

TITLE 13. NEW MOTOR VEHICLE BOARD

(Notice published February 6, 2015)

NOTICE OF PROPOSED RULEMAKING

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

PROPOSED REGULATORY ACTION

The Board proposes to amend sections 550, 551.2, and 551.21 and add section 551.22 of Title 13 of the California Code of Regulations pertaining to case management.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered and adopted the proposed regulations at a noticed General Meeting held on February 4, 2014. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

Also prior to the publication of this notice, and at a noticed General Meeting held on December 11, 2014, the Board considered potential amendments to the regulations that are the subject of this rulemaking action. Ten days prior to the meeting, a detailed agenda including the topic of potential amendments to the regulations that are the subject of this rulemaking action was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the February 4, 2014, or December 11, 2014, General Meetings, and no further public discussion was 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 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 before 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 March 23, 2015. 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, subdivision (a), authorizes the Board to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Business and Professions Code section 472.5, Code of Civil Procedure sections 128.5, 2015.5, 2016.020, 2023.010, 2023.020, 2023.030, and 2023.040, Government Code sections 11450.30 and 11455.30, and Vehicle Code sections 1504, and 3050-3079.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 550 to add two definitions that are not currently in the Board's regulations: proposed stipulated decision and order and stipulated decision and order of the board. Furthermore, it proposes adding clarifying language to some definitions in Section 550. These additions are for clarification purposes only and do not make substantial changes to the definitions.

The Board proposes to amend Section 551.2 to authorize an Administrative Law Judge to issue subpoenas and eliminate the requirement that the original proof of service be filed with the Board following service upon the witness or deponent; a copy is sufficient.

The Board proposes to amend Section 551.21 pertaining to the issuance of sanctions and deletes reference to Bad Faith Actions.

Section 551.21(a) provides that a party, a party's representative, or both, shall not engage in actions or tactics that are frivolous or will result in unnecessary delay.

Section 551.21(b) provides the definitions of "party", "representative of a party", "actions or tactics" and "frivolous".

Section 551.21(c) provides that a party may assert a violation of this section by written or oral motion and request sanctions be imposed upon a party and/or his or her representative.

Section 551.21(d) provides that an administrative law judge may recommend the board impose sanctions at his or her own initiative.

Section 551.21(e) provides that an award of sanctions shall not be recommended or ordered without providing a party, a party's representative, or both, notice and an opportunity to be heard.

Section 551.21(f) provides that the Board or administrative law judge will determine whether actions or tactics are frivolous based upon the record, as well as any additional testimony or documentary evidence provided.

Section 551.21(g) provides that the proposed order recommending or board order ordering sanctions shall be on the record or in writing, setting forth the factual findings on which the sanctions are based and the factual findings as to the reasonableness of the amount(s) to be paid.

Section 551.21(h) provides that a proposed order recommending an award of sanctions is considered by the Board members at their next regularly scheduled meeting. A determination not to award sanctions is not considered by the Board and is final upon issuance by the administrative law judge.

Section 551.21(i) provides that the Board members' consideration to affirm, reject or modify the administrative law judge's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Section 551.21(j) provides that if sanctions are granted or ordered, the Board or administrative law judge may recommend the party and/or the party's representative pay reasonable expenses and attorney's fees incurred in bringing the motion. Attorney's fees and expenses will not be ordered if certain circumstances occur that would make an award unjust.

Section 551.21(k) provides that if a motion for sanctions is denied, the board may order or an administrative law judge may recommend that the movant or movant's representative pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees after an opportunity to be heard, unless the motion was substantially justified or other circumstances make an award unjust.

Section 551.21(l) provides that if the motion is granted in part and denied in part, the board may order or an administrative law judge may recommend an award of reasonable expenses and attorney's fees be apportioned to the parties relating to the fees incurred in bringing and opposing the motion.

The Board proposes to add Section 551.22 pertaining to the adoption and objection to a proposed stipulated decision and order.

Section 551.22(a) provides that if a proposed stipulated decision and order is filed with the board, a copy will be sent to each member of the board.

Section 551.22(b) provides that the proposed stipulated decision and order will be adopted by the board unless a board member objects within 10 days after receiving a copy of the proposed stipulated decision and order.

Section 551.22(c) provides that if any board member objects within 10 days of receiving the proposed order and stipulated decisions, the board will consider whether to adopt or reject it at its next meeting.

Section 551.22(d) provides that if an objection is received, the parties will be notified that the board will consider the matter at its next meeting. The parties must be given 10 days prior notice of the time, date and location of the board meeting where the proposed stipulated decision and order will be considered.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The broad objective of the regulations is to clarify for litigants that appear before the Board the information necessary to effectively represent themselves or their clients.

The specific benefit anticipated from the regulation is promoting the expeditious and economical resolution of statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. It provides a uniformity of decisions across the state, allowing franchisors and their dealers to conduct their business in compliance with California law. Lastly, through its Consumer Mediation Program, the Board offers, at no cost to the consumer, an informal means for efficiently resolving disputes between members of the public and any new motor vehicle dealer, manufacturer, or distributor.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board conducted an evaluation of the proposed regulations potential inconsistency or incompatibility with existing state regulations and has found that these are the only regulations pertaining to the subject matter of the case management rulemaking. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

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 cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:

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.

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes that the proposed regulations will not (1) create any jobs within the State of California, (2) eliminate any jobs within the State of California, (3) create any new businesses within the State of California, (4) eliminate any existing businesses within the State of California, or (5) cause the expansion of businesses currently doing business within the State of California.

BENEFITS OF THE REGULATION

The proposed regulations will promote the expeditious and economical resolution of disputes between new motor vehicle dealers and their manufacturers or distributors. Also, benefits the public or consumer at no cost through Consumer Mediation Program, an informal means in efficiently resolving disputes between the public and any new motor dealer, manufacturer, or distributor.

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 case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present comments, statements or arguments with respect to alternatives to the proposed regulations, during the written comment period or at the public hearing, if one is requested.

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 backup contact person for these inquiries is:

Danielle R. Vare, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 327-3129 direct line
(916) 445-1888 main line
(916) 323-1632 fax
dvare@nmvb.ca.gov

AVAILABILITY OF 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 in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the Economic and Fiscal Impact Statement, and all the information upon which the proposal is based. Copies may be obtained by contacting the contact persons identified above.

AVAILABILITY OF CHANGED 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 addresses 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 completion of the Final Statement of Reasons, copies thereof may be obtained by contacting Ms. Parker or Ms. Vare 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.