

FINAL STATEMENT OF REASONS

1. Update of Initial Statement of Reasons.

The entire text of the Initial Statement of Reasons is incorporated herein by reference. The necessity of the proposed rulemaking is further justified by the following:

The proposed regulation is necessary to implement the provisions of Vehicle Code section 11713.3(o) which allows for an extension of time, beyond the statutory one year time period, for a manufacturer, branch, or distributor (hereinafter manufacturer) to operate a dealership in preparation for sale to a successor independent franchisee. This would allow a manufacturer to maintain its investment in a given dealership while continuing to search for a prospective buyer. The factory owned dealership would provide vehicle sales and warranty service to the community, pay sales tax, and maintain its employees. [See 13 CCR § 565(a)]

The proposed regulation ensures that impacted dealers of the same line-make within the relevant market area (any area within the radius of 10 miles from the site of a potential new dealership) of the factory-owned dealership are given written notice of the manufacturer's request for an extension. The manufacturer is required to notice the Board as well. This provides the necessary oversight to ensure that manufacturers are not operating as "dealers" except in the limited circumstances outlined in Vehicle Code section 11713.3(o). Manufacturers can own and operate a dealership outside of an existing same line-make dealer's relevant market area. [See 13 CCR § 565(b)]

The written notice is required to meet a prescribed format that is similar to other statutorily required notices in the Vehicle Code (see Vehicle Code sections 3060 and 3062). This ensures that impacted dealers are aware of the request and any rights they may have to oppose the manufacturer's intended action. The "notice to dealer" language is designed to be conspicuously placed on the first page. [See 13 CCR § 565(c)]

If the Board receives a timely request for extension, it is required to notify each franchisee of the same line-make within the relevant market area (i.e., an impacted dealer) that an opportunity to oppose the request is available. A formal pleading is not required. This may be accomplished by a letter of opposition to the Board. If an opposition is received, it will be considered by the Board at its next scheduled meeting. In the event of an opposition, the status quo is maintained until the Board acts upon the request. In other words, the manufacturer continues to own and operate the dealership in preparation for sale to a successor independent franchisee. Without the proposed regulation, impacted franchisees are not notified, there is no mechanism for filing a letter in opposition, and the status quo would not be maintained. [See 13 CCR § 565(d)]

The proposed regulation identifies good cause factors that the Board members must take into consideration in granting a request for extension. These include the opposition of impacted dealers and the comments of any interested parties. This would allow the submission of comments by dealers outside of the relevant market area, cities and counties that could be impacted, and other interested parties. [See 13 CCR § 565(e)]

The proposed regulation requires the secretary (Executive Director) to forward a copy of a timely request for extension of time to each member of the Board for consideration. Without the proposed regulation, each request for extension would need to be agendized for a noticed Board meeting. [See 13 CCR § 565(f)]

Vehicle Code section 11713.3(o) is silent on what the request for extension should include. In an effort to clarify this, the proposed regulation lists a number of factors that would be beneficial to the Board in determining whether to grant or deny a request for extension. This list of factors was drafted by the members at a noticed meeting after it had considered a request for extension at an earlier meeting. The Board is sensitive to dealers operating within the relevant market area of the factory owned dealership and wanted to be provided a list so it could notify them of their rights to oppose the request. The Vehicle Code does not permit dealer Board member participation in franchisee/franchisor disputes (protests) unless both parties stipulate otherwise. Subdivision (g)(6) of section 565 permits the requesting party to allow dealer member participation. [See 13 CCR § 565(g)]

The members of the Board have 30 days from receipt of the request for extension to review it. Any time during the 30 day period, an objection to the request can be lodged with the secretary (Executive Director). If there have been no timely objections to the request for extension by the members of the Board and no timely oppositions by impacted dealers have been received, then the secretary (Executive Director) shall grant the extension. The 30 day time frame is necessary to allow the members to consider the good cause factors identified in subdivision (e) and to review the opposition, if any, submitted by impacted dealers. A lesser time frame, 10 days, was considered and rejected by the members. [See 13 CCR § 565(h)]

In the event of a timely notice of objection to the request for extension by a member of the Board and/or a timely opposition by an impacted dealer has been received, the matter shall be considered by the Board at its next scheduled meeting. In the event there are no objections or letters in opposition received, the matter is reviewed independently by the members without the need of a noticed Board meeting. [See 13 CCR § 565(i)]

Upon the receipt of a timely notice of objection to the request for extension by a member of the Board and/or a timely opposition by an impacted dealer, the secretary (Executive Director) is required to notify the manufacturer that the matter will be considered by the Board at its next scheduled meeting and that the status quo will be

maintained until the Board acts upon the request. The manufacturer and impacted dealer, if any, shall be given at least 10 days notice of the time, date, and location of the Board meeting in which the request will be considered. The 10 day notice is consistent with the Board's statutes, regulations, and the Bagley-Keene Open Meeting Act. [13 CCR § 565(j)]

A Board member who is a new vehicle dealer may not consider a request for extension, object to such request, or participate at a Board meeting, unless the requesting party agrees. Without the proposed regulation, the statute is unclear whether dealer members may participate. Since the request for extension does not involve a dispute between a franchisee and a franchisor, dealer members are not necessarily precluded from participation. However, there is always a chance that the outcome of a request for extension could result in the filing of a formal action before the Board by way of petition. In an abundance of caution, in the instances in which the Board has considered a request for extension, the dealer members have not participated. [13 CCR § 565(k)]

The proposed regulation establishes a time frame in which a request for extension must be received. At least 60 days prior to the expiration of the one year period, the manufacturer is required to submit a written request to the Board. Requests that are not timely received will not be considered by the Board and will be deemed denied. The 60 days period is necessary to allow impacted dealers a 20 day period to submit a letter in opposition and the members 30 days to either grant or deny the request. In the event the request is denied and/or an opposition is received, then the matter would need to be agendaized for a noticed Board meeting. The Board meets approximately every 6-to-8 weeks. However, if necessary, a Special Board meeting could be scheduled. The Bagley-Keene Open Meeting Act requires the Board to disseminate its agenda at least 10 days in advance of the meeting. Depending on the location of the parties, the meeting could be held in Sacramento, San Francisco, or Los Angeles. The 60 day time period is also necessary to allow sufficient time to secure a hearing room, court reporter, make the necessary travel arrangements, and accommodate the schedules of the nine politically appointed Board members. A lesser time period would be impractical. [13 CCR § 565(l)]

The proposed regulation establishes the time frame in which an impacted dealer must file an opposition to the request for extension. Impacted dealers are given 20 days from receipt of the notice to file an opposition to the request for extension. This allows the Board members 10 days prior to their 30 day deadline to consider the opposition. [13 CCR § 565(m)]

2. Imposition of Mandate on Local Agencies and School Districts.

The Board's proposed regulatory action to adopt section 565, of Article 2, Chapter 2, Division 1, of Title 13 of the California Code of Regulations, does not impose a mandate on local agencies or school districts. The proposed regulatory action

imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other non-discretionary cost or savings to local agencies, and (4) no costs or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3. Summary of Public Comments.

No public comments were received either during the public comment period, July 27, 2001, through September 17, 2001, or during the public hearing on September 17, 2001.

4. Alternatives Considered.

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board has determined 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.

At the November 28, 2000, General meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. However, the Board President, Robert T. (Tom) Flesh invited and encouraged the submission of written and oral comments. Furthermore, Mr. Flesh indicated that the Board instructing staff to go forward with the proposed rulemaking, did not necessarily indicate final Board action; that if any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking; that if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting; and, lastly, that if there were no written or oral comments received, then the rulemaking process would proceed without further Board involvement.

At the June 26, 2001, Special meeting, the Board members and staff revised the proposed text that was originally adopted at the November 28, 2000, General meeting. The text was revised after the Board considered a request for an extension of time from a vehicle manufacturer. Members of the audience were encouraged to comment on the proposed revisions.