

Initial Statement of Reasons
Article 3.1
Title 13, Division 1, Chapter 1

Summary and Background

The California Department of Motor Vehicles (department) proposes to amend sections 160.00, 160.02, 160.04, and 161.06 in Article 3.1, Chapter 1, Division 1, Title 13 of the California Code of Regulations (CCR), relating to the Specialized license plate program.

License plate designs and messages are government speech, and the government may convey any message it selects in that communication. In 2015, the U.S. Supreme Court clarified that the designs a State places on license plates are government speech. In *Walker v. Texas Div., Sons of Confederate Veterans* (Jun. 18, 2015) 576 U.S. 200, the U.S. Supreme Court concluded there is no First Amendment right in any person permitting them to dictate the content of license plate design images and statements. Neither the Walker case, nor this rulemaking, concern the First Amendment implications of personalization of a registration number.

The department registers vehicles and authorizes their use on the road by assigning a registration number to each vehicle and producing a license plate displaying that registration number (Veh. Code section 4850). The license plate must be attached to the vehicle for it to lawfully operate on California public roads. The visibility and placement of the license plate bearing this registration number are critical to law enforcement's efforts to maintain driver compliance with the rules of the road. Also, the visibility of the registration number is a critical component of bridge and toll road authorities' ability to automate revenue collection. The visibility of the registration number is also relied on by parking facilities across the state to ensure fee collection.

Additionally, the license plate has become a source of revenue for many State agencies and public institution programs through sponsorship of a Specialized license plate (SLP). The Specialized license plate programs raise needed funds by displaying a desirable decorative image on the license plate, in addition to the registration number for a fee. Vehicle registrants will pay an extra fee for the decorative image, knowing they are contributing to specified public programs.

For many years, the California Legislature has created various license plate design programs to fund specific State endeavors. The current program is the Specialized License Plate (SLP) program under which any state agency may apply to the department to have a license plate series design created (Div. 3, Ch. 1, Art. 8.6, Veh. Code sections 5151 – 5169.) A minimum level of participation by the public is required to start up and maintain the availability of a Specialized license plate program and expenditure rules and reporting requirements apply to the sponsoring agency. The minimum level of participation, established in the Vehicle Code, is met when 7500 unique vehicle registrants pay the SLP fee and “enroll” in the proposed license plate program. This level of enrollment participation must occur during the 12-month (or up to 24-months, if requested) period after the sponsoring agency's initial application is approved by the department. This requirement serves to motivate a sponsoring agency to market the license plate and demonstrate its popularity and long-term viability before the expense of producing the license

plates is incurred by the department. An agency sponsor who fails to secure the requisite participation level will not successfully create a license plate program and will be required to refund the SLP fee to all enrollees. Only after the participation level reaches the 7500-enrollee level will the department develop needed programming in the license plate production system to produce the license plate and assign the registration number for manufacture at the production facility. All revenue generated from the sale of a Specialized license plate, less department costs in administering the license plate program is deposited into the Specialized License Plate Fund established in Vehicle Code section 5157.

Details of the plate sponsorship application process are delegated to the department in the SLP program legislation. In 2017, the department adopted an initial set of regulations setting forth the information an agency must provide to the department in its application (OAL #2017-1013-08.) Those rules resulted in a clear and streamlined process State agencies and other license plate program sponsors, such as colleges and universities, can follow to establish a license plate program. Some changes are being proposed at this time to further enhance the SLP program. These proposals will expand the design options available to State agency sponsors, add clarity to potential enrollee communications, and improve department oversight activity by requiring more detailed expenditure reports.

Problem this Department intends to Address/Benefits Anticipated from this Regulatory Action

First, regarding annual financial reporting, the department has received reports that are lacking in detail and inadequate for oversight purposes. Specifically, some reports just state “administrative expenses” without any additional details which prevents the department from reviewing the activities undertaken that a sponsor determines to be allowable “administrative” expenses. To conduct a meaningful oversight review of the report, the department needs added details such as the amount spent on marketing, website advertising, staff time to promote the program, etc. to be included in the report. Vehicle Code section 5159 in conjunction with section 5160 requires the department to suspend a SLP program when administrative costs exceed 25% of plate program revenue. The revised regulation requires the sponsor to provide the needed details in its annual report so that the department can accurately exercise its oversight duty regarding a SLP program that fails to achieve the legislative purpose, which is to raise revenue for agency sponsored programs.

Second, this proposal permits the use of intellectual property, i.e., trademarked or copyrighted images, as part of a SLP design. The previous concerns with using such images on license plate designs arose from past difficulties State agency sponsors faced in obtaining adequate licensing authority for use of intellectual property on a license plate. For that reason, the department adopted a rule requiring legislative authorization to use privately owned images on a SLP. However, the success of the “Snoopy” license plate, which incorporates intellectual property pursuant to appropriate licensing agreements, shows that the risks associated with the department approving license plate designs containing intellectual property can be adequately reduced when appropriate licensing agreements are in place. The “Snoopy” license plate experience shows that the appeal of license plates bearing copyrighted/trademarked images is high and increases the revenue potential for sponsor agencies’ programs.

Finally, regarding the marketing materials a SLP sponsor develops to garner interest and enrollment in their SLP program, the department has continued to field customer questions arising out of inaccurate or incomplete marketing materials used by license plate sponsors during the initial enrollment period. Under the current regulations, the sponsor need only provide the department with a marketing plan. This requirement has proven inadequate to generate efficient enrollment. By requiring a SLP sponsor to develop and submit all marketing materials to the department as part of their application process, the department can provide meaningful feedback related to the marketing materials, based on previous experience, to the sponsor before they are put into use.

Alternatives Considered

The department considered leaving the reporting requirements as is but ultimately decided to make the amendments to the regulations for the reasons previously stated. The department will consider alternatives if any are presented during the public comment period.

Title

The title is changed from Special Interest License Plates to Specialized License Plates to conform the terms used in the Vehicle Code. Special Interest License Plates are created in Article 8.4 of Chapter 1 of Division 3 and are not sponsored by agencies.

Necessity: The correction to the title was omitted in the prior regulatory adoption and is necessary for clarity and consistency at this time.

Section 160.00

New subsection (a) is added to define “Marketing expenditures” for purposes of the program.

Necessity: defining the term “Marketing expenditures” is necessary because subsection (b)(1) of section 160.02 and subsection (d) of section 160.04 have been amended to add the use of the term. Adding the details as to what the department considers “Marketing expenditures” here in the definition keeps the rules related to the Specialized License Plates program consistent with the existing format. Also, Vehicle Code section 5159 does not define marketing expenditures.

Subsection (a) is renumbered to new subsection (b), subsection (b) is renumbered to new subsection (c), subsection (c) is renumbered to new subsection (d), subsection (d) is renumbered to new subsection (e).

Necessity: due to a new subsection (a) being added it is necessary to renumber the existing subsections.

Section 160.02

Subsection (b)(1) is amended to change "An itemization of administrative expenditures including personnel expenses and non-personnel expenses incurred to administer the program" to "An itemization of administrative expenditures including marketing expenditures, as defined in section 160.00, and promotion activity expenditures the sponsor has incurred; and"

Necessity: Vehicle Code sections 5159 and 5160 in conjunction require the department to collect reports of program expenditures and to suspend the license plate program if one type of expenditure, the administrative expense of continuing to market the license plate, exceeds 25% of the generated revenue. Although the Vehicle Code does not give authority to the department to cancel the license plate program for any other misuse of generated funds, the department is the entity who receives and holds the annual reports of expenditures under this section. Vehicle Code sections 5159 and 5160 designate the department as the holder of financial reports of sponsoring agencies and describing here in greater detail the types of expenditures to be reported furthers the effectiveness of that monitoring obligation of the department. The current general language has resulted in the department receiving reports without any detail, and fees simply described as “administrative fees”. For consistency, the marketing materials that are required to be submitted to the department should align with the expenses and breakdown of fees as required on the annual financial report to ensure the sponsor remains aware of the reporting categories. Expenditure reporting has not been tracked and reported by sponsors consistently. To ensure the department is reviewing the types of expenditures it is required to review under the Vehicle Code, this language is necessary.

Section 160.04

Subsection (a)(1) is removed in its entirety.

Necessity: The deleted language duplicates the requirements specified in section 5155(a) of the Vehicle Code and is unnecessary. Specifically, the 2 inch by 3-inch space where an image may be located, and the location of a permissible image or message, are prescribed in subsection (a) of Vehicle Code section 5155. Removing this language from this subsection has no regulatory effect, and merely deletes duplication.

Subsection (a)(2) is renumbered to new subsection (a)(1).

Necessity: due to subsection (a)(1) being removed it is necessary to renumber subsection (a)(2).

Subsection (a)(3) is removed in its entirety.

Necessity: the requirement, retained in new subsection (a)(5) that the “image and messages contain content that is required by the Vehicle Code and is suitable as government speech in the estimation of the department” gives the department the discretion to reject proposed designs that are distasteful. Therefore, having an additional requirement that the message not offend good taste and decency is unnecessary. Additionally, section 170.00 was renumbered to 206.00 via a Section 100 change (OAL #2018-0207-02) so the reference to subsection 170.00(c)(7)(D) is inaccurate and therefore necessary to remove.

Subsection (a)(4) is renumbered to new subsection (a)(2) and is being amended to modify the current prohibition against copyrighted or trademarked images/messages from being used in a Specialized license plate design. This amendment will allow copyrighted or trademarked material to be used if, and only if, an appropriate licensing agreement is in place, and the full consent of the owner has been obtained by the Specialized license plate sponsor.

Necessity: The revised standard is necessary to achieve the purpose of the Specialized license plate statute because it will enable State agency sponsors to develop more popular license plate designs and thus raise revenue for designated State programs which is the purpose of the Specialized license plate program. The popularity of California Cultural and Historical Endowment Specialized License plate also known as the “Snoopy plate”, provides evidence that familiar images and logos on license plates appeal to vehicle registrants. The department has determined that a “valid licensing agreement or other evidence demonstrating the use of material on a license plate is authorized by copyright or trademark holders” is sufficient to protect the department from lawsuits under federal copyright or trademark law. Several potential sponsors have indicated to the department they have willing entities who will provide lawful use of their intellectual property in the license plate design in order to raise money for State programs. The risk addressed by the requirement that only the legislature may approve the use of a copyrighted or trademarked image was exposure of the department to liability for improperly using those images.

Subsection (a)(5) is renumbered to new subsection (a)(3) and is being amended to remove the color restriction with regards to the requirement of having the jurisdiction as part of a license plate design.

Necessity: The requirement to have the state’s name color match the color on regular series license plates (red) causes visibility issues on license plate designs that have a non-standard background color because it does not contrast sufficiently with dark backgrounds. Allowing the sponsoring agency to choose an appropriate contrasting color retains the requirement that the ‘California’ must be prominently displayed at the top center of the license plate as required in Vehicle Code section 4851.

Subsection (a)(6) is renumbered to new subsection (a)(4) and is being amended to remove the requirements related to the background color and the registration number color.

Necessity: The color restriction removal permits sponsors to develop a wider variety of license plate designs, limited only by the requirement that it function as the regular issue license plate does. The revised standard is necessary to achieve the purpose of the Specialized license plate statute because it will enable State agency sponsors to develop more popular license plate designs and thus raise revenue for designated State programs which is the purpose of the Specialized license plate program.

Subsection (a)(7) is renumbered to new subsection (a)(5).

Necessity: To conform the numbering and retain internal organization of the subsections.

Subsection (a)(8) is removed in its entirety.

Necessity: this subsection prohibited the use of a full plate graphic, but permitted a full, single-color background. The department is removing this prohibition because it does not assist in the development of visible license plate designs over and above the CHP’s acceptable visibility standards. The revised standard is necessary to achieve the purpose of the Specialized license

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plate statute because it will enable State agency sponsors to develop more popular license plate designs and thus raise revenue for designated State programs which is the purpose of the Specialized license plate program.

Subsection (b) is amended to add “including intellectual property.”

Necessity: the department used to prohibit the use of intellectual property but will now allow it with the appropriate licensing agreement(s) in place as discussed earlier in new subsection (a)(2). The department has determined that a “valid licensing agreement or other evidence demonstrating the use of material on a license plate is authorized by copyright or trademark holders” is sufficient to protect the department from lawsuits under federal copyright or trademark law. However, this language is also added to further protect the department.

Subsection (c) is amended to change the language “a marketing plan” to “all marketing materials including but not limited to” at the end of the sentence.

Necessity: since the adoption of this section, sponsoring agencies have submitted general plans for marketing, but errors in the actual materials provided to prospective enrollees have continued to occur in marketing materials. To ensure prospective license plate program enrollees are provided with accurate information, the department proposes to require all materials used in marketing a specialized license plate be pre-approved by department staff. Confusing or erroneous marketing materials drive potential participants away. This amendment supports the efficient and effective enrollment of the required 7500 enrollees prior to implementation and increases the likelihood of a sponsoring agency reaching this level.

Subsection (c)(1) is amended to change the language “Describes all of the” to “All” before “...marketing tools...”.

Necessity: Since a description of materials used in marketing is not adequate to ensure accuracy, the use of the word “all” clarifies that the actual copy of web pages, flyers, advertising, etc. be pre-approved.

Subsection (c)(2) is amended to change the language “Includes a sample” to “Samples” before “...of all written or electronic messages...”

Necessity: Samples are necessary to enable the department to review marketing materials for accuracy and determine whether to approve them or not. The previous rule permitted compliance by providing just one sample. Sponsors market through various channels and may use webpages and print enrollment methods as they deem advisable. This rule now requires all versions of enrollment forms and materials be submitted to the department prior to use to permit the department to ensure accuracy in the enrollment process. Additionally, this change is necessary to reduce confusion among prospective license plate enrollees by ensuring the marketing materials are accurate and error free.

Subsection (d) is amended to change “...explain the rationale for determining the percentage of anticipated revenue that will be used for administrative costs” to “... marketing expenditures, as defined in section 160.00, and promotional activity expenditures, the sponsor will incur.”

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Necessity: this amendment is necessary to align this requirement with the reporting requirement in earlier subsection (b)(1) of section 160.02.

Section 161.06

Subsection (a)(2) is amended to change the reference from 160.04(a)(4) to 160.04(a)(2).

Necessity: due to the amendments and renumbering proposed in section 160.04 the reference in this subsection also needs to be amended.

DEPARTMENTAL DETERMINATIONS

- Technical, Theoretical and/or Empirical Studies, Reports or Documents: None.
- Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business: No alternatives were considered or presented that would lessen any adverse impact on small businesses.
- Evidence Supporting Determination of No Significant Economic Impact on Business: This regulation will increase accessibility of the requirements to all Californians. The department has no evidence that this regulation will have an adverse impact on businesses.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: None
- Effect on Housing Costs: None.
- Local Agency/School District Mandates: The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Small Business Impact: The department does not anticipate this action having an impact on small businesses.

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- Potential significant statewide adverse economic impact: The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ECONOMIC IMPACT ASSESSMENT

(Government Code section 11346.3)

The department has made the following determinations related to this proposed regulatory action:

Creation or Elimination of Jobs Within the State of California

The department does not anticipate that this action will either create or eliminate jobs within the State of California. This action adds details to the license plate sponsor's reporting requirements and removes the prohibition of using intellectual property in a license plate design.

Creation or Elimination of Existing Businesses Within the State of California

The department does not anticipate that this action will either create or eliminate existing businesses within the State of California. This action adds details to the license plate sponsor's reporting requirements and removes the prohibition of using intellectual property in a license plate design.

Expansion of Businesses Currently Doing Business Within the State of California

The department does not anticipate that this action will expand businesses currently doing business in California. This action adds details to the license plate sponsor's reporting requirements and removes the prohibition of using intellectual property in a license plate design.