

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED ACTION

NOTICE IS HEREBY GIVEN that the New Motor Vehicle Board of the State of California ("Board"), pursuant to the authority vested in it by Section 3050, subdivision (a) of the Vehicle Code, proposes to add sections 551.14, 551.15, 551.16, 551.17, and to amend sections 553.40 and 595 to the regulations contained in Title 13 of the California Code of Regulations in order to offer an additional type of dispute resolution, informal mediation, for licensees within the Board's jurisdiction.

PROPOSED REGULATORY ACTION

The Board proposes to add sections 551.14, 551.15, 551.16, 551.17, and to amend sections 553.40 and 595, after consideration of all comments, objections, and recommendations regarding the proposed action.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered the proposed text of the regulations at a noticed General meeting held on November 28, 2000. 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, a list of approximately 150 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters. No comments by the public were received at the November 28, 2000, meeting, and no further public discussions were held prior to publication of the notice.

PUBLIC HEARING

A public hearing to receive oral or written comments on these regulations will be held at the following time and place:

DATE: April 29, 2002

TIME: 10:00 a.m.

PLACE: New Motor Vehicle Board
Hearing Room #2
1507 21st Street, Suite 330
Sacramento, California 95814

At the hearing, any person may present statements or arguments orally or in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed action described in the Informative Digest. The hearing will continue until all oral and written comments are presented. The Board requests but does not require that a person who makes comments at the hearing also submit a written copy of their testimony at the hearing. Any person or business submitting a comment to the proposed regulation has the right to request a copy of the final statement of reasons.

WRITTEN COMMENT PERIOD

Notice is also given that any person interested may present statements or arguments in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed amendments to the agency officer named below at the address identified below on or before 5:00 p.m. on April 29, 2002. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-2080
Fax: (916) 323-1632
E-mail: www.nmvp@pacbell.net

The official record of the rulemaking procedure will be closed at 5:00 p.m. following the conclusion of the public hearing on April 29, 2002. Written comments received after 5:00 p.m. on April 29, 2002, will not be considered unless an extension of time in which to receive written comments is announced at the public hearing.

AUTHORITY AND REFERENCE

Authority cited: Sections 3016, 3050(a), and 3050.5, Vehicle Code. Reference: Sections 3050(c), 3051, 3060, and 3062, Vehicle Code; Sections 11420.30 and 11470.50, Government Code.

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.

It is the mission and vision of the Board, as adopted by its members, to: resolve

disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner; safeguard for the Board's 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 add sections 551.14, 551.15, 551.16, and 551.17 to the regulations contained in Title 13 of the California Code of Regulations in order to establish a procedure for requesting informal mediation prior to initiating a formal petition, to establish a mechanism which allows the parties to request discovery in informal mediation, to explain the process for informal mediation, and to create a mechanism to allow for the conversion of informal mediation to a petition.

The Board proposes to amend section 553.40 to the regulations contained in Title 13 of the California Code of Regulations to extend the filing fee provisions to parties requesting informal mediation. Litigants that file and respond to a petition, appeal, or protest each pay a filing fee of \$200.00. The filing fee would be extended to parties requesting informal mediation as well as parties responding to the request. Under the proposed regulatory text in section 551.17(d), a party seeking to convert an informal mediation to a petition would not be charged an additional filing fee.

The Board proposes to amend section 595 to the regulations contained in Title 13 of the California Code of Regulations to extend the section pertaining to the format of papers filed with the Board to requests for informal mediation. It further clarifies that the number of the proceeding in a protest is assigned immediately upon filing by the secretary. Language is deleted that allowed the secretary to postpone assigning a number in a protest proceeding until a notice of appearance was filed and all filing fees were paid.

The current Board procedures for requesting informal mediation are ad hoc. The proposed regulation would formalize the procedure and be made available to more parties as an additional mechanism for dispute resolution. If the informal mediation is successful, no petition is filed with the Board. If it is not successful, then the proceeding can be converted to a petition. This reduces the costs incurred by all. It also fosters positive relations between the parties. Given the nature of the franchisor-franchisee relationship, this is important. Also, with informal mediation no formal action is filed by one party against another. Informal mediation is cost-effective, efficient, timely, and nonadversarial.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments 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.

LOCAL MANDATE

The proposed regulatory action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT

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.

EFFECT ON BUSINESSES

The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in making this determination.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The cost impact of the proposed regulatory action is expected to be inconsequential on directly affected private persons. The Board expects no cost impact on directly affected 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.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of this regulation will neither create nor eliminate jobs or businesses in the State of California, will not result in the elimination of existing businesses, and will neither reduce or expand businesses currently doing business in the State of California.

EFFECT ON HOUSING COSTS

The proposed regulatory action will have no impact on housing costs.

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.

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. 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.

CONTACT PERSON/BACKUP CONTACT PERSON

Please direct inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

In the event the Contact Person is not available, inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based may be directed to the following Backup Contact Person:

Howard Weinberg, General Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

AVAILABILITY OF INFORMATION VIA THE INTERNET

Information regarding the proposed amendments may be obtained from the Board’s website: www.nmvb.ca.gov.

STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The express terms of the proposed action are written in plain English and are available from the contact person named in this notice. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline to indicate additions, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and the location of public records, including reports, documentation, and other materials, related to the proposed action.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period and public hearing, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulation. Requests for copies of a modified regulation should be addressed to the Board contact person identified in this notice. The Board will accept written comments on the modified regulation for 15 days after the date on which it is first made available to the public.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons may be directed to the Contact Person or the Backup Contact Person listed in this Notice, or may be obtained from the Board's website: www.nmvb.ca.gov.