

## **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, subdivision (a), 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 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).

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATORY ACTION IS INTENDED TO ADDRESS**

For decades, the Board's legal staff have taken an active role in merits hearings by providing support throughout the hearing to the Board assigned Administrative Law Judge ("ALJ"). This role included reviewing the ALJ's drafts of the proposed decision for consistency and accuracy. The Board is in transition of assigning merits hearings to the Office of Administrative Hearings ("OAH") instead of or in addition to using the Board's in-house ALJs. As part of this transition to OAH, the Board's role in this process is limited as its legal staff will not review a proposed decision until it is signed by the OAH assigned ALJ.

The transition to OAH means the Board's staff will have less time to review a proposed decision issued by OAH as compared to its role in reviewing drafts of the proposed decision by its in-house or Board assigned ALJs. Vehicle Code sections 3067(b), 3081(b), and 3085.4(b) require that if a protest is heard by an ALJ alone, 10 days after receipt by the Board of the proposed decision, a copy shall be filed by the Board as a public record and a copy shall be served on each party and their attorneys.

The 10-day period is much less time as compared to when a decision is issued by an in-house ALJ to thoroughly review, analyze, and verify the factual and legal accuracy of a proposed decision issued from OAH. Additionally, this 10-day period is included in the 30-day statutory period the Board must consider the proposed decision at a noticed meeting. (Veh. Code §§ 3067(a), 3081(a), and 3085.4(a).).

## **NECESSITY**

The proposed amendment is necessary to provide the Board's legal staff sufficient time to review an OAH proposed decision for consistency and accuracy to properly advise its Board members whether they should adopt, reject, or make technical or other changes to the proposed decision. Based on the Board's current definition of ALJ, it only has 10 days to review a proposed decision issued by OAH before filing it as a public record and serving each party and their counsel.

The Administrative Procedure Act ("APA") applies to the Board and its administrative proceedings in part based on the Board's statutory and regulatory scheme. The proposed amendment will result in the APA applying to OAH proposed decisions, which will provide the Board's legal staff 30 days to review the proposed decision before filing it as a public record and serving each party and their counsel.

The Board hears and decides protests that pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor). The laws applicable to disputes heard by the Board between franchisees and franchisors are complex. A merits hearing on average takes 7 days to complete. Testimony is provided from multiple witnesses including experts and others familiar with the new motor vehicle industry. There are numerous exhibits sometimes consisting of thousands of

pages. The hearing transcripts are also voluminous and contain multiple volumes. The normal post-hearing briefing also consists of hundreds of pages. The average page length for the decisions issued over the past twenty years is thirty-nine pages per decision. Thus, the review and evaluation of proposed decisions is time consuming and technical.

## **BENEFITS ANTICIPATED FROM THE REGULATORY ACTION**

The proposed amendment will benefit the public, practitioners before the Board, and the State of California by ensuring the proposed decisions are consistent and accurate (factually and legally). In addition, this will help ensure the Board has sufficient time to review a proposed decision from OAH before its public meeting where it will decide whether to adopt, reject or make technical or other changes to the proposed decision.

The Board resolves 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. This proposed amendment will allow the Board to continue to issue uniform orders and decisions throughout California thereby allowing franchisors and their dealers to conduct their business in compliance with California law.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### **CREATION OR ELIMINATION OF JOBS WITHIN THE STATE:**

The Board has determined that the proposed amendment 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 amendment only impacts 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 150-175 manufacturers or distributors. In the last 20 years, there have been on average 45 protests filed each year. Only 12 petitions have been filed since 2005.

### **CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE:**

The proposed amendment will not impact the creation of new businesses or cause the elimination of existing businesses in California. The proposed amendment simply clarifies or interprets the reference to ALJ in Vehicle Code sections 3067(b), 3081(b), and 3085.4(b) means an ALJ of the Board and not OAH.

### **EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE:**

The proposed amendment will not impact the business climate in the state, and therefore, it would not result in the expansion of businesses doing business in California. The proposed amendment simply clarifies or interprets that the reference to ALJ in

Vehicle Code sections 3067(b), 3081(b), and 3085.4(b) means an ALJ of the Board and not OAH.

**BENEFITS TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT:**

The Board does not anticipate any impact on the health and welfare of California residents.

The proposed amendment will not benefit worker safety because it does not regulate worker safety standards.

The proposed amendment will not benefit the state's environment because it does change any applicable environmental standards.

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

In addition to Vehicle Code sections 3050, 3067(b), 3081(b), and 3085.4(b), Government Code sections 11410.50, 11415.10(a), 11415.20, 11501(a), 11517(c)(1) and relevant case law, the Board relied on the following documents in drafting and proposing the amendment:

- (1) Memorandum dated April 2, 2024, from Timothy M. Corcoran and Robin P. Parker to the Board's Policy and Procedure Committee regarding consideration of proposed changes to the regulations.

The Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the revisions to the 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 the proposed amendment at a noticed General Meeting held on April 25, 2024. Approximately 15 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 and Electronic Public Mailing list. The agenda was also posted on the Board's website.

The public was invited to comment at the General Meeting in relation to the proposed change to the regulation in this notice. No comments by the public were received at the April 25, 2024, General Meeting and no further public discussion was held prior to publication of the notice. At the meeting, the Board unanimously approved the proposed amendment.

The Board determined that the proposed regulation would 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.

Accordingly, the Board has determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed regulatory action or would be less burdensome.

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

There are no associated costs with the proposed regulatory amendment. The Board's case management procedures concern 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.