

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 sections 550, 551.8, 551.12, 553.40, 558, 586 and 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 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. 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(b))
3. 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(c), 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 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).
4. The Board also has authority to hear protests filed by an association (an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers) challenging the legality of a manufacturer, manufacturer branch, distributor or distributor branch's export or sale-for-resale prohibition policy. (Veh. Code §§ 3050(d) and 3085)

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).

SECTION 550

PURPOSE OF THE REGULATION

The Board proposes to amend Section 550 relating to the definition of a “Protest” or “Protestant.” “Protest” is being amended to include reference to the new types of protests created in statute. “Protestant” is being amended to include the new type of Protestant that can file a protest: an association primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interest of dealers.

NECESSITY

These regulatory changes are necessary to ensure that the Board’s regulations conform with statutes, as they were recently amended.

SECTION 551.8

PURPOSE OF THE REGULATION

The Board proposes to amend Section 551.8, which describes the dismissals of petitions or protests. The amendment adds that an order of dismissal of an association protest (newly added in statute) will be a final order, similar to all other protests listed in this regulation. The other protests added recently in statute are already included in the Vehicle Code sections already referenced in the regulation. The statutory section relating to association protests is also being added to the Reference section.

NECESSITY

These regulatory changes are necessary so that the new association protest is treated the same as all other protests listed in this regulation regarding the finality of Board orders of dismissal. Amending this regulation to include the new association protest allows for clarity of the case management process for all those who practice or appear before the Board.

SECTION 551.12

PURPOSE OF THE REGULATION

The Board proposes to amend Section 551.12 relating to peremptory challenges. Language is being added to this regulation to conform with the amendments made in statute. Specifically, a reference to the new association protest is being added to the regulation language to clarify that the regulation does not limit the provisions of the statute. The new association protest is being added to the Reference section as well.

NECESSITY

These regulatory changes are necessary so that the new association protest is treated the same as all other protests listed in this regulation regarding peremptory challenges. Amending this regulation to include the new association protest allows for clarity of the case management process for all those who practice or appear before the Board.

SECTION 553.40

PURPOSE OF THE REGULATION

The Board proposes to amend Section 553.40 relating to filing fees upon receipt of a new protest. The statutory sections relating to the new protests are being added to the Reference section so that the Board may collect filings fees for these protests, the same as it does for all other protests.

NECESSITY

These regulatory changes are necessary so that the new protests are treated the same as all other protests listed in this regulation regarding filing fees. Amending this regulation to include the new protests allows for clarity of the case management process for all those who practice or appear before the Board.

The amendments are also consistent with the Board's Mission and Vision Statements.

SECTION 558

PURPOSE OF THE REGULATION

The Board proposes to amend Section 558 relating to the submission of exhibits via declaration as an attachment to Respondent's Answer. This amendment specifies for parties the procedure by which they can file evidence in their Answers. Further, a subsection is removed from the Reference section for clarity.

NECESSITY

Amending this regulation is necessary as it allows for clarity of the case management process for all those who practice or appear before the Board.

SECTION 586

PURPOSE OF THE REGULATION

The Board proposes to amend Section 586 relating to warranty reimbursement

filings and protests. This regulation is being amended to remove all references to a requirement that has been removed from statute. In addition, the new warranty reimbursement protest is being referenced as needed in this Section. The new protest is also being added to the Reference section, as well as the removal of specific subsections for clarity.

NECESSITY

These regulatory changes are necessary to ensure that the Board's regulations conform with statutes, as they were recently amended. Amending this regulation to include the new protest, and remove references that are no longer applicable, allows for clarity of the case management process for all those who practice or appear before the Board.

SECTION 590

PURPOSE OF THE REGULATION

The Board proposes to amend Section 590 relating to hearings by the Board. This Section is being amended to add the new protest rights added in statute. Further, the appropriate Vehicle Code sections are being added to the Reference section, as well as specific subsections are being removed for clarity.

NECESSITY

These regulatory changes are necessary to ensure that the Board's regulations conform with statutes, as they were recently amended. Amending this regulation to include the new protest, and remove references that are no longer applicable, allows for clarity of the case management process for all those who practice or appear before the Board.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Board has determined that the proposed regulations 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 regulations only impact licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction that file a Protest or Petition with the Board. This includes approximately 1,500 to 2,000 new car, motorcycle, all-terrain vehicle, low-speed vehicle and recreational vehicle dealers and approximately 150-200 manufacturers or distributors. In the last 10 years, there have been on average 45 protests filed per year and there have been only 6 petitions filed in the last 10 years.

BENEFITS OF PROPOSED REGULATION:

Case management is 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). The Board keeps these types of cases from further clogging our already congested courts. Additionally, the Board issues uniform orders and decisions throughout California thereby allowing franchisors and their dealers to conduct their business in compliance with California law. There are no known benefits to the Board of this proposed regulation to the health and welfare of California residents, worker safety and the state's environment.

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 November 1, 2019, from Timothy M. Corcoran and Robin P. Parker to the Policy and Procedure Committee regarding Consideration of Proposed Regulations

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Prior to the publication of this notice, the Board considered and adopted the proposed regulations at a noticed General Meeting held on December 2, 2019. Eighteen (18) 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.

No comments by the public were received at the December 2, 2019, General Meeting in relation to the regulations in this notice, 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 regulations will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulations, are legally required to enforce the regulations, or derive a benefit from or incur an obligation from the enforcement of the regulations.

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