

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California New Motor Vehicle Board (“Board”), pursuant to the authority vested in it by Vehicle Code section 3050(a), proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend sections 567, 583, 591, 593.1, and 593.3 of Title 13 of the California Code of Regulations pertaining to appeals, protests and notices.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

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.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a public hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323-1632 or by e-mail at rparker@nmvb.ca.gov or nmvb@nmvb.ca.gov. The written comment period closes at 5:00 p.m. on Monday, December 20, 2010. The Board will consider only comments received at the Board’s offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050(a) authorizes the Board to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Vehicle Code sections 3050, 3060, 3062, 3064, 3065, 3066, 3070, 3072, 3074, 3075, and 11713.3; Civil Code section 1795.2; and *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 3050, subdivision (a) authorizes the Board to adopt rules and regulations governing such matters as are specifically committed to it.

The adopted mission of the Board is to: "...enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner. The adopted vision statement provides that the Board safeguard for its "constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves relations and reduces the need for costly litigation and develop methods that further improve the delivery of Board services in a timely and cost-effective manner..."

The Board proposes to amend Section 567 to clarify who can sign a notice of appeal and who can represent an appellant that is a corporation or is a natural person or other legal entity. It is consistent with the opinion in *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, which allows non-attorneys to represent corporations in administrative proceedings.

The Board proposes to amend Section 583 to clarify who can sign a protest and who can represent a protestant that is a corporation or is a natural person or other legal entity. It is consistent with the opinion that allows non-attorneys to represent corporations in administrative proceedings (*Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094). It also clarifies that a separate protest is required if there is more than one franchise.

The Board proposes to amend Section 591 to clarify that it pertains to merits hearings. It also eliminates the reference to "registered" mail and replaces it with "certified" mail. This amendment is consistent with Section 550.20 of the Board's regulations. In

addition, the amendments clarify that the order of time and place of merits hearing shall be sent via certified mail to the protesting franchisee, all parties, and to individuals and groups that have requested such notice. The amendments also correct the spelling of “franchisor”.

The Board proposes to amend Section 593.1 to encompass termination/refusal to renew and modification notices in addition to establishment, relocation, and off-site sales notices. The regulation requires that notices be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and the Board’s practice. Furthermore, this regulation clarifies that notices shall not be combined to include more than one franchisee nor combined to include more than one line-make.

The Board proposes to amend Section 593.3 to reference in the “Note” the recreational vehicle statutes commencing with Vehicle Code section 3070. The Board has the authority to ask the Department of Motor Vehicles to take licensing action against a manufacturer or distributor for failure to file or to timely file statutorily required notices, schedules or formula. Section 593.3 was never amended to encompass the RV industry therefore there is no existing authority for the Board to ask DMV to take licensing action in the event an RV manufacturer or distributor fails to submit these statutorily required documents.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California.

- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination:

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. The proposed regulations merely clarify appeals and protests for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest or appeal with the Board. They also clarify the issuance of notices by franchisors.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be 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 action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Parker at the following address:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

The back-up contact person for these inquiries is:

Polly Riggerbach, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1282 direct line
(916) 445-1888 main line
(916) 323-1632 fax
priggerbach@nmvb.ca.gov

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all the information upon which the proposal is based. Copies may be obtained by contacting Ms. Parker, the contact person, or Ms. Riggerbach, the back-up contact person.

AVAILABILITY OF CHANGES OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Parker or Ms. Riggerbach at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout font can be accessed through the Board's website at www.nmvb.ca.gov.