

INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the New Motor Vehicle Board ("Board") of the State of California to amend section 590 of Article 1, 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, 3065.1, and 3066). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

SECTION 590

PURPOSE OF THE REGULATION

The regulation currently authorizes the Executive Director of the Board to conduct hearings on protests. The proposed amendment eliminates that authority.

NECESSITY

Amendment to section 590 of the Board's regulations is proposed so the regulation is in compliance with the corrective action response to Finding 2¹ of the 1996 Performance Audit conducted by the Business, Transportation & Housing Agency. The Board's Audit Review Committee recommended that the Board's organization structure and duties of the Executive Secretary and Assistant Executive Secretary² be redefined to eliminate all duties related to hearing Board cases. The committee further recommended the Executive Secretary position be recast as the Board's Executive Director, with responsibility for all administrative and statutory functions of the Board, including processing cases filed with the Board and conducting informal mediation conferences designed to efficiently and expeditiously settle disputes whenever possible. The Board at the November 7, 2003, General meeting, approved the committee's recommendations.

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

The Board at its November 7, 2003, General meeting, approved regulatory changes proposed herein for section 590.

ALTERNATIVES TO THE REGULATION

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.

¹ Finding 2 pointed out that the "Duty Statements of the principal administrative officials are not in conformance with the provisions of the 'new' Administrative Procedures Act".

² Nonsubstantive changes replacing the term "secretary" with "executive director" and "assistant executive secretary" with "general counsel" were made effective on January 1, 2004. The General Counsel has not been authorized to participate in Board hearings.

At the November 7, 2003, General meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. Then Board President, Glenn E. Stevens advised the Board Members that members of the public would be invited to submit written and oral comments during the Public Notice and Comment Period, and or the Public Hearing on the proposed regulatory changes. Further, Mr. Stevens indicated that although the Board instructed staff to go forward with the proposed rulemaking, it did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

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