

TITLE 13. NEW MOTOR VEHICLE BOARD
(Notice published September 13, 2019)

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 and 551.12 of Title 13 of the California Code of Regulations pertaining to preemptory challenges.

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 April 10, 2019. Thirteen (13) 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 April 10, 2019, General Meeting, 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 on October 28, 2019. The Board will only consider comments received at the Board's offices by that time. Submit comments to:

Danielle R. Phomsopha, 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
danielle.phomsopha@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 Section 11425.40 of the California Government Code.

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 Sections 550 and 551.12 to clarify that only a protestant/petitioner or respondent in a protest or petition may file a preemptory challenge to an Administrative Law Judge. An intervenor would not be considered a party for purposes of filing a preemptory challenge. An intervenor would still be able to file a challenge "for cause" requesting disqualification of an Administrative Law Judge (per Section 551.1).

Section 550 defines a "party" or "parties" to include an intervenor. Additional language would be added to clarify that for purposes of a preemptory challenge, an intervenor is not a party.

Section 551.12 describes who may file a preemptory challenge and the mechanism for doing so. Language would be added to Section 551.12(b) to clarify that each party, excluding an intervenor, is entitled to a preemptory challenge.

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. The regulatory amendments ensure that if a peremptory challenge is filed by the protestant/petitioner and respondent in a matter, the Board still has Administrative Law Judges available to preside over the merits hearing without the need to use judges from the Office of Administrative Hearings. These amendments are consistent with the Board's Mission and Vision Statements.

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. The proposed regulations will also ensure the Board's hearing process remains cost effective.

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, 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
danielle.phomsopha@nmbv.ca.gov

The backup contact person for these inquiries is:

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
robin.parker@nmbv.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 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 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. Phomsopha 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.