

## **INITIAL STATEMENT OF REASONS**

This Initial Statement of Reasons has been prepared relative to the proposal of the California New Motor Vehicle Board ("Board") to amend section 550 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 California State Transportation Agency. The Board consists of nine members, seven 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 including 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 applicants for, or holders of, a specified type of occupational license 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, 3070, 3072, 3074, 3075, and 3076) These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).
5. To hear and decide "protests" filed by associations against manufacturers, manufacturer branches, distributors, or distributor branches pursuant to Vehicle Code § 3085. These protests pertain to specified types of disputes regarding export or sale-for-resale prohibition policies set by the manufacturer or distributor.

The Board is a quasi-judicial administrative agency with the independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new vehicles (includes, in part, cars, motorcycles, recreational vehicles, and all-terrain vehicles), as well as hear protests filed by new car dealer associations challenging an export or sale-for-resale prohibition policy protest.

## **SECTION 550**

### **PURPOSE OF THE REGULATION**

The Board proposes to amend Section 550 by clarifying two definitions currently in the Board's regulations: "Protest" and "Protestant." The Reference is updated to reflect newly enacted Vehicle Code section 3085, which creates an additional type of protest to be filed before the Board.

### **NECESSITY**

Section 550, subdivisions (v) and (w) define "protest" and "protestant", respectively. Recently enacted legislation (Assembly Bill 1178, Stats. 2015, Ch. 526) effective January 1, 2016, establishes an export or sale-for-resale prohibition policy protest in Article 6 of the Vehicle Code. An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. Since 1974, a protest has always been an action filed by a franchisee pursuant to specified Vehicle Code sections. Since a protest can now be filed by an association in addition to a franchisee, the definition needs to be amended to reflect this. Likewise, the definition of protestant has always meant any licensed new motor vehicle dealer who files a protest with the Board. For purposes of Vehicle Code section 3085, an association as defined can also be a protestant so the definition needs to reflect this.

The amendments to section 550 of the Board's regulations are reasonably necessary to ensure that the litigants that appear before the Board, or would like to appear before the Board, have the information necessary to effectively represent themselves or their clients. Without clear definitions, this situation creates uncertainty and increases the parties' legal fees in addition to increasing the time and money spent by the Board staff and administrative law judges.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

#### **IMPACT ON JOBS/NEW BUSINESSES:**

The Board has determined that the proposed regulation will not have an impact on the creation of new jobs or businesses, the elimination of any jobs or existing

businesses, or the expansion of businesses currently doing business in California. The proposed regulation only impacts licensed new motor vehicle dealers, manufacturers and distributors within the Board's jurisdiction that file a Protest, Petition or Appeal with the Board, as well as associations (as defined above) who choose to file Protests with the Board.

The proposed amendments will not have an impact on jobs or businesses in California because adding "associations" to the definitions of "protest" and "protestant" will not result in an increase in the number of protests filed with the Board. Even though roughly 40-50 protests are filed per year it is unlikely that more than 1 or 2 protests would be filed by an association pursuant to Vehicle Code section 3085. The scope of this protest is so narrow that it would not encompass the several hundred manufacturers and distributors or the several thousand vehicle dealers within the Board's jurisdiction. There are only three statewide associations that represent the main categories of vehicles within the Board's jurisdiction: California New Car Dealers Association (cars and heavy-duty trucks), California Motorcycle Dealers Association (motorcycles/scooters/ATVs), and California Recreation Vehicle Dealers Association (recreational vehicles). There are also a handful of regional car dealer associations. To further limit the impact, if any, of the amended definitions on jobs or businesses in California, the dealers the associations represent must be subject to an export or sale-for-resale prohibition policy that allegedly violates Vehicle Code section 11713.3(y).

#### **BENEFITS OF PROPOSED REGULATION:**

Case management definitions are being clarified for litigants that appear before the Board to have the information necessary to effectively represent themselves or their clients. This means the Board will continue to quickly and economically resolve statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors), along with associations. The Board keeps these types of cases from further clogging our already congested courts. Additionally, the Consumer Mediation Program will continue to efficiently resolve disputes between members of the public and any new motor vehicle dealer, manufacturer, or distributor at no cost to the consumer.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board relied on the following documents in drafting and proposing the adoption of the proposed regulation:

- (1) Memorandum dated October 28, 2015, from William G. Brennan, Robin P. Parker, and Danielle R. Vare to the Policy and Procedure Committee regarding the Consideration of Proposed Regulations.

No other technical, theoretical, and/or empirical studies or reports were relied upon in drafting the proposed regulation.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on November 12, 2015. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation 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 November 12, 2015, General Meeting, and no further public discussion was held prior to publication of the notice.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has determined that the proposed regulation 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.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

There are no associated costs with the proposed regulatory amendments; they clarify case management definitions for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors), who choose to file a protest, petition or appeal with the Board, as well as associations, who choose to file protests with the Board.