

## INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the California New Motor Vehicle Board ("Board") to delete section 593, and amend sections 594, 595, and 597 of Article 6, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

### INTRODUCTION

The Board is an agency within the Department of Motor Vehicles ("Department") with oversight provided by the Business, Transportation and Housing Agency. The Board consists of nine members, seven of who are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee (Veh. Code §§ 3000 and 3001).

The duties of the Board include the following:

1. To adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.
2. To hear and determine "appeals" which are filed by specified occupational licensees within the new motor vehicle industry as a result of adverse disciplinary action taken by the Department against the license of such entity. (Veh. Code § 3050(b)).
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Veh. Code § 3050(c)).
4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Veh. Code §§ 3050(d), 3060, 3062, 3064, 3065, and 3065.1). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

The Board is a quasi-judicial administrative agency with independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new vehicles (includes in part motorcycles, recreational vehicles, and all-terrain vehicles).

## **SECTION 593**

### **PURPOSE OF THE REGULATION**

The Board proposes deleting this obsolete regulation as the Board does not have any pre-approved forms. By deleting this regulation it will also eliminate the requirement that “papers” have original signatures. This will allow for e-mail and facsimile filing of documents; something that the litigants that appear before the Board have been requesting.

### **NECESSITY**

The deletion of Section 593 of the Board’s regulations is reasonably necessary to ensure that the litigants that appear before the Board have the ability to submit documents via e-mail or facsimile without the requirement that the signature be “original”. This is necessary to ensure that documents are timely filed and not delayed waiting for an original signature or signatures.

## **SECTION 594**

### **PURPOSE OF THE REGULATION**

The amendments to Section 594 would make grammatical changes, clarify the format of papers (pleadings) submitted to the Board, and delete obsolete requirements. The requirement of an original paper is being deleted in renumbered subdivision (f) thereby allowing litigants to submit for filing documents via e-mail and facsimile. New subdivision (h) pertains to the current Board practice that requires each paper filed with the Board bear a footer in the bottom of each page that contains the title of the paper or some abbreviation and the page number.

### **NECESSITY**

The amendments to section 594 of the Board’s regulations are reasonably necessary to ensure procedural compliance with the format of papers submitted to the Board for filing. The regulations also simplify these procedures by deleting unnecessary requirements that the parties submit original signatures.

## **SECTION 595**

### **PURPOSE OF THE REGULATION**

The amendments to Section 595 make clarifying and grammatical changes to the format and filing of papers and the format of the first page which contains the caption of the case (protest, petition or appeal). The proposed amendments delete obsolete language concerning when protest numbers are assigned and clarifies that the same case number shall not be assigned to more than one petition, appeal, or protest. The proposed amendments specify that upcoming dates in the proceeding should be on the first page. These amendments incorporate several of the provisions in the Office of Administrative Hearing's regulations (1 CCR § 1006). Lastly, the proposed amendments formalize the following practices:

- Allows the Board to direct a party to submit pleadings or other papers electronically, if the party is able to do so.
- Formalizes how a party may obtain a conformed copy of a paper filed with the Board.
- Permits the filing of papers via facsimile or electronic-mail. Unless the administrative law judge or Board order requires such, the original paper does not need to be filed with the Board if the party gets Board confirmation that a complete and legible copy of the papers was received.
- Clarifies when papers delivered to the Board are "filed."
- The proposed amendments specify that papers received after regular business hours are filed on the next regular business day.
- Specifies that protests sent by U.S. Postal Service certified or registered mail are deemed received by the Board on the date of certified or registered mailings and will be filed as of the date of the certified or registered mailing. This amendment is consistent with Sections 585 and 598 of the Board's regulations.

## **NECESSITY**

The amendments to section 595 of the Board's regulations are reasonably necessary to ensure the parties properly submit their papers to the Board. The amendments also provide useful procedural information to litigants.

## **SECTION 597**

### **PURPOSE OF THE REGULATION**

The amendments to Section 597 allow the Board to accept for filing papers, documents, or exhibits that bear a copy of a signature. As indicated above, this will allow for e-mail and facsimile filing of documents.

## **NECESSITY**

The proposed amendments are reasonably necessary to ensure that the litigants that appear before the Board have the ability to submit documents via e-mail or facsimile without the requirement that the signature be "original". This is necessary to ensure that documents are timely filed and not delayed waiting for an original signature or signatures.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

The Board relied upon the provisions of a New Motor Vehicle Board Policy and Procedure Committee Memorandum dated January 25, 2010, in adopting the proposed regulatory text. No other technical, theoretical, and/or empirical studies, reports, or documents were relied upon in drafting the proposed regulation.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Prior to the publication of this notice, the Board considered an initial draft of the proposed regulations at a noticed meeting held on February 11, 2008. At that meeting comments were received by members of the industry. Based on those comments and those of its members, the Board revised the proposed text. The proposed text was adopted at a noticed meeting held on February 4, 2010. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board's Public Mailing List and Electronic Public Mailing List, a list of approximately 90-100 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters, and the 38 California New Car Dealers Association Directors. The agenda was also posted on the Board's website. No comments by the public were received at the February 4, 2010, General Meeting, and no further public discussions were held prior to publication of the notice.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has determined that the proposed regulations will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

There are no associated costs with the proposed regulatory amendments; they clarify case management procedures for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.