



REGULATORY AGENCY ACTION

The Commission's April 24 and May 17 meetings were cancelled and rescheduled to August 7.

FUTURE MEETINGS:

September 25 in Sacramento.

November 20 in Sacramento.

January 15 in Sacramento.

BUREAU OF AUTOMOTIVE REPAIR

Chief: James Schoning

(916) 366-5100

Toll Free Complaint Number: 1-800-952-5210

Established in 1971 by the Automotive Repair Act (Business and Professions Code sections 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

Under the direction of Chief James Schoning, the Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. The terms of three of the Advisory Board members—Herschel Burke, Vincent Maita, and Alden Oberjuege—

expired in June 1991; they remain on the Board until replacements are appointed. The other Advisory Board members are William Kludjian, Jack Thomas, Carl Hughett, Joe Kellejian, Louis Kemp, and Gilbert Rodriguez.

On March 19, the Senate confirmed Governor Wilson's appointment of Jim Schoning as Chief of BAR.

MAJOR PROJECTS:

BAR Implements Tijuana Smog Check Pilot Program. In an effort to assist the Tijuana government in bringing some of that area's automobiles into compliance with California Smog Check standards, BAR began a pilot Smog Check program in Tijuana in mid-March. A committee consisting of staff from BAR, the Air Resources Board (ARB), the South Coast Air Quality Management District, the U.S. Environmental Protection Agency (EPA), and the Secretaria De Desarrollo Urbano y Ecologia (the Mexican government's equivalent of the EPA) developed the project which, in its first stage, will target government-owned vehicles. According to BAR Deputy Chief Amparo Garcia, the objective of the program is to help the Tijuana government crack down on automobile pollution, which in turn will help southern California's air quality problem. Upon successful completion of the pilot stage, the full program is expected to be implemented, focusing on vehicles registered in Mexico that are driven into southern California on a daily basis. During March, numerous Mexican technicians participated in training consisting of theoretical as well as hands-on experience. Manufacturers are lending the Mexican government three BAR-90 test analyzers for use during the pilot project.

Clean Air Act Update. The Clean Air Act Amendments passed by Congress in 1990 require states to have a centralized or equally effective Inspection/Maintenance (I/M) program as determined by performance standards to be adopted by the EPA. [12:1 CRLR 45] While it is anticipated that significant changes will have to be made to California's Smog Check Program, the direction those changes will take is still uncertain. At this writing, EPA's draft performance standards, originally scheduled for release last November, have not been published.

At the Advisory Board's February 21 meeting in San Diego, Richard Sommerville, Chair of BAR's I/M Review Committee, described the Committee's purposes and progress. He stated that California's I/M program is at a crossroads until EPA releases its performance standards. The Committee anticipates that the

federal government will require loaded-mode testing which, as a matter of economics, would most likely require conversion of California's decentralized program into a centralized program. One possible solution would be to separate the testing and repair functions of the program, with the testing portion under contract to the state. Members of the auto repair industry are opposed to centralizing the program, claiming such a move would put many of them out of business. Somerville noted that the machinery the federal government is advocating for use would cost individual stations over \$150,000, whereas the BAR-90 test analyzer used by California stations now costs between \$14,000-\$15,000. Somerville said that there may be room to integrate the BAR-90 analyzer into whatever total approach is eventually adopted.

Fee Increases Approved. In January, BAR held public hearings on its proposal to amend section 3351.1, Division 33, Title 16 of the CCR. The amendments increase BAR's registration and renewal fee for automotive repair dealers from \$100 to \$200 for each place of business in the state. The amendments also specify a \$50 late renewal fee for registrations not renewed on a timely basis. [12:1 CRLR 46] According to BAR, the increases are needed in order to effectively administer the Automotive Repair Act; registration and renewal fees have not increased since 1982. Surprisingly, the amendments were not met with any opposition at the hearings. The amendments, which have an effective date of July 1, were approved by the Office of Administrative Law (OAL) on March 11.

BAR Proposes New Rulemaking Package. In early March, BAR announced its intent to amend sections 3303, 3340.15, 3340.16, 3340.16.5, 3340.17, 3340.22.2, 3340.22.3, 3340.30, 3340.32, 3340.41, 3372.1, and 3373, and adopt new section 3340.22.3, Title 16 of the CCR.

The proposed amendments to section 3303 would delete existing language stating that vehicles of 10,000 pounds gross vehicle weight or greater are rebuttably presumed to be commercial vehicles.

Section 3340.15(d) requires that Smog Check station licenses, inspector licenses, and qualified mechanic certificates be posted prominently in an area frequented by customers. BAR proposes to amend this section to require that such licenses or certificates be displayed under glass or other transparent material. Proposed amendments to sections 3340.16 and 3340.16.5 would make clarifying, technical revisions. The proposed amendments



to section 3340.17 would formally allow BAR to designate a test analyzer system as being out-of-service under circumstances when the test analyzer system fails to meet current program requirements.

Health and Safety Code section 44017.3 provides for the posting of repair cost limit signs in Smog Check stations; these signs must indicate the maximum amounts which may legally be charged for repairs required as part of the Smog Check Program. BAR's proposed amendments to section 3340.22.2 would conform the regulation to recent changes in section 44017.3 which revise the language required to be included in the repair cost limit signs. Proposed new section 3340.22.3 would specify that signs required in Smog Check stations by the above-referenced sections be replaced if they no longer meet applicable specifications or have become illegible.

Health and Safety Code section 44031.5 establishes that DCA shall qualify mechanics for the Smog Check Program by establishing minimum experience and training criteria. Existing section 3340.30(b) provides alternative methods by which a Smog Check mechanic applicant may take BAR's mechanic qualification exam; one of the alternative methods currently allowed is to complete BAR's Clean Air Car Course, without any other automotive experience or training. BAR's proposed amendments to section 3340.30 would revise this particular alternative so as to require, in addition to completion of the Clean Air Car Course, completion of one or more years of automotive/mechanical experience or coursework.

Health and Safety Code section 44030.5 requires DCA to develop standards for the certification of institutions and instructors providing training to Smog Check mechanics. BAR's proposed regulatory amendments to section 3340.32 would require such institutions to evaluate the applications of applicants for appropriate experience and/or coursework, and advise prospective students of applicable experience and/or coursework requirements.

Proposed amendments to section 3340.41 would prohibit any person from knowingly entering into a test analyzer system any false information about a vehicle being tested.

Proposed amendments to section 3372.1 would delete the provision that currently allows an automotive repair dealer to provide a disclosure statement in advertisements for automotive service, when such advertisement might otherwise be construed as being misleading. Such a

disclosure statement is currently allowed under circumstances in which an automotive repair dealer is advertising an automotive service for a stated price, but has reason to believe that additional labor, parts, or service are often needed as part of the advertised service.

Finally, BAR's proposed amendment to section 3373 would provide that an automotive repair dealer may not withhold or insert statements or information in documents required to be maintained as part of the Smog Check Program, when such statements or information would be, or would appear to be, misleading to customers.

On April 21 and 28, BAR received extensive comments on its proposed amendments to section 3372.1; as a result of the concerns expressed, BAR pulled this section from the rulemaking package and will reexamine it at a later date.

At this writing, the rest of the rulemaking package is being prepared for submission to DCA for the internal approval process. If approved, the proposed changes will then be forwarded to OAL for review and approval.

LEGISLATION:

SB 1688 (Craven), as amended April 28, would authorize the DCA Director to direct BAR to undertake a study and create an advisory committee on auto body repair. The bill, which would require the Director to report findings and recommendations to the legislature by December 1, 1993, would also require that each application for registration to operate an auto body repair shop contain specified information. [A. Desk]

SB 1792 (Presley). The Automotive Repair Act requires automotive repair dealers to maintain certain records for at least two years. As amended May 12, this bill would require the dealers to maintain those records for at least three years. Existing law, until January 1, 1999, requires licensed Smog Check stations to utilize equipment certified by DCA. This bill would, until that date, require replacement parts for that equipment to be certified by DCA and would limit the fee for certification testing of original equipment and replacement parts to \$10,000 and \$2,500, respectively. Until that date, the bill would require Smog Check equipment manufacturers to furnish to DCA, and to install, specified software updates, and would specify penalties for failure to comply. [S. Appr]

AB 2483 (Bentley), as amended March 19, would prohibit antifreeze and coolant from containing suspended matter or sediment; provide that alcohol-based coolants

and antifreeze are not suitable for use in automotive engines and prohibit their sale and distribution; change the labeling requirements for engine coolants and prediluted engine coolants; and make it unlawful for any person or other legal entity to make any deceptive, false, or misleading statement by any means whatever regarding quality, quantity, performance, price, discount, or savings in the sale or selling of any regulated automotive product. [S. B&P]

SB 1294 (Presley). Existing law establishes BAR's I/M Review Committee to analyze the effect of the Smog Check Program on motor vehicle emissions and air quality; the Committee is required to prepare and submit to the legislature on or before December 31, 1992, a report on the effect of existing cost limitations for repairs required under the program. As amended April 2, this bill would require the Review Committee, in consultation with ARB and DCA, to include in that report its recommendations for improving the effectiveness and cost-effectiveness of the program, including, at a minimum, prescribed information. The report is expected to be an outline of proposed legislation for 1993 which will address an enhanced and revised Smog Check Program which conforms with the performance standards to be established by EPA under the 1990 Clean Air Act Amendments. [A. Trans]

SB 1404 (Hart), as amended March 24, would require ARB to adopt regulations specifying the amount and types of pollutants that make a motor vehicle a gross polluter, as defined. The bill would also authorize air pollution control districts and air quality management districts, in cooperation with law enforcement authorities and DCA, to conduct a program, on or after March 1, 1993, using remote sensing devices or other methods to identify gross polluters. [S. Appr]

SB 2044 (Boatwright), as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BAR, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill would also provide that the unlicensed performance of activities for which a BAR license is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. Also, SB 2044 would provide that if, upon investigation, BAR has probable cause to believe that a person is advertis-



ing in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Bureau to offer or perform those services, the Bureau may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [A. CPGE&ED]

AB 2489 (Hayden), as amended April 21, would require the California Environmental Protection Agency to prepare a list of chlorofluorocarbons (CFCs) for which substitutes are available and dates by which their implementation would be feasible. CFCs are frequently used in automobile air conditioning systems. Cal-EPA would also be required to develop programs to implement earlier phaseout dates for instances where there are known, nonhazardous alternatives to CFCs. [A. W&M]

AB 2743 (Lancaster), as amended April 9, is the Department of Consumer Affairs' omnibus bill. The bill would permit DCA licensing boards involved in disciplinary proceedings to request that an administrative law judge direct a licensee found to have committed a violation of the board's licensing act to pay the board for the reasonable costs of investigation and enforcement of the case. It would also provide, as grounds for denial of a license, knowingly omitting to state a fact required to be revealed in a license application. The bill authorizes a board to revoke, suspend, or restrict a license if the licensee secured the license by fraud, deceit or misrepresentation. [A. W&M]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 46-47:

AB 598 (Elder), as amended August 19, would require ARB to prepare a list of models of motor vehicles that are significant sources of air pollution, and require the Department of Motor Vehicles (DMV) to develop and implement a program to acquire and scrap the designated vehicles. DMV would also be required to assess a pollution mitigation fee on an individual if the cost of repairing his/her vehicle in order to bring it into compliance with emission standards exceeds the prescribed cost limitations. [S. Trans]

AB 1828 (Areias), as amended May 20, 1991, would provide that in all instances where nonoriginal equipment manufacturer aftermarket crash parts are intended for use by an insurer in the repair of an insured's motor vehicle, a disclosure document containing specified informa-

tion and printed in a specified type must be attached to the insured's copy of the estimate and be acknowledged by the insured. [S. InsCl&Corps]

The following bills died in committee: **AB 624 (Bane)**, which, among other things, would have prohibited automobile repair dealers from offering discounts to offset auto insurance deductibles; **AB 1989 (Baker)**, which would have exempted, from provisions prohibiting the release of residence and mailing addresses by the Department of Motor Vehicles, persons engaged in the sale or marketing of services related to the Smog Check Program; **SB 295 (Calderon)**, which would have limited the cost of a Smog Check test only to \$50, exclusive of the charge for the certificate; **AB 691 (Hayden)**, which would have required the use of refrigerant recycling equipment approved by ARB on and after January 1, 1993, in the servicing of vehicle air conditioners and other specified activities; **SB 573 (Rosenthal)**, which would have required BAR to establish a program for certifying a third party dispute resolution process for arbitrating disputes relating to the warranties on used cars; and **AB 1118 (Johnson)**, which would have required DCA to publish the rules and regulations to be followed in order to suspend or revoke the license of a Smog Check station or mechanic.

FUTURE MEETINGS:

August 28 in Orange County.

November 20 in San Luis Obispo.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 23,519 barbers, 5,855 shops, and 19 schools.

BBE's enabling act is currently found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Division 3, Title 16 of the California Code of Regulations (CCR).

On July 1, 1992, BBE and the Board of Cosmetology (BOC) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and

Professions Code sections which establish BBE and BOC will be repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

MAJOR PROJECTS:

Merger Preparation Continues. At its February 2 meeting, BBE reviewed the status of various merger-related issues. For example, after BBE and BOC visited each other's examination facilities to assess the feasibility of combining the sites, BBE determined that the sites should be kept separate for at least the first six months after the merger. This decision is based on BBE's findings that the barber examination requires a site where the chairs have adjacent sinks; the lengthy waiting period to take the BOC examination should not adversely affect administration of the barber examination; and the substantial difference in the administration of the two examinations would make it difficult to have both examinations administered at the same time at the same location.

BBE staff also addressed the issue of consumer protection, suggesting that the barbering and cosmetology licensing examinations be evaluated every four years to eliminate portions of the examinations that do not relate to protecting the public from harm. According to BBE, demonstrated competence is necessary in the areas of shaving and chemical applications; however, the public may not be irreparably harmed if the scalp massage, haircut, or hairstyle demonstration were removed from the barber examination. BBE contends that the marketplace would automatically react to those licensees who give a bad haircut or hairstyle.

BBE also discussed enforcement concerns, and reviewed proposed Inspector Territorial Assignments for the new board. Such assignments take into account that each territory is different (*i.e.*, some areas are densely populated and others are not), and that various lengths of time to travel and to inspect are necessary. BBE is still concerned that the quality and frequency of barber shop inspections will decrease after the merger.

BBE received a final recommendation report from Systems Excellence (Systex), the private consulting firm hired by BBE to develop an organizational structure for BBC. Specifically, Systex assessed the job functions performed by BBE and BOC staff, the current workloads of each board,