



## REGULATORY AGENCY ACTION

### ■ FUTURE MEETINGS

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 section 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.

### ■ MAJOR PROJECTS

**BAR Investigation of Sears Leads to Probation and Multimillion-Dollar Settlement.** On June 11, DCA Director Jim Conran announced that BAR would seek the revocation or suspension of the registration of all 72 of Sears' auto repair shops in California, based on the results of a year-long investigation. After detecting

a pattern in consumer complaints involving Sears, BAR began the first phase of a two-part investigation of Sears' sales and repair procedures in late 1990. In the initial phase of the investigation, BAR undercover operatives conducted 38 tests at 27 Sears locations in California between December 1990 and December 1991. In each test, a BAR automobile in need of minor brake work was transported to an area near a Sears service center. The undercover operative then drove the car to the center and requested a brake inspection. In 34 cases, Sears employees recommended and performed what BAR considered to be unnecessary repairs or service. BAR further claimed that in some cases, scare tactics and other hard-sell methods were used that would likely influence the typical car owner into authorizing service. Additionally, BAR stated that the service was occasionally inadequate, with mechanics damaging cars and returning them in worse condition than when they arrived. In all cases, the test cars were thoroughly examined for defects by BAR both before and after the service.

In January 1992, BAR reported its findings to Sears. Later that month, BAR operatives conducted a second test series on ten shops. While the level of overselling had declined, the investigation showed that such practices still continued. BAR subsequently began license revocation proceedings in June.

BAR investigators stated they had uncovered a consistent pattern of fraud and abuse in Sears' sales tactics. The investigators reported that Sears employees were instructed to sell a certain amount of various brake and suspension services or repairs per eight-hour shift. Sears' sales employees confirmed that Sears had implemented a system whereby employees who met or exceeded their quota of sales were rewarded with prizes, trips, and merchandise. Sears began the incentive system after reducing its employees' hourly pay in a cost-cutting move. Such incentive systems linked to quotas are not common in the auto industry, and many consumer activists have argued that such systems can easily lead to abuse and overselling.

Sears initially responded by denying BAR's allegations and claiming that its investigations were flawed. Sears claimed that BAR investigators tricked its employees into thinking cars needed certain repairs by using older cars with artificially aged parts and other signs of wear; what BAR referred to as unnecessary repairs, Sears called preventive maintenance. On June 14, Sears ran a full-page advertisement entitled "Open Letter to

Sears Customers" in major California newspapers, in which Sears contended that the behavior challenged by BAR amounted to no more than "recommending replacement of worn parts, when appropriate, before they fail" and characterized this action as an "accepted industry practice." However, in an attempt to restore consumer confidence, Sears discontinued its incentive compensation program, conceding that "mistakes may have occurred." BAR maintained, however, that Sears had systematically defrauded the public and continued to press for the revocation of Sears' registrations.

In the face of the BAR's administrative action and continuing public opprobrium, Sears began negotiating a settlement with BAR and analogous agencies in other states where similar misconduct was suspected or alleged. In September, Sears announced that—as part of its settlement of both BAR's administrative action and numerous class action lawsuits which had been filed all over the country—it would distribute up to \$46.6 million in coupons to qualifying customers who had their automobiles serviced at Sears between August 1, 1990 and January 31, 1992. Beginning November 1, any customer who purchased certain brake components is entitled to \$50 in coupons good for any Sears merchandise. In addition, full refunds are due to any California customer overcharged by more than \$50 for unnecessary work performed by Sears. Sears also agreed to pay DCA \$3.5 million to cover the cost of BAR's investigation, and to make a \$1.5 million contribution to auto mechanic programs at California's community colleges. In return, BAR modified the administrative action against Sears such that Sears will be on probation for three years. Sears admitted no wrongdoing in the settlement. BAR will continue to use undercover operatives to monitor Sears' performance during the probationary period. According to DCA Director Conran, "Sears is on a very short leash."

**State Budget Crisis Impacts BAR's Function, Eliminates Advisory Board.** After months of debate, Governor Wilson and the legislature produced California's 1992-93 budget, which reflects the state's economic downturn and the resultant loss of revenue by making major cuts in most state-funded programs. At one time, DCA was scheduled to be eliminated, and later an 18% cut in expenditures by all DCA agencies was contemplated. The final Budget Act mandates a 50% reduction in travel costs for DCA, in addition to a 10% cut in general expenditures by each agency; the savings will be transferred to the state's general fund in June 1993. In addi-



tion, the Budget Act eliminated 47 advisory boards, including BAR's nine-member Advisory Board (*see infra* LEGISLATION).

**Clean Air Act Update.** In 1990, Congress passed amendments to the Clean Air Act requiring, among other things, that states have a centralized or equally effective Inspection/Maintenance (I/M) program, as determined by performance standards to be adopted by the federal Environmental Protection Agency (EPA). [12:2&3 CRLR 66] EPA finally released its draft proposals for those performance standards on July 13, eight months after they were due; the proposed rules, if approved, will go into effect on July 1, 1994.

The proposed rules promulgate a two-level system of testing, including a basic system (unchanged from current standards) for less polluted areas and a new enhanced testing regime for the most polluted metropolitan areas, such as Los Angeles, Long Beach, San Diego, Oxnard-Ventura, San Bernardino-Riverside, Fresno, and Sacramento. The basic testing program has been mandated for most of the remaining areas of California.

In proposing the performance standard for enhanced programs, EPA considered low, medium, and high options for adoption; those options take an incremental approach to advanced technology testing. According to EPA, the low option is similar to the better programs currently operating pursuant to the 1977 amendments to the Clean Air Act; the medium option includes pressure testing of the evaporative system in addition to the elements included in the low option; and the high option includes a transient, mass-based, short test which closely reflects how vehicles perform under actual driving conditions, identifies high-emitting vehicles, and provides greater assurance of effective repair. Additionally, the high option includes a pressure test of a vehicle's evaporative emission control system to detect any leakage in the system and a purge test to assure that captured fuel vapor is delivered to the engine and burned during normal vehicle operations. Although EPA is proposing to adopt the high option, it is also seeking public comment on the low and medium options.

EPA estimates that in the typical urban area adopting the high option program, there will be a 28% reduction in volatile organic compounds, a 31% reduction in carbon monoxide emissions, and a 9% reduction in nitrogen oxide emissions from highway mobile sources by 2000, as compared to the same area without such an I/M program. While EPA's model program assumes annual testing, EPA strong-

ly recommends that states implement biennial testing programs, which will reduce test costs and consumer inconvenience. The Clean Air Act allows states to implement biennial programs if they can demonstrate that such a program alone or in conjunction with other programs is equally effective as annual testing.

Furthermore, the model program includes a system of high-volume centralized test centers separated from the service/repair component of the I/M system. In its proposal, EPA acknowledges that while centralized systems are presumed to be the most effective, alternative systems are authorized by the Act if they are proven to be as effective as a centralized system; the state would have the burden of showing that any proposed decentralized system is at least as effective in meeting performance standards and avoiding fraud and abuse as EPA's model. According to EPA, it could not accept any of the currently operating decentralized systems (including California's) as being equally effective as a centralized system. Under EPA's proposed rules, an enhanced test-and-repair system must be operational by July 1994, along with an approved evaluation system; by January 1997, the evaluation results must show that the enhanced test-and-repair system achieves EPA's performance standard. The basic I/M areas are not required to be test-only, and the performance standard is such that a reasonably comprehensive, conventional test-and-repair system can meet the target.

Installation of the equipment necessary for the enhanced program is expected to cost from \$75,000 to \$150,000 for each inspection installation. The Department of Transportation said that states will be eligible for federal funds to help acquire the equipment and train technicians; this aid will come through a \$6 billion program approved by Congress last year.

BAR's I/M Review Committee is currently reviewing the proposed EPA standards and their impact on California's Smog Check Program. The Committee, in consultation with the Air Resources Board (ARB) and DCA, must report its findings, including its recommendations for improving the effectiveness and cost-effectiveness of the program, to the legislature before December 31, 1992; that report is anticipated to be the basis for 1993 legislation implementing EPA's performance standards in the Smog Check Program (*see infra* LEGISLATION).

**Rulemaking Package Approved.** On August 18, the Office of Administrative Law approved BAR's amendments to sections 3303, 3340.15, 3340.16, 3340.16.5, 3340.17, 3340.22.2, 3340.30, 3340.32,

3340.41, 3373, and the adoption of new section 3340.22.3, Title 16 of the CCR. [12:2&3 CRLR 66] These amendments make various changes to the Smog Check Program regarding station licenses, test analyzer systems, repair cost limit signs, mechanic qualification exams, and certification of institutions and instructors providing training to Smog Check mechanics.

## LEGISLATION

**ABX 66 (Vasconcellos)** abolishes 47 specified advisory boards, including BAR's Advisory Board (*see supra* MAJOR PROJECTS). This bill, which takes effect on January 1, 1993, was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992).

**HR 35 (Eaves)** directs BAR, the Department of Motor Vehicles, and the California Highway Patrol, along with various industry organizations, to create a study group to investigate the appropriateness of requiring a more comprehensive equipment inspection for salvaged vehicles than the current brake and light inspection; the study group is to report its findings to the Assembly not later than July 1, 1993. This resolution was adopted on August 14.

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 67-68:

**SB 1688 (Craven)** authorizes the DCA Director to direct BAR to undertake a study and create an advisory committee on auto body repair. The bill, which requires the Director to report findings and recommendations to the legislature by December 1, 1993, also requires that each application for registration to operate an auto body repair shop contain specified information. This bill was signed by the Governor on August 9 (Chapter 479, Statutes of 1992).

**SB 1792 (Presley).** The Automotive Repair Act requires automotive repair dealers to maintain certain records for at least two years; this bill requires 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. Until that date, this bill requires replacement parts for that equipment to be certified by DCA and limits the fee for certification testing of original equipment and replacement parts to \$10,000 and \$2,500, respectively. Until that date, the bill also requires Smog Check equipment manufacturers to furnish to DCA, and to install, specified software updates, and specifies penalties for failure to comply. This bill was signed



## REGULATORY AGENCY ACTION

by the Governor on September 12 (Chapter 674, Statutes of 1992).

**AB 2483 (Bentley)** prohibits antifreeze and coolant from containing suspended matter or sediment; provides that alcohol-based coolants and antifreeze, excluding glycols, are not suitable for use in automotive engines and prohibits their sale and distribution; changes the labeling requirements for engine coolants, antifreeze, and prediluted engine coolants; and makes 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. This bill was signed by the Governor on July 23 (Chapter 322, Statutes of 1992).

**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. This bill requires 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 (*see supra* MAJOR PROJECTS). This bill was signed by the Governor on September 12 (Chapter 677, Statutes of 1992).

**SB 1404 (Hart)** authorizes ARB, in consultation with DCA, to adopt non-regulatory guidelines specifying the amount and types of pollutants that qualify a motor vehicle as a gross polluter, as defined. The bill also authorizes DCA, in cooperation with law enforcement authorities, to conduct programs using remote sensing devices or other methods to identify gross polluters, and requiring gross polluters to be tested and repaired. This bill was signed by the Governor on September 26 (Chapter 972, Statutes of 1992).

**SB 2044 (Boatwright)** declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BAR, to establish by regulation a system for the issuance of an administrative cita-

tion 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 also provides 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 provides that if, upon investigation, BAR has probable cause to believe that a person is advertising 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. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

**AB 2743 (Frazee)** is the Department of Consumer Affairs' omnibus bill. The bill permits a DCA licensing board 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 also provides, 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. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

**AB 598 (Elder)** was substantially amended and is no longer relevant to BAR.

The following bills died in committee: **AB 2489 (Hayden)**, which would have required the California Environmental Protection Agency to prepare a list of chlorofluorocarbons for which substitutes are available and dates by which their implementation would be feasible, and **AB 1828 (Areias)**, which would have provided that in all instances where non-original 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 information and printed in a specified type must be attached to the insured's copy of the estimate and be acknowledged by the insured.

## BOARD OF BARBERING AND COSMETOLOGY

*Interim Executive Officer:*  
*Rualette White*  
*(916) 445-7061*

On July 1, 1992, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the enabling statutes of the Board of Barber Examiners (BBE) and the Board of Cosmetology (BOC) were repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC); that act is found at Business and Professions Code section 7301 *et seq.* The newly-created BBC provides for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis. The Board is also authorized to conduct and administer examinations, adopt regulations governing public health and safety, and discipline persons in violation of its statutes or regulations. BBC represents the first merger of two California regulatory agencies. The Board consists of nine members, five public and four representing the professions, and will hold meetings at least four times per year.

### MAJOR PROJECTS

**New Members Appointed to BBC.** Pursuant to AB 3008, BBC consists of nine members—five public and four industry members. The Governor is authorized to appoint three of the public members, two licensed cosmetologists, and two licensed barbers; the Senate Rules Committee and the Speaker of the Assembly are each authorized to appoint one public member. At BBC's first meeting on September 14, only six of the Board members had been appointed:

- Paul Schwager, Assembly Speaker Willie Brown's appointee, will serve as a public member. Schwager, who resides in Orange, is a labor representative to the United Food and Commercial Workers Union Local 324. Schwager served as a public member on BBE prior to the merger.

- Howard Stein, DDS, the Senate Rules Committee's appointee, is a retired dentist who will serve as a public member. Stein, of Huntington Beach, is currently the chief executive officer of Ramstone Management Company, Inc. Stein served as a public member on BOC prior to the merger.

- Carole Matchette, Governor Wilson's appointee, will serve as a public member. Matchette, from Tarzana, served for nine years as a sales advisor and recruiting and