

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES: May 10 and 12, 2006

SUBJECT MATTER OF PROPOSED REGULATIONS: Invoice Requirements; Individual Prices for Parts and Services/Repairs

SECTION AFFECTED: § 3356 of Title 16, Division 33, Chapter 1, Article 7 of the California Code of Regulations

UPDATED INFORMATION:

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

The proposed regulatory action clarifies and reinforces the current invoice requirements applicable to automotive repair dealers (ARD). This will help to ensure that all consumers have full and complete disclosure of all charges in their dealings with ARDs. This is not only consistent with the Bureau's principal mandate to protect the interests of the public, but is consistent with the spirit and intent of those provisions of the Automotive Repair Act¹ that relate to open disclosure in estimates, work orders and invoices. Furthermore, the proposed action is consistent with and recognizes the current standard of practice in the industry.

This proposal makes minor clarifying changes to existing regulation by reorganizing the current provisions of Section 3356 of Title 16 of the California Code of Regulations, and applying the word "separately" to the description of both labor (service and repair work) and parts, as provided in Section 9884.8 of the Business and Professions Code. The proposed changes will clarify the requirement to list and describe labor separately from parts and to include the individual price for each item of labor and each part listed and described in an invoice. All of the current requirements for inclusion of business identification, distribution of copies and maintenance of records will be retained.

Although it is a common practice for the repair industry to include individual prices for both parts and labor in their invoices, from time-to-time, consumer complaints will arise when an ARD chooses to deny a customer this information. When this happens, Bureau staff finds it difficult to hold the ARD to this common industry trade practice, because current regulations do not expressly require that labor actions (service and repairs) be individually listed in an invoice.

¹ Chapter 20.3 (commencing with section 9880) of Division 3 of the Business and Professions Code.

Further, current regulations do not expressly require that individual prices for each listed and described part or labor action be included in an invoice. This results in the consumer being denied important information when an unscrupulous repair dealer has something to hide. This is an issue that has been around for a long while and should be addressed and clarified to resolve any confusion.

Business and Professions Code, Section 9884.8 currently states in part: "*...Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts...*"

By stating that the "*service work and parts shall be listed separately*", there is a clear intent that this listing should include both a description and a price. By requiring that subtotal prices be also included, it is clear that individual prices must have been used to arrive at the subtotals.

California Code of Regulations, section 3356 currently states in part "*...the invoice shall describe all service work done ... and shall separately identify each part in such a manner that the customer can understand what was purchased,...*"

The regulation states that the parts must be separately identified on the invoice, but fails to expressly state that labor actions must be likewise separately identified, or that the price of each labor action and each part must be included. An important part of knowing what was purchased must necessarily include the individual price for an item. While it is implied that individual prices must be included, it is important that this requirement be clearly and specifically stated.

The foundation of the Automotive Repair act is set on the concepts of full disclosure and informed authorization. This is the general theme that runs through most of the Bureau's regulations. The proposed action will clarify and reinforce this concept in the requirement to provide customers with complete, detailed and informative invoices, consistent with the current industry standard of practice.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

This action will not have any adverse economic impact on businesses, including small businesses. This determination is based on the following facts or evidence/documents/testimony:

The proposed action merely clarifies existing statutory requirements and the provisions of current regulation. In addition, the proposed action will recognize a current industry standard of practice adhered to by almost all automotive repair dealers. Therefore, the proposed action will

not require the industry to do anything any differently than they do now, and there will be no impact from the changes to current regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This action does 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 either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made, either in writing or orally during the public comment period or at the public hearings, regarding the proposed action:

1. Bob Haynes, BAR Liaison, Pep Boys Automotive, in oral testimony presented at the May 10, 2006 public hearing, offered the following comments and recommendations:

- a. Pep Boys does support any and all efforts of the Bureau of Automotive Repair and any other entity that helps the customer along the way to making an informed buying decision.

This expression of support was accepted and considered in the adoption of the proposed action.

- b. In the specific language of the proposed regulation changes, on page two, in the paragraph numbered three, it states that the invoice shall separately describe each part supplied in such a manner that the customer could understand what was purchased and shall identify the price of each itemized part. The designation of each part shall include the brand name or other comparable designation. The phrase, “or other comparable designation” is not specific in nature, and leaves that wide-open for lots of interpretation.

This comment was accepted and the proposed action was modified as follows to accommodate it:

The phrase “or other comparable designation,” as well as the reference to “brand name,” has been stricken from the proposed amendments to paragraph (3) of subsection (a) of Section 3356. The proposed inclusion of that language in this regulation was intended to be informative to and a convenience for automotive repair dealers concerning the specific

requirements of subdivision (a) of Section 12001 of the Vehicle Code. Aside from the informational and convenience value of including, verbatim, the text of the statute in this regulation, no additional purpose is served. As has been pointed out, no specificity or clarification would be achieved and the inclusion of that language is, therefore, not necessary. Since there is currently no definition of the phrase “or other comparable designation,” a definition or examples of what would constitute a designation comparable to the brand name of a part may have to be developed if it becomes necessary to revisit this issue in the future.

It must be noted that the requirements of subdivision (a) of Section 12001 are applicable to any automotive repair dealer who sells and installs new parts in passenger cars regardless of whether or not the language of the statute is included in Section 3356 or any other Bureau regulation. If the conditions of the statute are met, the “brand name, or other comparable designation,” must be included in the description of all new parts sold and installed. Furthermore, pursuant to Section 12000 of the Vehicle Code, the Bureau is mandated to enforce the provisions of Section 12001.

- c. In paragraph four, it states that if a customer is to be charged for a part, the part must be specifically listed on the invoice as provided in paragraph three. I’m okay with that, but then it says that if the part is not listed in compliance with paragraph three, it shall not be regarded as a part and a separate charge may not be made for it. It’s always been my belief that the regulations provided that all work and all parts that were performed or installed or replaced on a vehicle must be listed on an invoice whereas in paragraph four, subparagraph B, it says that you can list it, but if you don’t, it’s okay, you just don’t get charge for it. So, is it a violation or not? Again, that needs to be more specific.

This comment/recommendation was rejected because:

Paragraph (4) of subsection (a) of section 3356 is essentially unchanged from the provisions of the current regulation and remains consistent with the spirit and intent of Section 9884.8 of the Business and Professions Code. Mr. Haynes’ previous understanding was correct and will remain correct; i.e.; any part supplied must be recorded and described in the invoice, regardless of whether or not a charge is made for the part, and if a part is not listed no charge may be made for it. It is and will continue to be a violation, not to list and describe a part that is supplied. It is and will continue to be a violation, to charge for a part that is not listed and described.

2. Jonathan Morrison, California Motor Car Dealers Association, in written comments and oral testimony presented at the May 12, 2006 public hearing, offered the following comments and recommendations:

- a. In Section 3356(a)(2) the word “separately” is being added before the word “describe.” We assume that this is intended, based on the initial statement of reasons, to require that every repair be itemized on the invoice. We believe, however, that under the current language, this is already required. Adding “separately” before “describe,” we feel, will

add confusion as to the amount of itemization required. If the purpose of (a)(2) is merely to require that prices be listed on each itemized service, we don't have any problem with that. That's already pretty much a current practice and all of our dealers do this already. If however, there is going to be additional specificity, then I think it should be clarified in the regulation.

This comment/recommendation was rejected in part, and accepted in part, and the proposed action was modified to accommodate it, as follows:

Mr. Morrison is correct, under the current provisions of Section 9884.8 and this regulation, it is clear that all service work must be listed and described in the invoice. The primary purpose of this proposed action is to make it clear that when an item of service or repair is listed and described in an invoice, an individual price for that item is also stated. For example, if a "brake job" is performed and an "oil change" is also performed, each must be listed and described and the individual price for each must be stated. The current regulation, arguably, does not make the latter requirement clear and could be interpreted to allow automotive repair dealers to disclose only a combined subtotal for all the service and repair work performed. As has been stated in the Initial Statement of Reasons for this proposed action and confirmed by Mr. Morrison comments, this is already the current industry standard of practice followed by almost all automotive repair dealers. In this proposed action, the Bureau is merely attempting to promote the spirit and intent of those provisions of the Automotive Repair Act² that relate to open disclosure and itemization in estimates, work orders and invoices and to recognize, in its regulation, a current industry standard.

The addition of the word "separately" is also intended to maintain conformity with the current law³. This is being done to clearly extend and preserve the underlying principal that service and repair work, parts, and subtotal prices must be listed separately from one another. The intent here is not to require any additional detailed itemization. When read in the context of the underlying statute, it is clear what is meant by the use of the word "separately" in this regulation and there should be no confusion about its application to how much detailed itemization is or is not required.

Rather than the word "separately," it may be the addition of the word "itemized" that has given rise to this issue and concern. The Bureau would agree that the use of the word "itemized" may give the impression that it is trying to require more detail than what is currently being provided by the vast majority of automotive repair dealers. Again, that is not the intent of the proposed action. Therefore, the word "itemized" has been deleted and replaced with the word "described" in order to address the concern.

Furthermore, in order to be as clear as possible and to alleviate this concern, the Bureau has modified and consolidated the language of paragraphs (2) through (4) of subsection (a) of the proposed text, as follows:

² Chapter 20.3 (commencing with section 9880) of Division 3 of the Business and Professions Code.

³ Business and Professions Code section 9884.8.

...
(2) The invoice shall separately list, describe and identify all of the following:

(A) ~~a~~All service and repair work performed, including all diagnostic and warranty work, and shall identify the price for each itemized described service and repair.

(3B) ~~The invoice shall separately describe e~~Each part supplied, in such a manner that the customer can understand what was purchased, and shall identify the price for each itemized described part. The description of each part shall include the brand name, or other comparable designation, and shall state whether the part was new, used, reconditioned, rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

(4C) ~~The invoice shall separately identify the~~ subtotal price for all service and repair work performed.

(D) ~~T~~he subtotal price for all parts supplied, not including sales tax, and.

(E) ~~T~~he applicable sales tax, if any.

- ...
- b. We see a problem with adding the provisions of California Vehicle Code section 12001 regarding the brand name listing. [(a)(3)] The regulation proposal just includes the language of the statute verbatim stating that the description of each part shall include the brand name or other comparable designation. We're concerned with the term other comparable designation, as used in the statute. We feel that adding that into the regulation will cause confusion due to its ambiguity. We feel that's a vague and ambiguous term and that any regulation that is going to be included in the section should have some description of what the Bureau has in mind for a comparable designation. This is a completely subjective provision and the party that is going to be determining whether or not it's a comparable designation, a description of a brand, is going to be BAR. As such, we feel that BAR should be adding language to assist automobile repair dealers in understanding what is required. We think that the most obvious comparable designation would be that a part is an OEM part. If it is a Ford vehicle being repaired and you state that it is an OEM part, that is, by definition, a Motorcraft part and thus the brand name is pretty much included in the description. We feel that this provides a better service for consumers. For instance, I recently leased a car and right on the lease it says that any repairs done, have to be done with OEM parts. If you are a consumer that isn't very familiar with brand names and all you are given is the brand name itself, like Motorcraft, or Delphi, or AC Delco, or Goodrich, you may not know if it is an OEM part or a non-OEM part. Therefore, we think that the designation of a part as OEM should suffice for a comparable designation and that the regulation should reflect this fact.

This comment was accepted and the proposed action was modified as follows to accommodate it:

Please refer to comment 1. b., above.

- c. There is a limited amount of space available to put descriptions on each line item of an invoice and putting OEM instead of the actual brand name would save considerable room making compliance easier for automobile repair dealers. We also feel that for the same purposes, stating that a part is non-OEM – that should suffice. Again, what customers really want to know is whether the part is of the same build quality as the part originally installed in the vehicle and by stating that a part is non-OEM, will know that it isn't.

This comment/recommendation was rejected because:

While the Bureau would agree that, generally speaking, the use of the designation OEM would be comparable to including a brand name in the description of a crash part, the brand name provision has been removed from the proposed regulation text. [See also comment 1. b., above.] Therefore, this comment is no longer germane to the proposed action.

- d. To assist in compliance, we believe that automobile repair dealers that use mostly new OEM parts should be able to use a blanket statement on the invoice stating that all parts used in the repair are new OEM parts unless stated otherwise. Again, this is to assist in compliance and then of course, any parts that don't comply with the statement would be described and itemized separately stating that the part is non-OEM or the brand name could be listed.

This comment/recommendation was rejected because:

If used, a blanket statement such as the one proposed by Mr. Morrison would have to be specifically limited to crash parts in order to be acceptable. Subsections (q) and (r) of section 3303 ascribe the use of the designations OEM and non-OEM to crash parts in particular. That theme originates in Sections 9884.8 and 9884.9 of the Business and Professions Code. While a statement such as "All crash parts are new OEM unless otherwise specified." may be acceptable, broadening the statement to include all parts – by deleting the word "crash," for example – would not be appropriate.

Mr. Morrison's comment also gives the impression that he is suggesting that by using a blanket statement as above, the automotive repair dealer could avoid having to specifically list the parts to which the statement applies. However, the OEM/non-OEM designation is only one element of the description of a crash part. Even if an appropriate blanket statement could be used, all parts to which it applies would still have to be listed and described in the invoice. The only difference would be that the OEM designation would not have to appear individually in each description.

3. **Johan M. Gallo, Bridgestone/Firestone Retail & Commercial Operations, LLC, in oral testimony presented at the May 12, 2006 public hearing, offered the following comments and recommendations:**

- a. We have some significant concerns over the language of the proposed regulation, in particular, the level of detail that we currently provide on our invoices. For example, if we list that we are going to do a brake job, we list that we machine the rotors and we turn the drums. Since we also rinse them once we are done, are we now going to be required to list that on the ticket? Right now, the way the language is written, just about anything that you do on this vehicle has to be listed in detail.

This comment/recommendation was rejected because:

Please refer to comment 2. a., above.

- b. As I look at the cost impact to the business in the Initial Statement of Reasons, it states that there doesn't appear to be a significant impact, which we are in disagreement with. When we look at most software packages today, and when we look at the stores system that we have, it supports 2,200 stores nationwide. To state that this will not have significant impact is an understatement. We continually make adjustments in our point of sales terminal language to comply with California BAR regulations only to be told by the field versus Sacramento that we're not in compliance. It takes a lot of time to go through Sacramento and we, on numerous occasions, visit with Sacramento staff to make sure that our system is in compliance only to be told by a field representative that it is not adequate in its description. As we look at the proposed regulation on labor, in an attempt to comply, if we now comply with the language that's here and we look at the length of many our invoices given the amount of detail that we already provide, I believe its unduly burdensome not only to what we are trying to provide for the customer, but I also think that, in some cases, it's completely unnecessary. By way of example, when we do a brake job, we also include washing the backing plate and washing any hardware that gets reinstalled on the vehicle. Under the current guideline, just saying remove and replace is adequate. Under the proposed guideline, we would now also have to indicate that we're washing those brake parts. If we are attempting to comply with this regulation, how much detail is ever going to be enough? Right now, I believe that the proposed regulation is rather ambiguous and that the problem that it creates for us is that we're going to write code for a hundred and fifty-six stores in a system that supports 2286 stores nationwide to comply with the California regulation only to be told, I can only assume, based on past experience with field representatives as opposed to Sacramento, that we are not in compliance. As we look at the current proposed regulation, just for the record, we are opposed to it in its current form. We feel that it needs to have more clarification and more specific language. We look at the amount of training that we believe will be required by not only the Sacramento staff with BAR, but also the field staff of the BAR so that we have a consistent compliance message. I think, as we look at the language as written, even an independent shop will have to literally go out and buy another software package to replace the software that they currently use in their system in order to provide this level of detail. I can only imagine the type of cost that they will incur to do that.

This comment/recommendation was rejected because:

Again, it is not the intent of this proposed action to require any additional detail in the listing or description of service and repair work beyond what is currently required and being provided by the vast majority of automotive repair dealers. [See also comment 2. a., above.] If the forms, software and procedures currently used by an automotive repair dealer comply with the current invoice requirements and the current industry standard of providing individual prices for service and repair work, then they will comply with the requirements of the proposed action. In other words, the proposed action will not require automotive repair dealers that are currently in compliance to do anything differently than they do now. It logically follows, then, that if nothing new has to be done to comply, there would be no adverse economic impact to businesses as a result of the proposed action. This was very clearly, but succinctly stated in the Initial Statement of Reasons for this proposed action. It is only a very small minority of automotive repair dealers that will be affected by the proposed action, but they are the ones who are not in compliance now.

- c. I would recommend that BAR entertain the opportunity to have workshops to sit down and refine the language that's currently in the proposed regulation so that we end up with a product that is truly workable and provides total disclosure to the consumer which is all that we want to begin with.

This comment/recommendation was rejected because:

Workshops are generally employed for proposed regulatory actions that are either complex or voluminous, or both, thus making it difficult for affected parties to easily review them during the 45-day public comment period⁴. That is not the case with this proposed action as it is relatively simple in its intended effect, contains only a few relatively minor changes, and reorganizes the current regulation. The nature and completeness of the comments included in this rulemaking should provide sufficient evidence of the fact that workshops were and are unnecessary.

- d. One of the issues that we all often face is the use of abbreviations. In many software packages, you are ultimately limited or truncated on how much description you can provide. Right now, given the amount of detail that we provide not only on parts, but on labor as well, it's a common practice in the industry to use abbreviations. If you list R&R, most people understand that's remove and replace. If you list REMAN, most consumers understand that that means remanufactured; or RECON, which is reconditioned. We are already facing issues with abbreviations on the parts side of it. Now, also on the labor. Unless BAR adopts or agrees to certain abbreviations that would be considered an industry norm or an acceptable standard or trade practice, I think it would be extremely important for all automotive repair shops to have specific guidelines that help them so that when they're writing software packages, we can comply with the law, properly communicate with the customer and not be subjected to inconsistent enforcement at the field level.

This comment/recommendation was rejected because:

⁴ See Government Code section 11346.45.

There is no prohibition against using universally understood acronyms or abbreviations, but the proposed action does not specifically address what is or is not acceptable in this regard. The current and proposed regulations merely specify that invoices shall describe all service work done and shall separately identify each part in such a manner that the customer can understand what was purchased. There is no specific reference to the use of acronyms or abbreviations. If acronyms and abbreviations are used, the automotive repair dealer should be sure that the customer understands what is meant. While R&R may be understood by those in the automotive repair industry to mean “remove and replace,” some outside the industry might interpret that term to mean “rest and relaxation” or “rest and recuperation.” The question of whether a certain acronym or abbreviation may or may not be used depends on the customer’s understanding.

4. Jack Molodanof, Automotive Service Councils (ASC) of California, California Aamco Dealer’s Association and California Auto Body Association, in oral testimony, and Shelly Nolder, Executive Director, ASC of California, in written testimony presented at the May 12, 2006 public hearing, offered the following comments and recommendations:

- a. Our concern is with section 3356(a)(2), which deals with itemization of labor. It states the invoice shall separately describe all service work performed including all diagnostic and warranty work and shall identify the price for each itemized service. The concern is arguably under the language that when you specifically require itemization and specifically separately describe in each service process, it may become too burdensome and unnecessary. For example, a brake service itemization may entail a process of going through and having to list taking off the hubcap, .4 of an hour; taking off the lug nuts, .3 of an hour, removing the wheel. That is unnecessary and burdensome, and it doesn’t add anything for the consumer. I don’t think we need to go in that direction.

This comment/recommendation was rejected because:

Again, it is not the intent of this proposed action to require any additional detail in the listing or description of service and repair work beyond what is currently required and being provided by the vast majority of automotive repair dealers. [See also comments 2. a. and 3. b., above.]

- b. It is our understanding that the BAR wants to address an issue that is occurring in the industry where some shops lump all their labor in together for specific service jobs, for example the brake service as well as a tune-up and they lump the labor together. We understand what you are trying to accomplish. We feel that current law gives you enough authority, but if you are going to pursue the regulations, we have suggested some amended language that we feel will at least accomplish your goal and then address our concerns. We have listed the language in the correspondence and it essentially reads as follows. We ask you to delete 3356(a)(2) as proposed and insert the following language: “The invoice shall describe all service work performed including all warranty work and

shall identify the price for the service work performed.” We think that accomplishes your goal and addresses our concerns.

This comment/recommendation was accepted and the proposed action was modified to accommodate it as follows:

Mr. Molodanof and Ms. Nolder are correct in their characterization of the Bureau’s primary intent in pursuing this proposed action. In the course of performing investigations and complaint mediations, Bureau representatives sometimes encounter situations where an automotive repair dealer will provide only a subtotal of the charges for several different services and repairs identified in one invoice. For example, oil change; engine tune-up; and brake job – \$325.00. The automotive repair dealer will argue that the regulation (current) only requires that the subtotal be given. The problem this causes is that, if it is determined that one or more of the listed services and repairs were not performed properly and the customer is entitled to a refund or adjustment, there is no reliable way to determine the appropriate amount of that refund or adjustment. This can lead to further disagreements and prolongs and complicates the mediation process unnecessarily for all concerned. [See also comments 2. a. and 3. b., above.]

5. Chris Walker, California Automotive Business Coalition (formerly Automotive Repair Coalition), in oral testimony presented at the May 12, 2006 public hearing, and in a letter dated and received May 12, 2006, offered the following comments and recommendations:

- a. We don’t feel the consumer protection problem has been sufficiently identified. We believe that this proposal will create more paperwork and potential for confusion, implications for consumers, businesses and BAR.

This comment/recommendation was rejected because:

Please refer to comments 2. a., 3. b. and 4. b., above.

- b. We believe that counter to the finding made by BAR, that in fact, this proposed regulation indeed, has an impact on business and the cost of compliance.

This comment/recommendation was rejected because:

Please refer to comment 3. b., above.

- c. We believe that the compliance issue is very much opened up and questions about how far must someone go. You are moving away from a very simple understood law. You write down the parts and people are charged, if you don’t include the parts on the invoice, people can’t be charged for them. We are now including in this proposed regulation a lot of qualifiers including that the parts have to be described on the invoice in a manner that

the customer can understand. Some customers have a better understanding than others do. What does that mean?

This comment/recommendation was rejected because:

The requirement that parts be described “in such a manner that the customer can understand what was purchased” is included in the current regulation. This requirement is not changed by the proposed action, as modified. [See also comment 1. b., above.]

- d. We are also including in this qualifier that the part be listed by brand name or other comparable designation, and also state whether the part was new, used, reconditioned, rebuilt, OEM or non-OEM. Without definitions of each of those, we have a real concern about how this can be enforced, both by the consumer and by BAR, and complied with by industry. The kicker here is that if any one of those qualifiers is called into question, under (b), the customer can get the part for free. So, we have a situation where industry is giving away free parts, service is provided at no charge to customers. The incentive here, I think, causes much headache, not only for industry, but also for BAR and confusion with consumers.

This comment/recommendation was rejected in part, and accepted in part and the proposed action was modified to accommodate it, as follows:

To eliminate part of this concern, the phrase “or other comparable designation,” as well as the reference to “brand name,” has been stricken from paragraph (3) of subsection (a) of Section 3356. However, this is not a new requirement. Automotive repair dealers are currently required pursuant to VC section 12001, to include the “brand name, or other comparable designation,” in the description of all new parts sold and installed. [See also comment 1. b., above.]

With respect to the requirement to specify whether a part was new, used, reconditioned, rebuilt, OEM or non-OEM, this is already explicitly required both by statute⁵ and by the current Section 3356. The proposed action, as modified, has no effect on this requirement. Likewise, the prohibition against charging for a part that is not listed in an invoice is a current provision of this regulation and will remain unchanged in the proposed action, as modified. [See also comment 1. c., above.]

It is not clear what Mr. Walker means by his statement, “service is provided at no charge to customers.” There is nothing in current regulation or in any element of this proposed action, that refers to providing “services” at no cost or that prohibits charging for “services” in certain circumstances.

- e. How far must listed labor be itemized? When we are doing a brake job and we charge for brake fluid, now must we also charge for the five minutes that it took to put the brake fluid into the lines? How far in detail are we going? These questions need to be

⁵ See Business and Professions Code section 9884.8.

answered; they need to be clarified in order for the industry to comply properly and the consumer to have concrete expectations of what industry shall provide.

This comment/recommendation was rejected because:

The requirement is and will continue to be, that the service or repair work performed is to be listed and described. How the price is determined is not at issue. How much time it takes to add brake fluid may be a factor in establishing the price for the brake job, but that is not an element of this proposed action. That is something that might be taken into account in a time and motion study to determine the time it takes to perform the brake job. The time factor then can be used together with the automotive repair dealer's labor rate, to calculate the price for the brake job. [See also comments 2. a., 3. b. and 4. b., above.]

- f. The Automotive Business Coalition has historically expressed concerns about the lack of consistency in interpretation of laws and regulations from BAR field offices throughout the state. We feel that this additional regulation, as proposed, will only exacerbate the problems that have existed and continue to exist, and therefore we are opposed to them as written today.

This comment/recommendation was rejected because:

This comment is not totally germane to the proposed action. This comment, for the most part, pertains to an enforcement issue that relates to this regulation in general, but not to the proposed action in particular.

The proposed action has been modified in an attempt to make clearer the intent of the proposed action and to minimize the possibility of misinterpretation. [See also comments 2. a., 3. b. and 4. b., above.]

- g. There is an established flat rate system for labor. Building upon my comments about how far the details go, we think that this proposed regulation absolutely will effect what we know as the flat rate system which is a well-understood industry practice used for charges for labor. Everyone gets it – everyone knows it. This is moving away from that and we have concerns about the lack of recognition of the impact this proposed regulation would have on that system

This comment/recommendation was rejected because:

The proposed action neither favors nor discourages the use of the “flat rate system” of determining the price for service and repair work, nor does it favor or discourage any other system. The primary focus of this regulation, both in its present form and in the proposed action, is the disclosure of individual prices for service and repair work. Nowhere does this regulation or any element of the proposed action, make reference to the manner by which prices are calculated or determined. In any case, the use of the flat rate system – which the Bureau agrees is an established industry practice – is and will

continue to be an acceptable manner of determining prices for service and repair work. [See also comments 2. a., 3. b. and 5. e., above.]

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

The following written comments/objections/recommendations were received during the 15-day public comment period regarding the modified language of the proposed action:

1. Marty Keller, Executive Director, California Automotive Business Coalition, in a letter dated and received by facsimile transmission, August 30, 2006, offered the following comments and recommendations regarding the modified language:

- a. The new language is still not entirely clear and thus continues to open shops to the possibility of conflict with Bureau officials who disagree among themselves about the meaning of the provisions. This is a problem that many of our members experience today under the old regulations, and the new language does nothing to improve the situation.

This comment/recommendation was rejected because:

Under the current provisions of Section 9884.8 and this regulation, it is clear that all service work must be listed and described in the invoice. The primary purpose of this proposed action is to make it clear that when an item of service or repair is listed and described in an invoice, an individual price for that item must also be stated. For example, if a “brake job” is performed and an “oil change” is also performed, each must be listed and described and the individual price for each must be stated. The current regulation, arguably, does not make the latter requirement clear and could be interpreted to allow ARDs to disclose only a combined subtotal for all the service and repair work performed. As was stated in the *Initial Statement of Reasons* for this proposed action and confirmed by several of those who have presented comments, stating the price for each service or repair listed and described in an invoice is already the current industry standard of practice. In this proposed action, the Bureau is merely attempting to promote the spirit and intent of those provisions of the Automotive Repair Act⁶ that relate to open disclosure and itemization in invoices and to recognize, in this regulation, the current industry standard.

The addition of the word “separately” was intended to maintain conformity with the current law⁷. This was done to clearly extend and preserve the underlying principal that service and repair work, parts, and subtotal prices must be listed separately from one another. The intent here was not to require any additional detailed itemization. When read in the context of the underlying statute, it is clear what is meant by the use of the

⁶ Chapter 20.3 (commencing with section 9880) of Division 3 of the Business and Professions Code.

⁷ Business and Professions Code section 9884.8.

word “separately” in this regulation and there should be no confusion about its application to how much detailed itemization is or is not required.

In order to be as clear as possible, the Bureau modified and consolidated the language of paragraphs (2) through (4) of subsection (a) of the originally proposed text. The modification, together with the record of this rulemaking makes clear the Bureau’s intent and interpretation and will resolve any disagreement among “Bureau officials” about the meaning of these provisions, if indeed there is any disagreement. [See also comments 2. a., 3. b., 4. b. and 5. f, above.]

- b. In particular, the requirement of [subparagraph (B) of paragraph (2) of subsection (a)] that requires a shop to “list and identify ... each part supplied, in such a manner that the customer can understand what was purchased” sets up a subjective standard; i.e., an individual’s understanding, that cannot be measured or predetermined. Almost every part has a manufacturer’s identification number and description; we suggest that this be the standard for this section, and not the subjective understanding of customers whose acquaintance with the technicalities of automotive parts is as varied as our customers are numerous.

This comment/recommendation was rejected because:

The requirement that parts be described “in such a manner that the customer can understand what was purchased” is included in the current regulation. This requirement is not being changed by the proposed action, even as modified.

Certainly, the manufacturer’s part number and description may be sufficiently clear to meet the customer’s understanding, but there are also additional requirements that must be met. Specifically, it is currently a statutory⁸ requirement that the description of a part in an invoice state whether the part is new, used, rebuilt or reconditioned and whether crash parts are OEM or non-OEM. It is also a current statutory⁹ requirement that the brand name, or other comparable designation, be given for all new parts listed and described in an invoice. All of these requirements, when taken together are intended to give the customer a clear understanding of what they are purchasing. A manufacturer’s part number and description alone may not be sufficiently clear enough that the customer will have that understanding.

The remainder of Mr. Keller’s August 30, 2006 comments either repeat or refer to previous comments, have been considered and addressed previously, do not specifically relate to the modified language and are not given further consideration here.

2. Jonathan Morrison, California Motor Car Dealers Association, in a letter dated August 30, 2006, and received by electronic mail transmission August 31, 2006, offered the following comments and recommendations regarding the modified language:

⁸ Business and Professions Code section 9884.8.

⁹ Vehicle Code section 12001.

- a. The proposed regulation, as modified, would require that an invoice “separately list, describe and identify” various services and items. This is confusing for ARDs, who are not given any clarification as to what BAR contemplates. BAR offers no explanation of how ARDs are expected to comply with these requirements, which seem to implement a three-part process of listing, describing, and identifying. BAR does not describe the form this process is to take, nor does it offer any examples to clarify the differences between listing, describing, and identifying services or parts.

This comment/recommendation was rejected because:

The words “list,” “describe,” and “identify,” as used in this regulation, are self-explanatory. When read within the context of the underlying statute¹⁰ and this regulation these words have the meaning of their common usage. In subsection (a), the language of paragraph (2) – including all its subparagraphs – makes it clear that:

- All service and repair work must be listed and described and the price for each described service or repair must be identified;
- Each part supplied must be listed and described and the price for each described part must be identified;
- The sub-total price for all service and repair work must be identified;
- The sub-total price for all parts must be identified; and
- The applicable sales tax must be identified.

The word “separately” is used in paragraph (2) to conform to the statutory¹¹ requirement to list service and repair work, parts, sub-total prices, and sales tax separately from one another. [See also comments 2. a., 3. b., 4. b., 5. f. and 6. a., above.]

- b. The regulation, as modified, is also vague and ambiguous as to whether the adverb “separately” applies only to the listing requirement, or whether it applies to the description and identification requirements as well. An ARD is left unsure as to whether the invoice must separately list each service performed pursuant to a major repair job (e.g. a brake repair), but may collectively describe and identify the major repair job in a general manner, (i.e. “brake repair.”) Contrarily, the regulation could be seen as requiring that the description and identification be done with the same amount of specificity as the list. We believe that either of these interpretations goes beyond the legislature’s intent in enacting the underlying law.

This comment/recommendation was rejected because:

Please refer to comments 2. a., 3. b., 4. b., 5. f., 6. a. and 7. a., above.

- c. As did the first proposal, the modified regulations lack clarity as to the degree of specificity required in itemizing the services performed. If the intent of the amendments is to require that an ARD itemize labor charges for each service job performed, as

¹⁰ Business and Professions Code section 9884.8.

¹¹ Business and Professions Code section 9884.8.

opposed to listing a single labor charge for all services performed, CMCD A has no objection to that intent. However, as proposed to be amended, we believe the text is vague and ambiguous and could lead to widespread uncertainty and confusion in the industry. In particular, we are concerned that requiring the invoice to “separately list, describe, and identify” all service work performed would seem to require greater itemization on the invoice than the original amendment, as three procedures are required instead of one. Unfortunately, the proposed regulation gives no guidance relative to the amount of itemization required.

This comment/recommendation was rejected because:

Please refer to comments 2. a., 3. b., 4. b., 5. f., 6. a. and 7. a., above.

- d. It is already the practice of our dealer members and most ARDs to separately itemize labor and parts per service job performed. We assume (although the proposed regulation is unclear on this point) that it is not the Bureau’s intent to dictate service categories or require itemizations of subcategories for every repair or service job performed. For example, a repair invoice for a brake pad replacement, and an oil and filter change should state¹²:

	<u>Parts</u>	<u>Labor</u>	<u>Total</u>
1. Brake Pad Replacement:	\$50	\$50	\$100
2. Oil and Filter Replacement:	\$30	\$10	\$ 40
Total:	\$80	\$60	\$140

However, replacing a set of brake pads may involve a 20-step service procedure starting with hoisting the car, removing lug nuts, etc. The proposed regulation does not specify the level of detail contemplated by BAR. It would be extremely time consuming (and expensive) for an ARD to itemize all of the work procedures involved in a single service job, let alone itemize the labor charge for each procedure performed. Over-itemization is confusing for consumers and may provide the opportunity for an unscrupulous ARD to overcharge.

Our main concern is with the ability to realistically comply with the amended regulatory requirements, due to the lack of direction provided as to BAR’s expectations.

This comment/recommendation was rejected because:

Mr. Morrison’s example, while extremely simplistic and not necessarily representative of what actually occurs in the industry, is basically correct. There is usually more description of the service or repair work performed, but the basic concept of separating service and repair work from parts, etc., is demonstrated in Mr. Morrison’s example. More typically what Bureau representatives actually see in use are invoices with lists and descriptions similar to the following:

¹² For purposes of simplicity, parts are not itemized in this example, although we recognize an actual invoice would itemize each part installed during a repair.

<u>Labor</u>	<u>Cost</u>	<u>Parts</u>	<u>Cost</u>
Brake Pad Replacement: Remove and replace brake pads	\$50.00	New Ajax brake pad kit, part # ABPK-14	\$50.00
Oil and Filter Replacement: Replace oil and oil filter	\$30.00	4 quarts Ajax 10w40 motor oil	\$ 5.00
		New Ajax oil filter, part # AOF-10	<u>\$ 5.00</u>
Sub-totals:	Labor \$80.00	Parts \$60.00	
Tax (@ 7.75%):			<u>\$ 4.65</u>
TOTAL:			<u>\$144.65</u>

Another example might be something similar to this:

	<u>Labor</u>	<u>Parts</u>
Brake Pad Replacement: Remove and replace brake pads with new Ajax brake pad kit, part # ABPK-14	\$50.00	\$50.00
Oil and Filter Replacement: Replace oil with 4 quarts Ajax 10w40 motor oil	\$30.00	\$ 5.00
Replace oil filter with new Ajax Oil filter, part #AJOF-10		<u>\$ 5.00</u>
Sub-totals:	\$80.00	\$60.00
Tax (@ 7.75%):		<u>\$ 4.65</u>
TOTAL:		<u>\$144.65</u>

It is the separate listing of specified items and the identification of prices for those items that is the subject of this proposed action. While there is no preferred or particular format for an invoice, the Bureau does provide informational presentations concerning the requirements for written estimates, revised estimates and invoices as a means of educating licensees and assisting them in achieving compliance. Along with the presentations, the Bureau has developed an informational brochure entitled Write-it-Right, with explanations and suggestions to inform and assist licensees. Presentations are made to industry groups as well as individual licensees upon request to any Bureau filed office. Copies of the Write-it-Right brochure are also available from field offices, the Bureau's Sacramento headquarters mail room, or on the Bureau's web site at www.autorepair.ca.gov. [See also comments 2. a., 3. b., 4. b., 5. f., 6. a. and 7. a., above.

The remainder of Mr. Morrison's August 30, 2006 comments either repeat or refer to previous comments, have been considered and addressed previously, do not specifically relate to the modified language, or are not germane to this proposed regulatory action and are not given further consideration here.

There were no further comments, objections or recommendations received within the 15-day public comment period regarding the modified language of the proposed action.