requiring the return of replaced parts to customers.

(7). Subdivision (a)(7), Advertising Requirements (section 3372.1)

This subdivision is necessary to include the advertising requirements as specified in section 3372.1 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are provided instruction on what is permissible and not permissible when advertising their business and services.

(8). Subdivision (a)(8), Guarantees and Warranties (sections 3375, 3376, and 3377)

This subdivision is necessary to include the guarantee and warranty requirements as specified in sections 3375, 3376, and 3377 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are educated regarding the types of information that must be included in a guarantee or warranty of work performed to protect their business and customers.

(9). Subdivision (a)(9), Maintenance of Records (section 3358)

This subdivision is necessary to include the requirement to maintain and make records available for inspection as specified in section 3358 as part of the remedial training course. Requiring this subject matter in a remedial training course ensures students are educated regarding the types of business records they must maintain and how long they must be maintained.

**Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “A remedial training course shall provide a minimum of eight hours of instruction, exclusive of lunch and rest breaks.”

The purpose of this subdivision is to establish the required length of remedial training instruction.

This subdivision is necessary to provide a required length of a remedial training course. The Bureau requires eight hours of instruction to ensure providers spend sufficient time to cover each of the required subject matter areas identified in subdivision (a). As there are nine subject matter areas, the Bureau believes 8 hours is sufficient to cover all required areas. The training course could be completed in a single 10-hour day of live instruction, or over multiple days, or by self-paced online learning.

**(21.) Adopt section 3395.8, Application and Petition Requirements for Remedial Training Providers for Automotive Repair Dealers; Renewal.**

**Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide “Any person (“applicant”) seeking Bureau certification to provide remedial training as authorized by section 9884.7(d) of the Code shall submit a completed application which includes all of the following[.]”

The purpose of this subdivision is to establish the required elements of an application to become certified as a remedial training provider.

This subdivision is necessary to introduce the required elements of an application to become certified as a remedial training provider. BPC section 9884.7 requires the Bureau to establish through regulation a program to certify providers of remedial training for automotive repair dealers. This application process implements the statute.

**Subdivision (a)(1)**

The Bureau proposes to adopt subdivision (a)(1) to provide “The following applicant identifying information[.]”

The purpose of this subdivision is to introduce the required identifying information to be submitted by an applicant to be certified as a provider of remedial training.

This subdivision is necessary to list the items of identifying information an applicant must submit to be certified as a provider of remedial training.

(1). Subdivision (a)(1)(A), Full legal name

This item is necessary to identify the true and correct identity of the applicant. This information enables the Bureau to make a complete and thorough determination of a person's suitability for certification and to contact the applicant if further information is necessary.

(2). Subdivision (a)(1)(B), Applicant's active State Bar of California license number and expirations date

This item is necessary to ensure that the applicant is an attorney who is currently licensed by the State Bar of California. The vast majority of violations identified by BAR are related to estimate, authorization, and invoicing issues. The purpose of the remedial training course is to provide registrants with informed instruction on how to comply with the Bureau's laws and regulations. In order to ensure the registrants are receiving accurate information, BAR determined those who are trained in the interpretation and application of laws and regulations, attorneys, are the most appropriate persons to provide this training.

(3). Subdivision (a)(1)(C), Social Security number

This item is necessary because BPC section 30 requires the Bureau to collect this information from applicants. (Bus. & Prof. Code, § 30, subd. (a)(1).)

(4). Subdivision (a)(1)(D), Physical address

This item is necessary so the Bureau can communicate with the applicant about their application and transmit notices, mailings, and other communications to the applicant.

(5). Subdivision (a)(1)(E), Mailing address

This item is necessary so the Bureau can communicate with the applicant about their application and transmit notices, mailings, and other communications to the applicant when they receive mail somewhere other than their physical address.

(6). Subdivision (a)(1)(F), Telephone number

This item is necessary so the Bureau can communicate with the applicant by telephone.

(7). Subdivision (a)(1)(G), Email address, if any

This item is necessary so the Bureau can communicate with the applicant about their application and transmit notices, mailings, and other communications.

(8). Subdivision (a)(2), Whether the applicant is serving or has previously served in the United States military

This item is necessary so the Bureau can determine whether an applicant is serving or has previously served in the military. If they answer in the affirmative, this entitles the applicant to expedited application processing under certain circumstances pursuant to BPC section 115.4.

(9). Subdivision (a)(3), Whether the applicant is an honorably discharged member of the United States Armed Forces. If the applicant affirmatively states they meet this criterion, they shall provide the following documentation along with the application to receive expedited review: a certificate of release or discharge from active duty (DD-214) or other documentary evidence showing the date and type of discharge

This item is necessary as BPC section 115.4 states the Bureau shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active-duty member of the Armed Forces of the United States and was honorably discharged. The DD-214 is the standard military discharge form that indicates the date and type of discharge from military service. The Bureau will accept other documentation from the United States Armed Forces on the release and discharge from active duty as long as it has the date and type of discharge.

(10). Subdivision (a)(4), Whether the applicant was admitted to the United States as a refugee, has been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States, or has a special immigrant visa (SIV). If the applicant affirmatively states they meet any of these criteria, they shall provide the applicable documentation below with the application to receive expedited review

This item is necessary as BPC section 135.6 states that the Bureau shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence that they have been admitted to the United States as a refugee under Section 1157 of Title 8 of the United States Code, have been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States pursuant to Section 1158 of Title 8 of the United States Code, or they have a special immigrant visa (SIV) that has been granted a status under Section 1244 of Public Law 110-181, under Public Law 109-163, or under Section 602(b) of Title VI of Division F of Public Law 111-8. This subdivision is necessary to introduce the list of the permissible documentation.

(11). Subdivision (a)(4)(A), Form I-94, arrival/departure record, with an admission class code such as "RE" (refugee) or "AY" (asylee) or other information designating the person a refugee or asylee

This item is necessary to provide proof of the applicant's admission into the United States as a refugee. The I-94 confirms that the person is a refugee or asylee which the Bureau may use to expedite the application.

(12). Subdivision (a)(4)(B), Special Immigrant Visa that includes the “SI” or “SQ”

This item is necessary to provide proof the applicant possesses a special immigrant visa. The requested document will show the applicant aided the U.S. government abroad and has permanent residency, which the Bureau may use to expedite the application.

(13). Subdivision (a)(4)(C), Permanent Resident Card (Form I-551), commonly known as a “green card,” with a category designation indicating that the person was admitted as a refugee or asylee; or,

This item is necessary to provide proof the applicant is a refugee or asylee. The requested document will show the applicant is a permanent resident of the United States which the Bureau may use to expedite the application.

(14). Subdivision (a)(4)(D), an order from a court of competent jurisdiction or other documentary evidence that provides reasonable assurances to the Bureau that the applicant qualifies for expedited licensure per Section 135.4 of the Code

This item is necessary to allow for a court order that provides reliable assurances based on the language used in the order the applicant is a refugee, has been granted asylum, or has a SIV and qualifies under the statute.

(15). Subdivision (a)(5), Whether the applicant has ever been convicted of any crime or offense for which a license may be denied pursuant to section 480 of the Code

This subdivision is necessary to introduce the list of convictions an applicant must disclose on the application. Under BPC section 480(f)(1), the Bureau may require applicants for licensure to disclose criminal conviction history on an application for licensure. For subdivisions (a)(5)(A)-(E), the Bureau requests the applicant disclose any of these convictions so it can evaluate whether the conviction poses a threat to consumers.

(16). Subdivision (a)(5)(A), A criminal conviction for a serious felony under Penal Code section 1192.7

This item is necessary to require applicants to disclose a criminal conviction for a serious felony. BPC section 480(a)(1)(A) provides the Bureau may deny a license to applicants who have been convicted of a serious felony under Penal Code section 1192.7 presuming other requirements in section 480(a) are met. Section 480(f)(1) permits the Bureau to ask for this information from an applicant.

(17). Subdivision (a)(5)(B), A criminal conviction that qualifies as a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)

This item is necessary to require applicants to disclose a criminal conviction for a registerable offense under Penal Code section 290(d)(2) or (d)(3). BPC section 480(a)(1)(A) provides the Bureau may deny a license to applicants who have been convicted of a crime for which registration is required under this statute presuming other requirements in section 480(a) are met. Section 480(f)(1) permits the Bureau to ask for this information from an applicant.

(18). Subdivision (a)(5)(C), A criminal conviction that occurred within the seven years preceding the application date

This item is necessary to require applicants to disclose a criminal conviction a criminal conviction within the last seven years. BPC section 480(a)(1) provides the Bureau may deny a license to applicants who have been convicted of a crime within the last seven years presuming other requirements in section 480(a) are met. Section 480(f)(1) permits the Bureau to ask for this information from an applicant.

(19). Subdivision (a)(5)(D), A criminal conviction for which the applicant is presently incarcerated

This item is necessary to require applicants to disclose a criminal conviction for which the applicant is presently incarcerated. BPC section 480(a)(1) provides the Bureau may deny a license to applicants who have been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated. Section 480(f)(1) permits the Bureau to ask for this information from an applicant.

(20). Subdivision (a)(5)(E), Any conviction for which the applicant was released from incarceration within the preceding seven years

This item is necessary to require applicants to disclose a criminal conviction a criminal conviction for which the applicant was incarcerated and released in the last seven years. BPC section 480(a)(1) provides the Bureau may deny a license to applicants who have been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant was released from incarceration within the preceding seven years from the date of application. Section 480(f)(1) permits the Bureau to ask for this information from an applicant.

### **Subdivision (a)(6)**

The Bureau proposes to adopt subdivision (a)(6) to provide “Applicants are not required to disclose any of the following convictions pursuant to this subdivision[.]”

The purpose of this subdivision is to inform the applicant which convictions they are not required to disclose on the application.

This subdivision is necessary to clarify which convictions are not required to be disclosed and introduces and sets forth a list of convictions that do not require disclosure by law.

(1). Subdivision (a)(6)(A), Convictions dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement

This item is necessary to except from disclosure a criminal conviction that was dismissed or expunged pursuant to the specified code sections. BPC section 480(c) provides applicants cannot be denied a license based on convictions that have been dismissed pursuant to these statutes.

(2). **Subdivision (a)(6)(B), Convictions for which the person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code**

This item is necessary to except from disclosure a criminal conviction for which a certificate of rehabilitation has been obtained. BPC section 480(b) provides applicants cannot be denied a license based on convictions for which applicants have obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(3). **Subdivision (a)(6)(C), Convictions for which the person has been granted clemency or a pardon by a state or federal executive**

This item is necessary to except from disclosure a criminal conviction for which the applicant was granted clemency or pardon by a state or federal executive. BPC section 480(b) provides applicants cannot be denied a license based on convictions for which applicants have been granted clemency or a pardon by a state or federal executive.

(4). **Subdivision (a)(6)(D), An arrest that resulted in a disposition other than a conviction including an infraction or citation**

This item is necessary to except from disclosure an arrest that resulted in a disposition other than a conviction including an infraction or citation. BPC section 480(d) provides applicants cannot be denied a license based on an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction and/or a citation.

(5). **Subdivision (a)(6)(E), Convictions that were adjudicated in the juvenile court**

This item is necessary to except from disclosure a criminal conviction adjudicated in juvenile court. BPC section 480(d) provides applicants cannot be denied a license based on juvenile adjudications.

(6). **Subdivision (a)(6)(F), Convictions under California Health and Safety Code sections 11357(b), (c), (d), (e), or section 11360(b) which are two years or older**

This item is necessary to except from disclosure a conviction of specified Health and Safety Codes that are older than two years. Records of under HSC sections 11357(b), (c), (d), (e), or section 11360(b) shall not be kept beyond two years from the date of the conviction. (Health & Saf. Code, § 11361.5, subd. (a).)

### **Subdivision (a)(7)**

The Bureau proposes to adopt subdivision (a)(7) to provide “Whether the applicant has ever had a license, registration, or certification that was formally disciplined by a licensing board in or outside of California, including the Bureau, or any program in the Department of Consumer Affairs (Department) or the State Bar of California. “Discipline” for purposes of this section includes reproof, suspension, revocation, probation or any other form of restriction placed on the license, registration, or certification.”

The purpose of this subdivision is to require the applicant to disclose specified prior disciplinary actions.

This subdivision is necessary as BPC section 480(a)(2) provides the Bureau may deny an application if the applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years based on professional misconduct that would have been cause for discipline, and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. The Bureau includes the State Bar of California as certified remedial training providers are required to be attorneys. This subdivision collects the information the Bureau needs to evaluate whether the application should be denied based on past discipline.

### **Subdivision (a)(8)**

The Bureau proposes to adopt subdivision (a)(8) to provide “If the applicant answers affirmatively to any of the items in subdivisions (a)(5) or (a)(7), the applicant shall provide a written statement explaining the details regarding any criminal conviction or disciplinary action on a separate sheet of paper as provided in this section. For criminal convictions, the statement shall include: the date and place of arrest, name of the court, court case number, code section violated, brief explanation of the offense, and the sentence imposed. For discipline, the written statement shall include the date and nature of the disciplinary action, name and location of the public agency, and the fine or sentence imposed.”

The purpose of the subdivision is to collect further information from the applicant if they disclosed any information in response to subdivisions (a)(5) or (a)(7).

This subdivision is necessary to obtain further information about relevant facts the applicant has provided in response to subdivisions (a)(5) and (a)(7). The Bureau requests this information to investigate the prior conviction or discipline and determine whether there is a substantial relationship between the reported acts and the qualifications, functions, or duties of the business or profession for which the application is made.

### **Subdivision (a)(9)**

The Bureau proposes to adopt subdivision (a)(9) to provide “A course outline and course description for the remedial training course that consists of, at a minimum, all of the following[.]”

The purpose of the subdivision is to establish the elements of the course outline and description required to be submitted as part of the application process.

This subdivision is necessary to collect the course outline and course description from a remedial training provider applicant, and to provide a list of the information required to be submitted with the outline and description. The course outline and description enable the Bureau to review and approve the course material proposed by the applicant and ensure it contains the requisite subject matter categories specified in 3395.7.

- (1). Subdivision (a)(9)(A), All of the subjects listed in section 3395.7(a) and the specific content areas to be taught for each subject. The course description shall describe:

This subdivision is necessary to determine whether the course teaches the subject matter required in section 3395.7.

(2). Subdivision (a)(9)(A)(i), The subject matter of the course

This subdivision is necessary to obtain information about the subject matter of the course. This requirement seeks a description of the subjects taught in the course to enable the Bureau to determine whether each subject in section 3395.7 is covered in the course.

(3). Subdivision (a)(9)(A)(ii), The remedial education objectives of the course

This subdivision is necessary to obtain information about the remedial education objectives of the course in the outline and description. This requirement seeks a description of the remedial education objectives so the Bureau can determine whether the provider's objectives are consistent with the subject matter enforced by the subject matter areas.

(4). Subdivision (a)(9)(A)(iii), How the course content is designed to meet those educational objectives

This subdivision is necessary to ensure the course content is designed to meet those educational objectives. This enables the Bureau to examine how the course will meet its objectives of teaching the subject matter.

(5). Subdivision (a)(9)(B), The method of instruction for the course offered. Teaching methods for each course shall describe any lecture, seminar, audiovisual, online interactive, or any other instruction method.

This subdivision is necessary to obtain information about the method of instruction in the outline and description. The Bureau asks for this information so it can evaluate the efficacy of the proposed methods of instruction for the required course subject matter.

(6). Subdivision (a)(9)(C), An explanation of how the proposed course will measure student participation, interaction, and attendance, for example, participant attendance reports by instructors, in-content quizzes, participant polls, real time participant video requirements, and records of participant log in and log out times. The explanation shall also include how the applicant will ensure attendance is recorded accurately.

This subdivision is necessary to collect information about how the applicant intends to measure student participation. The Bureau requires this information so it can ensure students are engaged in course content, learning how to apply it, participating, and retaining the information. The Bureau asks how the applicant will record student attendance so it can ensure that providers are keeping accurate track of course attendance.

(7). Subdivision (a)(10), A certification by the applicant under penalty of perjury under the laws of the State of California that all statements made in the application and all documents provided by the applicant to the Bureau in support of the application are true and correct.

This subdivision is necessary because certifications under penalty of perjury help to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: "The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a

truthful factual representation and are made in good faith.”].) Accordingly, certification under penalty of perjury is necessary to ensure that applicants submit truthful and accurate information to the Bureau.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete, or accurate. “The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” (*In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459].)

### **Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “The Bureau will notify the applicant in writing within 60 days of the date of submission whether their application is approved or denied. If denied, the denial shall include the reasons for the denial, and notification that the applicant must submit a new application to obtain Bureau certification as a certified provider. Upon the Bureau’s approval, an applicant shall become a certified provider and be issued a certification if no grounds for denial exist as provided in section 3395.10. The certification shall be valid for five years from the date of issuance and shall expire unless renewed prior to the expiration date of the certification as provided in this section. After a certificate has expired, the certificate is automatically cancelled and the provider must apply as a new applicant in accordance with this section if they seek to again offer remedial training as a Bureau certified provider.”

The purpose of the subdivision is to establish the timeframe for the Bureau’s review of the application, the term of the certification, and the procedure for renewal.

This subdivision is necessary to establish a timeframe for review of the remedial provider application. In the Bureau’s experience, 60 days is an adequate time in which to review the application.

If it denies application, the Bureau will notify the applicant of the reasons and inform the applicant what actions they must take to reapply after a denial. This notice is necessary to trigger the running of the 15-day period in which to submit a request for reconsideration as provided in section 3395.10(b), or the submission of an appeal of the denial as set forth in section 3395.10(c). The grounds for denial are set forth in section 3395.10.

The subdivision provides the certified provider must renew their certificate before the expiration of five years to keep it current. The Bureau requires the provider to submit a new application for certification after the expiration of five years because it needs to ensure the applicant is still qualified to be a provider. Additionally, there may be changes in the applicable laws and regulations or in the industry, and the Bureau wants to ensure those are captured in a new course outline and description.

### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “The abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application in accordance with Section 142 of the Code. An applicant who abandons an application must submit a new application to obtain Bureau certification as a certified provider.

The purpose of the subdivision is to establish that an application that is returned as incomplete to the applicant is deemed abandoned after 12 months from the date the application is returned to the applicant.

This subdivision is necessary to require the submission of a new application when an application has been abandoned. BPC section 142(b) provides that (“[n]otwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.” The Bureau recites that requirement here to organize the requirements for renewal and application abandonment in one place.

### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide “To renew a certification, the certified provider shall submit a course outline and course description as specified in subdivision (a)(9) for Bureau review and approval at least 60 days prior to their certification expiration date. Bureau approval of the outline and description is a requirement for renewal of the certification. The Bureau will notify the certified provider in writing within 60 days of the date of submission whether their renewal is approved or denied. The denial shall include the reasons for the denial, and an explanation of the process for appealing or requesting reconsideration in accordance with section 3395.10. A certified provider who is denied renewal must submit a new application to obtain Bureau certification as a certified provider.”

The purpose of the subdivision is to establish the process for renewal of a remedial training provider certification.

This subdivision is necessary to establish the requirements for certification renewal. The Bureau requires the provider to submit a new course outline and description as there may be changes in the applicable laws and regulations or in the industry, and the Bureau needs to ensure those are captured in a new course outline and description. In the Bureau’s experience, 60 days is sufficient time for the Bureau to review the new course outline and description.

### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e) to provide “Certified providers may voluntarily surrender their certification by notifying the Bureau in writing of the request and receiving written notice from the Bureau chief or their designee that the Bureau chief has consented to the surrender.”

The purpose of the subdivision is to establish a process for a certified provider to voluntarily surrender their certification.

This subdivision is necessary to establish the requirements for voluntary surrender of a certification. This subdivision implements BPC section 118 which provides that

"[t]he withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to the withdrawal deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground." (Bus. & Prof. Code, § 118, subd. (a).)

### **Subdivision (e)(1)**

The Bureau proposes to adopt subdivision (e)(1) to provide "A request for consent to surrender a certification shall include all of the following: their certified provider name, the Bureau-issued provider certification number, the certified provider's physical and mailing addresses, and the reason(s) why the certified provider seeks to surrender their certification. The Bureau chief or their designee reserves the right to evaluate the certified provider's request and to exercise their discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, including initiation or continuance of disciplinary action as authorized by Section 118 of the Code."

The purpose of the subdivision to establish what items of information must be submitted in order to request approval of a voluntary surrender of a certification.

This subdivision is necessary to enumerate what items of information the Bureau needs to evaluate a request for voluntary surrender of a certification. In order to identify who is making the request the Bureau needs the certified provider name, certification number, and addresses and the Bureau wants the reason to identify changes we might want to make in the program. It provides the Bureau has the discretion provided under section 118(a) to consent to the surrender and explains what actions the Bureau may take after receiving the request.

### **Subdivision (e)(2)**

The Bureau proposes to adopt subdivision (e)(2) to provide "Within 15 days of the date of the Bureau chief's written notice of consent to the surrender, the certified provider shall no longer provide remedial training as authorized by this section. Certified providers who voluntarily surrender their certification shall reapply as a new applicant in accordance with this section if they seek to offer remedial training as a Bureau certified provider."

The purpose of the subdivision is to establish what actions must be taken by a provider once the Bureau has consented to a voluntary surrender of the certification.

This subdivision is necessary to require a certified provider to cease offering remedial training once they have voluntarily surrendered their license. After surrender, a provider may reapply if they wish to provide remedial training. The 15-day period after the chief's notice accepting the surrender of the training provider's certification allows time for the notice to reach the provider in the mail, and allows the provider time to complete any previously arranged training. Once a license has been surrendered it is considered cancelled and the provider would have to restart the application process.

## **Subdivision (f)**

The Bureau proposes to adopt subdivision (f) to provide “To petition for reinstatement of a certification after one year from the effective date of a revocation decision or from the denial of a previous petition, a previously certified provider (“petitioner”) shall submit to the Bureau chief or their designee a petition for reinstatement of revoked certificate that includes all of the following[.]”

The purpose of the subdivision is to establish the requirements a petitioner must satisfy to reinstate their certification after one year from the effective date of a revocation decision or from the denial of a previous petition.

This subdivision is necessary to introduce the requirements a petitioner must fulfill to reinstate their certification after one year from the effective date of a revocation decision or from the denial of a previous petition. The Bureau requires the previously certified provider to wait one year before petitioning for reinstatement as a penalty to disincentivize from engaging in the conduct that gave rise to the revocation of the certificate. The Bureau requires the petitioner to pursue reinstatement of the certificate (as opposed to merely reapplying) because the Bureau requires the petitioner to demonstrate rehabilitation in the manner set forth in subdivisions (f)(2) and (f)(3).

### **Subdivision (f)(1)**

The Bureau proposes to adopt subdivision (f)(1) to provide “All of the items required in subdivision (a)(1) through (9) of this section.”

The purpose of the subdivision is to require the petitioner to comply with the application requirements in subdivision (a)(1) through (9) as part of the petition for reinstatement.

This subdivision is necessary to provide the items that must be submitted with a petition for reinstatement. The items in this section are required because the Bureau treats the reinstatement process like an original application and needs the same qualifying information from the petitioner. As it has been one year since the provider was certified, this information may have changed.

### **Subdivision (f)(2)**

The Bureau proposes to adopt subdivision (f)(2) to provide “Any documents or evidence of rehabilitation the petitioner would like the Bureau chief to consider as provided in section 3395.”

The purpose of the subdivision is to allow petitioners to provide documents or evidence of rehabilitation for the Bureau chief to consider.

This subdivision is necessary to establish what rehabilitation evidence the petitioner wishes the Bureau chief to consider on the petition for reinstatement. The Bureau is asking for evidence of rehabilitation so the Bureau can make an informed decision when determining whether the previously certified provider should be re-certified. Section 3395 details what the Bureau will consider when considering a petition for reinstatement: the nature and gravity of the act, evidence of any professional misconduct or crimes, the time elapsed since the act, and any evidence of rehabilitation submitted by the petitioner. For instance, the more time that has

elapsed since the petitioner's conduct, the more time the petitioner has had to rehabilitate themselves. Furthermore, to the extent that the petitioner has engaged in acts to rehabilitate themselves, the more likely the Bureau is to reinstate the certification.

#### **Subdivision (f)(3)**

The Bureau proposes to adopt subdivision (f)(3) to provide "Any written arguments the petitioner supporting the request for reinstatement."

The purpose of the subdivision is to allow a petitioner to make written arguments to the Bureau about why they should be reinstated.

This subdivision is necessary to establish that, in addition to evidence, a petitioner may include any written arguments supporting the request for reinstatement. This provides the previously certified provider the opportunity to provide any legal reasons why the Bureau should grant their petition.

#### **Subdivision (g)**

The Bureau proposes to adopt subdivision (g) to provide "A certified provider shall notify the Bureau in writing of any changes to the information submitted to the Bureau under subdivisions (a)(1)-(2) and (a)(5)-(7) within 60 days of the date of making any changes, or receiving notice of any change in the case of criminal conviction or disciplinary matters referenced in subdivisions (a)(5) and (a)(7)."

The purpose of the subdivision is to establish when a provider must update the Bureau about changes in information provided pursuant to subdivisions (a)(1)-(2) and (a)(5)-(7).

This subdivision is necessary to require certified providers to notify the Bureau, within 60 days of any changes in information submitted as part of the application regarding their identifying information, military/asylee status, criminal convictions, or disciplinary matters. The Bureau needs the information to evaluate whether any new information regarding disciplinary actions or criminal actions impacts its original determination to certify the provider.

### **(22.) Adopt section 3395.9, General Requirements for Remedial Training Providers for Automotive Repair Dealers.**

#### **Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide "When registering students for a remedial training course, a certified provider shall obtain the following[.]"

The purpose of the subdivision is to establish what information the provider needs to collect when registering students for the remedial training course.

This subdivision is necessary to specify the information a remedial training provider is required to obtain when registering a registrant for a remedial training course. Since successful completion of this course is required to prevent disclosure of an ARD citation, the required information is necessary for the Bureau to identify the registrant and correctly apply the certificate of completion.

**(a) Subdivision (a)(1), Student Name.**

This item is necessary to require certified provider to obtain the student's/registrant's name. This information is required on the certificate of completion, and the Bureau needs this information to track training taken by registrants.

**(b) Subdivision (a)(2), Automotive repair dealer registration number**

This item is necessary to track the identity of ARDs who successfully complete remedial training.

**(c) Subdivision (a)(3), Bureau-issued citation number, if any**

This item is necessary to track training taken by registrants and to apply successfully completed training to the citation received for the purposes of non-disclosure under BPC section 9882(a)(2)(B)(i). The statement "if any" has been included for those registrants who may proactively take this training and are not taking the course due to receiving a citation.

**Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide "Upon successful completion of the course by the student, a certified provider shall issue to the student a certificate of completion that shall include the information contained in subdivision (a), and, at a minimum, all the following[.]"

The purpose of the subdivision is to identify the required elements of the certificate of completion issued by a certified provider.

This subdivision is necessary to provide the registrant information a remedial training provider must include on the certificate of completion. This information enables the Bureau to identify the registrant and apply the successful completion of the course for the purposes of nondisclosure under BPC section 9882(a)(2)(B)(i).

**(a) Subdivision (b)(1), Certified provider's name**

This item is necessary to obtain the name of the remedial training provider to verify the provider has been certified by the Bureau.

**(b) Subdivision (b)(2), Certified provider's Bureau-issued certification number**

This item is necessary to obtain the provider's certification number so the Bureau can verify it has certified the provider.

### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “A certified provider shall report to the Bureau, within three business days of the student’s completion of the course, each student who has successfully completed the remedial training course. The report shall include the information in subdivision (b) in this section and a copy of the certificate of completion issued to the student. For the purposes of this section “successfully completed” or “successful completion” shall mean full attendance and completion of the period of instruction by the student and the completion of all requirements of the course provider.”

The purpose of the subdivision is to establish the requirements for certified providers’ reporting of remedial training to the Bureau.

This subdivision is necessary to provide the timeframe for a certified provider to report successful completion of remedial training courses. This enables the Bureau to apply the course completion in a timely manner for the purpose of nondisclosure under BPC section 9882(a)(2)(B)(i). Three days gives the certified provider adequate time to notify the Bureau. Additionally, this section provides a clear definition of successful completion. As there are many providers providing the remedial training employing different elements of instruction, the Bureau needs to establish a uniform rule for when providers must provide a certification of completion to participants.

### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide “A certified provider shall establish within 30 days of initial Bureau approval a minimum three-year document retention policy for the records required by this Article, including records of participant attendance, copies of certificates of completion for each student completing a course, and dates and locations of instruction.”

The purpose of the subdivision is to establish a document retention policy for certified providers.

This subdivision is necessary to require remedial training providers to maintain records regarding students who have attended a remedial training course and the dates and locations where the training was provided for a minimum of three years. The three-year requirement allows for inspection of those records within a reasonable time of the training to ensure provider compliance and is consistent with other records requirements for ARDs as set forth in BPC section 9884.11, which requires ARDs to maintain records for three years.

### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e) to provide “In order to maintain certification, a certified provider shall respond to any inquiries by the Bureau, provide any information or documents requested by the Bureau, and cooperate in any investigation conducted by the Bureau regarding the certified provider’s compliance with the requirements of this Article.

Failure to respond to the Bureau within 30 days of the date of the Bureau's written inquiry or request for documents or information constitutes grounds for denial of any application or revocation of certification by the Bureau pursuant to section 3395.10."

The purpose of this subdivision is to establish the requirements for certified provider communication and cooperation once certified by the Bureau.

This subdivision is necessary to require certified providers to cooperate with a Bureau investigation by providing information and documentation within 30 days of a Bureau request. If a remedial training provider fails to respond to Bureau inquiries, they face revocation of their provider certification as specified in section 3395.10. Based on document and information requests the Bureau typically makes, 30 days is a sufficient time for businesses to provide the requested records. The Bureau typically makes requests for discrete categories of information that can be provided within that time.

#### **Subdivision (f)**

The Bureau proposes to adopt subdivision (f) to provide "A certified provider shall make any location where training is provided or where records required by this Article are maintained available for inspection to authorized representatives of the Bureau during normal business hours. This includes permitting an authorized representative of the Bureau to monitor a training course to determine whether the objectives of the course are being met and the course is presented as approved by the Bureau."

The purpose of the subdivision is to establish requirements for Bureau access to remedial training premises.

This subdivision is necessary to establish the requirements for Bureau access to remedial training premises so the Bureau is able to monitor training and verify it is done in accordance with the approved course description and outline. Additionally, remedial training providers must make records available for inspection during normal business hours to ensure providers are keeping accurate track of student attendance.

**(23.) Adopt section 3395.10, Grounds for Denial or Revocation of Certification for Providers of Remedial Training for Automotive Repair Dealers.**

#### **Subdivision (a)**

The Bureau proposes to adopt subdivision (a) to provide "An application for certification as a certified provider of remedial training ("certified provider") pursuant to section 3395.8 or a request to renew a certification may be denied or a certificate revoked for any of the following reasons[.]"

The purpose of the subdivision is to provide the bases on which the Bureau may deny or revoke a provider certification.

This subdivision is necessary to set forth the reasons an application as a remedial training provider may be denied, or a remedial training provider certification may be revoked.

### **Subdivision (a)(1)**

The Bureau proposes to adopt subdivision (a)(1) to provide “For denial of an application to be certified as a provider, any grounds for denial authorized by Section 480 of the Code[.]”

The purpose of the subdivision is to establish the bases for denial of an application for certification as a remedial training provider.

This subdivision is necessary to establish that the grounds for denial in BPC section 480 such as a prior disciplinary action against the applicant by a licensing board in or outside of California, and/or a criminal conviction that is substantially related to the qualification, functions, or duties of a remedial training provider apply to a certified training provider as well as all other Bureau applications. (Bus. & Prof. Code, § 480 subd. (a).)

### **Subdivision (a)(2)**

The Bureau proposes to adopt subdivision (a)(2) to provide “For revocation of a certified provider’s certification, any grounds for discipline set forth in Section 490 of the Code, any substantially related act resulting in disciplinary action against any registration or license issued to a certified provider by the Bureau or any program in the Department, or the State Bar of California or any other substantially related act resulting in disciplinary action against any registration or license issued to a certified provider by any other governmental entity as authorized by Section 141 of the Code[.]”

The purpose of the subdivision is to establish the basis for revoking a remedial training provider’s certification.

This subdivision is necessary the bases for revocation of a certification of a remedial training provider. The Bureau incorporates the grounds for discipline in section 490 because it provides “a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.” (Bus. & Prof. Code, § 490, subd. (a).) Section 141 is incorporated because it authorizes disciplinary action “for any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license[.]” (Bus. & Prof. Code, § 141, subd. (a).)

### **Subdivision (a)(3)**

The Bureau proposes to adopt subdivision (a)(2) to provide “Noncompliance with any provision in sections 3395.8 or 3395.9.”

The purpose of the subdivision is to establish the Bureau may not renew a provider’s certification or revoke it if they fail to comply with sections 3395.8 or 3395.9.

This subdivision is necessary to establish that failure to comply with the application and disclosure requirements set forth in section 3395.8, and failing to obtain and report required student information to the Bureau, and/or failing to maintain or provide records when requested

as recorded in section 3395.9 may result in denial of an application for certification, denial of certification renewal and/or disciplinary action against a remedial training provider certification. Failing to comply with these regulations demonstrates a provider is not suitable for certification because they are unwilling and/or unable to follow Bureau regulations.

#### **Subdivision (a)(4)**

The Bureau proposes to adopt subdivision (a)(4) to provide “Failure to accurately document student attendance for all training hours.”

The purpose of the subdivision is necessary to establish a certified provider’s failure to properly document attendance may result in the denial of a request to renew certification or a revocation of certification.

This subdivision is necessary to establish a certified remedial training provider’s failure to accurately record a student’s attendance hours may result in denial of a request to renew a certification or a revocation of certification. Failing to properly document student attendance demonstrates a provider is not suitable for certification because they are unwilling and/or unable to follow Bureau regulations. A certified provider who fails to properly document a student’s attendance is also subverting the legislative mandate to permit participants to prevent disclosure of citations for participants who attend and successfully complete the training.

#### **Subdivision (a)(5)**

The Bureau proposes to adopt subdivision (a)(5) to provide “Providing any false, or misleading information to students, the Department, or Bureau.”

The purpose of the subdivision is to establish providing any false or misleading information to students, the Department, or the Bureau provides a ground for denying an application or a request to renew a certification, or revoking a certification.

This subdivision is necessary to establish providing false information to the Bureau, registrants, or the Department as a ground for denying an application or a request to renew a certification, or revoking a certification. Providing false information indicates the provider is unable and/or unwilling to follow Bureau regulations and undermines the Bureau’s trust in the provider to provide accurate information regarding participant attendance.

#### **Subdivision (a)(6)**

The Bureau proposes to adopt subdivision (a)(6) to provide “Any conduct that constitutes fraud as defined in subdivisions (e)(1)-(5) of Section 9884.7 of the Code.”

The purpose of the subdivision is to establish fraudulent conduct is a ground for denying an application or a request to renew a certification, or revoking a certification.

This subdivision is necessary to establish an applicant or certified provider engaging fraud as defined in BPC section 9884.7(e), may result in denying an application or a request to renew a certification, or revoking a certificate. The commission of fraud undermines the Bureau’s trust in the provider to provide accurate information regarding participant attendance and to otherwise provide truthful information to the Bureau.

### **Subdivision (b)**

The Bureau proposes to adopt subdivision (b) to provide “The Bureau shall provide an applicant or certified provider with a written notice of the denial or revocation of the provider certification if the Bureau seeks to deny an application or revoke any certification pursuant to this section. The notice shall include the basis for the denial or revocation, as applicable, and the process and procedure for appealing the denial or revocation according to this section. The applicant or certified provider may submit a written request for reconsideration to the Bureau chief or their designee of either the denial or revocation within 15 days of the date of the Bureau’s written notice of such denial or revocation. The written request shall provide the reasons the applicant or certified provider requests a reconsideration of the denial or revocation. In making a request for reconsideration, the applicant or certified provider does not waive the right to appeal under subdivision (c).”

The purpose of the subdivision is to establish the process by which the Bureau will notify an applicant or certified provider of a denial or revocation of certification, and their rights to request reconsideration of the Bureau’s determination.

This subdivision is necessary to establish the Bureau’s decision to deny or revoke a certification will be given by written notice. In the Bureau’s experience, 15 days is a sufficient amount of time for the applicant/petitioner to request reconsideration from the Bureau chief. The Bureau provides the reasons for denial or revocation of the certification to enable the applicant or provider to respond based on the grounds provided. The Bureau requests the reasons for reconsideration to assist the Bureau in making its decision regarding whether to reconsider the decision. If reconsideration is denied, the applicant may still appeal the denial or revocation pursuant to subdivision (c) of this section.

### **Subdivision (c)**

The Bureau proposes to adopt subdivision (c) to provide “Regardless of whether or not the applicant or certified provider requests reconsideration as provided in subdivision (b), an applicant or certified provider may appeal the denial or revocation of a provider certification by requesting an informal hearing under the Administrative Procedure Act (commencing with Section 11445.10 of the Government Code) within 30 days of the date of the Bureau’s written notice specified in subdivision (b).”

The purpose of the subdivision is to establish the process for an applicant or certified provider to appeal the Bureau’s denial or revocation of certification.

This subdivision is necessary to provide an applicant or provider the ability to appeal the Bureau’s determination by requesting an informal hearing under the Administrative Procedure Act (commencing with Section 11445.10 of the Government Code). By this reference, the Bureau intends to incorporate the informal hearing procedures of section 11445.10 *et seq.* The subdivision requires the provider to give notice of the appeal to within 30 days. In the Bureau’s experience, this provides the provider with sufficient time to consider whether to do so and give notice thereof.

### **Subdivision (d)**

The Bureau proposes to adopt subdivision (d) to provide “If the denial or revocation notice is withdrawn by the Bureau chief or their designee after the Bureau chief grants a reconsideration, the application shall be deemed approved, or the certification deemed unrestricted. The request for an informal hearing, if any, shall be deemed to be withdrawn.”

The purpose of the subdivision is to establish if the Bureau grants a reconsideration, the application is deemed approved and a certification unrestricted, and a request for informal hearing, if any, is withdrawn.

This subdivision is necessary to establish the status of an application or certification if reconsideration is granted. This is necessary to clarify the provider’s ability to engage in training under the circumstances outlined in the subdivision.

### **Subdivision (e)**

The Bureau proposes to adopt subdivision (e) to provide “Providers wishing to reinstate their certification after a period of one year or more from the effective date of the decision revoking the certification or from the date of the denial of a similar request to reinstate the certification shall follow the procedures specified in section 3395.8.”

The purpose of the subdivision is to establish how and when a provider may reinstate their certification as a remedial training provider.

This subdivision is necessary to establish the process for reinstating a certification after one year or more from the effective date of the decision revoking the certification or from the date of the denial of a similar request to reinstate the certification. After a period of one year, the applicant must reapply from the beginning of the process and update all application information, as information may have changed within that time period.

### **Subdivision (f)**

The Bureau proposes to adopt subdivision (f) to provide “For the purposes of this section, the following definitions apply[.]”

The purpose of the subdivision is to define the terms used in the regulation.

- (a) Subdivision (f)(1), “Disciplinary action” means any form of restriction placed on the license, registration, permit or other indicia of licensure including reproof, suspension, revocation, probation, or any other form of restriction.

This subdivision is necessary to provide a definition for “disciplinary action” as used in this section. This information enables an applicant to understand the use of the term as set forth in subdivision (a)(2) of this section. Each of these terms is commonly understood and used within the Business and Professions Code to fall within the umbrella of “disciplinary action.”

- (b) Subdivision (f)(1) “Substantially related” has the meaning set forth in section 3395.2 as it relates to the qualifications, functions, or duties of a certified provider of remedial training.

This subdivision is necessary to provide a definition for “substantially related” as used in this section. This information enables an applicant to understand the use of the term as set forth in subdivision (a)(2) of this section. Section 3395.2 defines the term for purposes of denial, suspension, or revocation of a license or registration pursuant to BPC sections 141, 9884.22(b), 9889.22, and 9889.3(a) and (b). The Bureau intends the same meaning for this regulation.

### **Underlying Data**

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. Bureau of Automotive Repair BAR Advisory Group Meeting – October 22, 2020
  - A. Notice of Meeting:  
<https://www.bar.ca.gov/pdf/bag-agenda-10.22.20.pdf>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/bag-automotive-repair-citation-concepts-10.22.20.pdf>
2. Bureau of Automotive Repair BAR Public Workshop – April 22, 2021
  - A. Notice of Meeting:  
<https://www.bar.ca.gov/public-workshops/202104-citation-program-for-ards>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/workshops/202104-ard-citation-program/presentation.pdf>
3. Bureau of Automotive Repair BAR Public Workshop – July 15, 2021
  - A. Notice of Meeting:  
<https://www.bar.ca.gov/public-workshops/202107-citation-program-for-ards>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/workshops/202107-ard-citation-program/presentation.pdf>
4. Bureau of Automotive Repair BAR Advisory Group Meeting – January 27, 2022
  - A. Notice of Meeting:  
<https://www.bar.ca.gov/bar-advisory-group/2022-january>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/bag/202201/ab-471.pdf>

5. Bureau of Automotive Repair BAR Public Workshop – January 27, 2022
  - A. Notice of Meeting:  
<https://www.bar.ca.gov/public-workshops/202201-citations-for-ards>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/workshops/202201-ard-citation-program/presentation.pdf>
6. Bureau of Automotive Repair BAR Public Workshop – March 2, 2022
  - A. Notice of Meeting: <https://www.bar.ca.gov/public-workshops/202203-remedial-training>
  - B. Presentation PowerPoint:  
<https://www.bar.ca.gov/pdf/workshops/202203-remedial-training/presentation.pdf>
7. Workload Costs Analysis

## **ECONOMIC IMPACT ASSESSMENT**

This regulatory proposal will have the following effects:

- Insofar as it creates a new remedial training program, it may create jobs for those who become certified remedial training providers within the State of California. Insofar as it creates a citation program for ARDs, it will not create jobs.
- Insofar as it creates a new remedial training program, it may create new businesses for those who become certified remedial training providers within the State of California and establish businesses. Insofar as it creates a citation program for ARDs, it will not create businesses.
- Insofar as it creates a new remedial training program, it may expand businesses for those who become certified remedial training providers within the State of California and expand their businesses. Insofar as it creates a citation program for ARDs, it will not expand businesses.
- This regulatory proposal will have a positive impact on the health and welfare of California citizens to the extent remedial training and the prospect of being cited for violations promotes safer automotive repairs, auto body repairs, and ethical behavior of ARDs and their workers.
- This regulatory proposal may have a positive impact on worker safety to the extent remedial training and the prospect of being cited for violations promotes safer automotive repairs, auto body repairs, and ethical behavior of ARDs and their workers.
- This regulatory proposal has no effect on the environment because it does not involve the environment.

### **Business Impact:**

The Bureau has made an initial determination the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including small businesses and the ability of California businesses to compete with businesses in other states. These proposed regulations establish a citation program for automotive repair dealers. Should a licensee or an employee of a licensee violate the Bureau's laws and regulations in a manner that warrants a citation, the citation and fine issued is not sufficient to eliminate a particular job or ARD. The fine issued is avoidable, should the licensee or employee of the licensee comply with the rules and regulations of the Bureau.

It is paramount ARDs follow the appropriate repair procedures and business processes in accordance with the law. The purpose of the proposed regulations is to ensure safe automotive repairs and promote best business practices for California consumers.

The Bureau estimates up to 1,200 citations will be issued to ARDs per year with an average fine amount of \$500, which would result in penalty payments of \$600,000 per year and up to \$6 million over a ten-year period as follows:

Bureau of Automotive Repair Citations & Fines - Economic Impact (costs)											
Item	Ave Fine Amt	Years Ongoing									
		1	2	3	4	5	6	7	8	9	10
Fine Payment	\$500	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$6,000,000
<b>Total Costs:</b>		<b>\$600,000</b>	<b>\$6,000,000</b>								

The Bureau notes, ARDs issued a citation will be required to pay the fine amount but may enroll in a remedial training program to mitigate public disclosure of that citation on the internet. The average cost to enroll and complete the remedial training is estimated at \$120 per training course.

The Bureau does not have an estimate of the number of ARDs being issued a citation (1,200), which may opt to complete remedial training, but anticipates some ARDs issued a citation will participate in remedial training. As a result, training costs are estimated to range from \$0 to \$144,000 per year and up to \$1.44 million over a ten-year period as follows:

Bureau of Automotive Repair Remedial Training - Economic Impact (costs)											
Item	Course Costs	Years Ongoing*									
		1	2	3	4	5	6	7	8	9	10
Training Course (online)	\$120	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$1,440,000
<b>Total Costs:</b>		<b>\$144,000</b>	<b>\$1,440,000</b>								

\*Assumes all cited individuals seek training (top-range)

### **Fiscal Impact Assessment<sup>1</sup>:**

The Bureau anticipates workload and costs related to the issuance citations and fines, as well as for certifying remedial training course providers. Total workload and costs are estimated at approximately \$848,000 per year and up to \$8.5 million over a ten-year period including the following:

**Citation and Fines:** The Bureau estimates 1,200 citations and fines will be issued per year and anticipates workload costs of approximately \$400 per citation, which results in workload costs of approximately \$493,200 per year and up to \$4.9 million over a ten-year period as follows:

Bureau of Automotive Repair Citations & Fines (CCR 3394.51) - Fiscal Impact (costs)											
Item	Costs	Years Ongoing									
		1 1,200	2 1,200	3 1,200	4 1,200	5 1,200	6 1,200	7 1,200	8 1,200	9 1,200	Total 12,000
Issuance of Citation & Fine	\$411	\$493,200	\$493,200	\$493,200	\$493,200	\$493,200	\$493,200	\$493,200	\$493,200	\$493,200	\$4,932,000
<b>Total Costs:</b>		<b>\$493,200</b>	<b>\$4,932,000</b>								

**Citation Extension:** The Bureau estimates 25 ARDs issued a citation will seek an extension each year, which will result in workload and costs estimated at \$280 per extension request with total costs of \$7,000 per year and up to \$70,000 over a ten-year period as follows:

Bureau of Automotive Repair Request for Extension (CCR 3394.52) - Fiscal Impact (costs)												
Item	Costs	Years Ongoing										
		1 25	2 25	3 25	4 25	5 25	6 25	7 25	8 25	9 25	10 25	Total 250
Extension Request	\$280	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$70,000
<b>Total Costs:</b>		<b>\$7,000</b>	<b>\$70,000</b>									

**Citation Appeals:** The Bureau estimates 15 percent (or 180) of citations issued per year will be appealed beginning with an informal conference held by the Informal Citation Review Conference Panel to affirm, modify, or dismiss the citation. However, the Bureau further notes because the citation (issuance) process includes multiple levels of review and approval, it does not anticipate modifications or dismissals of citations or fines.

Based on the Bureau's experience with its two other citation programs, the Bureau estimates 54 appealed cases will be referred onto the Attorney General and Office of Administration (AG/OAH) with 18 percent (32) of cases resulting in a stipulated settlement agreement and 12 percent (22) of cases resulting in a hearing default settlement. Appeals workload and costs are estimated at \$340,360 per year and up to \$3.4 million over a ten-year period as follows:

<sup>1</sup> The Bureau inserts the fiscal impact assessment here based on the inability to present charts in the notice of regulatory action because of accessibility.

Bureau of Automotive Repair Citation Appeals (CCR 3394.53) - Fiscal Impact (costs)												
		Years Ongoing										
Item	Costs	1	2	3	4	5	6	7	8	9	10	Total
Appeals (15% of Citations Issued)	\$192	180	180	180	180	180	180	180	180	180	180	1,800
Sub-Total:	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$34,560	\$345,600
*AG/OAH Stipulated Settlement	\$4,400	32	32	32	32	32	32	32	32	32	32	320
Sub-Total:	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$140,800	\$1,408,000
**AG/OAH Hearing Default	\$7,500	22	22	22	22	22	22	22	22	22	22	220
Sub-Total:	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	\$1,650,000
<b>Total Costs:</b>	<b>\$340,360</b>	<b>\$3,403,600</b>										

\*Attorney General/Office of Administrative Hearings (18%) Stipulated Settlement

\*\*Attorney General/Office of Administrative Hearings (12%) Hearing Default

**Registration:** The Bureau estimates 25 attorneys will apply for registration to provide remedial training courses with workload costs of \$289 per registration, which results in workload costs of approximately \$7,250 per year and up to \$72,250 over a ten-year period as follows:

Bureau of Automotive Repair Course Provider Registration (CCR 3395.8) - Fiscal Impact (costs)												
		Years Ongoing										
Item	Costs	1	2	3	4	5	6	7	8	9	10	Total
		25	25	25	25	25	25	25	25	25	25	250
Course Provider Registration	\$289	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$7,225	\$72,250
<b>Total Costs:</b>	<b>\$7,225</b>	<b>\$72,250</b>										

**Revenues:** The Bureau estimates up to 1,200 citations will be issued to ARDs per year with an average fine amount of \$500, which would result in penalty revenues of \$600,000 per year and up to \$6 million over a ten-year period as follows:

Bureau of Automotive Repair Citations & Fines - Fiscal Impact (revenues)												
		Years Ongoing										
Item	Ave Fine Amt	1	2	3	4	5	6	7	8	9	10	Total
		1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	12,000
Citation & Fine	\$500	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$6,000,000
<b>Total Revenues:</b>	<b>\$600,000</b>	<b>\$6,000,000</b>										

The Bureau notes, no registration fees are being assessed because current law does not authorize a fee to be charged. Any workload costs will be offset by penalty revenues and/or absorbed within existing resources.

#### **Specific Technologies or Equipment:**

These regulations do not mandate the use of specific technologies or equipment.

#### **Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the adopted regulation.

Set forth below are the alternatives the Bureau considered and the reason the Bureau rejected the alternatives for each aspect of this regulation proposal:

### **Alternative 1: Citation System for ARDs**

The Bureau considered taking no action. However, taking no action would leave the Bureau's current system of addressing violations through educational efforts in place. This would allow continued violations of concern to go undisclosed until they reach a level requiring disciplinary action, which would prevent the public from obtaining information that can assist them when choosing an ARD.

### **Alternative 2: Informal Appeal Process**

The Bureau considered taking no action as adopting such a conference is discretionary under AB 471. However, if the Bureau declines to adopt such a process, all contested citations for violations of the Automotive Repair Act would have to be heard in an administrative hearing. As the Bureau has enjoyed success in resolving contested citations through the informal appeal process for smog check and unlicensed activity, it decided to adopt such a process for ARD violations to enhance administrative efficiency and reduce administrative costs.

### **Alternative 3: Remedial Training**

The Bureau considered taking no action. However, if the Bureau were to take no action, it would miss an opportunity to obtain compliance by incentivizing registrants to take additional training on the Bureau's laws and regulations to prevent disclosure of a citation for violations the Bureau deems minor.