

TITLE 13. NEW MOTOR VEHICLE BOARD

(Notice published June 4, 2021)

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, 551.8, 551.12, 553.40, 558, 586 and 590 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 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.

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 by e-mail at danielle.phomsopha@nmvb.ca.gov or nmvb@nmvb.ca.gov or by facsimile (FAX) at (916) 323-1632. The written comment period closes at midnight on July 20, 2021. The Board will only consider comments received at the Board's offices by that time. Submit comments to:

Danielle R. Phomsopha, Senior Staff Counsel
New Motor Vehicle Board
P.O. Box 188680
Sacramento, CA 95818-8680
(916) 327-3129 direct line
(916) 445-1888 main line
(916) 323-1632 fax
danielle.phomsopha@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050, subdivision (a), authorizes the Board to amend the proposed regulations. The proposed regulations implement, interpret, and make specific Business and Professions Code section 472.5, Code of Civil Procedure sections 2015.5 and 2016.020, Government Code section 11425.40, Vehicle Code sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3070, 3072, 3074, 3075, 3076, 3080, 3085 and 3085.2.

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 "...demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes."

The Board proposes to amend Sections 550, 551.8, 551.12, 553.40, 558, 586 and 590 to include the information necessary to conform the regulations with statute due to recently enacted legislation. Several new types of protests were created by recently enacted legislation including, a protest where an association primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interest of dealers can be filed challenging an export or sale-for-resale prohibition policy of a manufacturer or distributor ("association protests"); a protest where a franchisee may file a protest with the Board for a declaration of its retail labor rate or retail parts rate when such rates are in dispute or the franchisor fails to comply with the requirements in statute ("warranty reimbursement protest"); and a franchisee can file a protest with the Board to determine whether a franchisor has complied with the Vehicle Code requirements that "[n]o franchisor shall establish or maintain a performance standard, sales objective, or program for measuring a dealer's sales, service or customer service performance that is inconsistent with the standards set forth in subdivision (g) of Section 11713.13 [of the Vehicle Code]" ("performance standard protest").

Section 550 defines a "Protest" and "Protestant." "Protest" is being amended to include 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. The new statutes are also being added to the Reference section of the regulation.

Section 551.8 describes the dismissals of petitions or protests. This regulation is being amended to add that an order of dismissal of an association protest shall be a final order. The statutory section regarding association protests is also being added to the Reference section.

Section 551.12 describes who may file a peremptory challenge and the mechanism for doing so. Language is being added to this Section to conform with the amendments made in statute. In addition, 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.

Section 553.40 relates to the Board's filing fees upon receipt of a new protest. The new protest statutes are being added to the Reference section so the Board may be able to collect filings fees, as it does for all protests.

Section 558 clarifies how a Respondent may submit information as exhibits to its answer. In addition, a subsection is removed from the Reference section for clarity.

Section 586 relates to warranty reimbursement filings and protests. This Section 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.

Section 590 relates to hearings by the Board and 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.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

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 regulations 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.

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 they 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.

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 regulations, are legally required to enforce the regulations, or derive a benefit from or incur an obligation from the enforcement of the regulations. 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 or petition 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 regulation, 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. Phomsopha at the following address:

Danielle R. Phomsopha, Senior Staff Counsel
New Motor Vehicle Board
P.O. Box 188680
Sacramento, CA 95818-8680
(916) 327-3129 direct line
(916) 445-1888 main line
(916) 323-1632 fax
danielle.phomsopha@nmbv.ca.gov

The backup contact person for these inquiries is:

Robin P. Parker, Chief Counsel
New Motor Vehicle Board
P.O. Box 188680
Sacramento, CA 95818-8680
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
robin.parker@nmvb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices by appointment. Please contact the contact persons listed above should you wish to make an appointment for in-office inspection and copying. 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 regulations 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. Phomsopa or Ms. Parker 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.