

Initial Statement of Reasons  
Title 13, Division 1, Chapter 1  
Article 3.0 – Vehicle Registration and Titling

**Summary and Background**

The Department of Motor Vehicles (department) proposes to adopt Section 158.50 in Article 3.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations (CCR), relating to the Lien Sales program.

Civil Code sections 3067 through 3074 detail the procedures for lien sales in California. Sections 3071 and 3072 bifurcate the process based on the value of a vehicle. Vehicles valued over \$4,000 are subject to the provisions of Civil Code section 3071 and those valued at \$4,000 or less are subject to the provisions of Civil Code section 3072.

Vehicle Code section 22670 establishes that when a vehicle is towed at the request of a public agency the estimated value of that vehicle is established by the public agency who ordered the towing of the vehicle unless they opt to not set a value.

There is nothing in statute that determines, outside of a lien sale following the towing of a vehicle at the behest of a public agency, the value of a vehicle for lien sale purposes.

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

A lien sale is the process in which a vehicle may be sold to pay a debt that has not been satisfied. In a lien sale all interested parties are notified and the vehicle is then sold to the highest bidder. The Civil Code outlines the procedures for a lien sale based on the value of a vehicle but is silent, except for in cases of a public agency ordered towing, as to how the value is to be determined. Throughout the Civil Code the department is tasked with managing lien sales. Because the role of the department in the lien process changes based on the value of the vehicle it is imperative that there is a way to equitably establish a process to value vehicles. Currently, there is confusion and uncertainty regarding the valuation process of vehicles subject to a lien sale. The department has therefore determined that it is necessary to adopt a regulation to establish how value for lien sale vehicles is to be calculated. This will benefit the public and businesses when determining which procedure must be followed when selling a vehicle through the lien sale process.

**Alternatives Considered**

The department must determine that no reasonable alternative considered by the department, or that has otherwise been identified and brought to the attention of the department, 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 department considered leaving the process as it currently exists, but that would continue the confusion and uncertainty that surrounds determining the vehicle value when a vehicle is subject to a lien sale. The department will consider alternatives if any are presented during the public comment period.

### **158.50 Lien Sales –Value of Vehicle Determined by the Department**

Subsection (a) is adopted to make clear that, for purposes of a lien sale, vehicles valued over \$4,000 are processed in accordance with Civil Code section 3071 and requires application to be made to the department. Civil Code section 3071 requires a lienholder to apply to the department for the issuance of an authorization to conduct a lien sale for any vehicle with a value determined to be over \$4,000 and also authorizes the department to charge a fee. Lastly, Civil Code section 3071 establishes the information required to be provided to the department when a lienholder is applying for authorization to conduct a lien sale. This provision is necessary to ensure a clear distinction between the application for a lien sale when a vehicle is valued over \$4,000 and when a vehicle is valued at \$4,000 or less, as proposed for adoption in subsection (b). While some of the regulatory text is duplicative of statute, the department has determined the duplication necessary for clarity and to prevent an interested party from having to consult multiple resources related to a lien sale.

Subsection (a)(1) is adopted to identify the information required when a lienholder is applying to the department for an authorization to conduct a lien sale. The applicant is required to provide information related to the vehicle make, year, model, vehicle identification number, and the state of registration. When the subject vehicle is a motorcycle, the applicant is required to provide the engine number. Lastly, subsection (a)(1) requires an inspection of the vehicle by a peace officer, a licensed vehicle verifier, or a departmental employee when the vehicle identification number is not available. Subsection (a)(2) requires the names and addresses of the registered and legal owners of the vehicle if ascertainable and the name and address of any person whom the lienholder knows, or reasonably should know, claims an interest in the vehicle. Subsection (a)(3) requires a statement of the amount of the lien and the facts that give rise to the lien. The information required by subsections (a)(1) through (a)(3) are consistent with the requirements of Civil Code section 3071 and will prevent a lienholder from having to access multiple resources to find information related to the lien sale process.

Subsection (a)(4) is adopted to establish a fee of \$39 that is required to be submitted with an application for a lien sale. Civil Code section 3071 authorizes the department to charge a filing fee and authorizes the fee to be recovered by the lienholder when a lien sale is conducted. The fee of \$39 is derived from considering the direct costs, overhead costs, and volume. A detailed costing analysis as well as the Economic and Fiscal Impact Statement can be obtained by making a request to the department representative identified in the Notice of Proposed Action.

Subsection (b) is adopted to make clear that, for purposes of a lien sale, vehicles valued at \$4,000 or less are processed in accordance with Civil Code section 3072 and requires application to be made to the department that includes the vehicle make, year, model, vehicle identification number, license number, and the state of registration. Subsection (b) also requires an inspection of the vehicle by a peace officer, a licensed vehicle verifier, or a departmental employee when the vehicle identification number is not available. The information required to be provided to the department in subsection (b) is consistent with the requirements of Civil Code section 3072(a) and will prevent a lienholder from having to access multiple resources to find information related to the lien sale process.

Subsection (b) is also adopted to establish a fee of \$1.49 that is required to be submitted with an application for a lien sale for a vehicle valued at \$4,000 or less. Vehicle Code section 1811 authorizes the department to sell copies of all or any part of its records at a charge sufficient to pay at least the entire actual cost to the department of the copies, the charge for the records and the conditions under which they may be sold to be determined by the Director. The fee covers the costs to the department for all processes from receiving and processing the application information and the Certification of Lien Sale completed by the lienholder/agent through the authority of the lien sale and is derived from considering the direct costs, overhead costs, and volume. A detailed costing analysis as well as the Economic and Fiscal Impact Statement can be obtained by making a request to the department representative identified in the Notice of Proposed Action.

Subsection (c) is adopted to establish, for purposes of a lien sale other than one initiated under Vehicle Code section 22670, the market value of a vehicle is established using the definition in section 157.02(c) of the CCR, which is used to determine the most current vehicle license registration fee. Section 157.02(c) states the following:

The market value of a vehicle, other than a trailer or semi-trailer as described in subdivision (a) of Section 5014.1 of the Vehicle Code, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 100 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 90 percent of that sum; for the third year, 80 percent of that sum; for the fourth year, 70 percent of that sum; for the fifth year, 60 percent of that sum; for the sixth year, 50 percent of that sum; for the seventh year, 40 percent of that sum; for the eighth year, 30 percent of that sum; for the ninth year, 25 percent of that sum; and for the 10th year, 20 percent of that sum; and for the 11th year and each succeeding year, 15 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar (\$1).

Because the Civil Code is silent as to how vehicles should be valued for purposes of a lien sale, the department has decided to utilize the value definition as currently defined in regulation.

Section 157.02(c) was adopted to determine the market value of a vehicle to establish the vehicle license fee as required by Revenue and Taxation Code sections 10751 through 10754. This definition accounts for depreciation of vehicles and allows a simple calculation to determine the market value of a vehicle. Value of vehicles are variable based on many factors and while each vehicle's value cannot be placed in regulation this formula provides for a standard depreciation and additionally will calculate variables in value based on the sales price of the vehicle when purchased either new or used.

The adoption of subsection (c) notes "the department may assign a vehicle value..." The department chose to use the term "may" to establish discretion as there may be instances where the vehicle valuation does not take place or cannot be used, for example, a new salvage status or a determination by the police. Using the word "shall" would override these statutory mechanisms and potentially defeat the intended purpose.

Subsections (c)(1) through (c)(3) are adopted to identify circumstances under which the vehicle value determination would not apply including when a vehicle valuation is made under Vehicle Code section 22670 for a vehicle that has been ordered removed, towed, or stored by a public agency, as specified in subsection (c)(1); when a vehicle title has been branded as salvaged, taxi, police, non-USA, warranty return, or remanufactured before the expiration of the most current vehicle registration, as specified in subsection (c)(2); or when the department receives an application for salvage certificate or nonrepairable certificate, form REG 488C, as specified in subsection (c)(3). Each of these three instances have their own process by which a vehicle is valued, as provided in the adoption of subsections (d) and (e).

Subsection (d) is adopted to establish that vehicle value is determined in accordance with Vehicle Code section 22670 when the vehicle has been ordered removed, towed, or stored by a public agency. This provision is necessary to identify the method by which a vehicle can be valued when it has been ordered removed, towed, or stored by a public agency and is exempt from the valuation described in subsection (c). The department will not determine value on such a vehicle and the public agency is responsible for determining the value of vehicles for lien sale purposes.

Subsection (e) is adopted to establish that vehicle value will be assigned on a case-by-case basis for vehicles whose titles have been branded as salvaged, taxi, police, non-USA, warranty return, or remanufactured, as provided in subsection (c)(2), or if the department has received an application for salvage certificate or nonrepairable vehicle certificate, form REG 488C, as specified in subsection (c)(3). This provision is necessary to ensure there is a process in place where the department can assign a value to a vehicle that is salvaged or nonrepairable.

The Application for Salvage Certificate or Nonrepairable Vehicle Certificate, form REG 488C (Rev 8/2008) is adopted in Section 155.05, as it relates to Applications for Salvage Certificates, and in Section 155.07, as it relates to Applications for Nonrepairable Vehicle Certificates. The form is unchanged.

## DEPARTMENTAL DETERMINATIONS

- Technical, Theoretical and/or Empirical Studies, Reports or Documents: The department based the adoption of two fees on the supplemental costing that includes the costing cover sheet summaries and the costing summary category worksheets for each fee.
- Reasonable Alternatives that Would Lessen any Adverse Impact on Small Business: None.
- Evidence Supporting Determination of No Significant Economic Impact of Business: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for clarifying how vehicle values are ascertained for purposes of lien sales. The consequences of that determination are minimal and would not create a significant impact on business.

## ECONOMIC AND FISCAL IMPACT DETERMINATIONS

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost of Savings to Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None.
- Local Agency/School District Mandates: None.
- 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: It has been determined that the adoption of these regulations may affect small business.
- Potential significant statewide adverse economic impact: The department is not aware of a potential significant statewide adverse economic impact associated with this proposed regulation.

## 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:** This regulatory proposal likely will not have a significant impact on the creation or elimination of jobs in the State of California. The proposed regulation is intended to provide calculation to determine value of vehicles for purposes of lien sales.

**Creation or Elimination of Existing Businesses Within the State of California:** This regulatory proposal likely will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California. The proposed regulations do not provide direct economic or other incentives to create jobs or expand business.

**Expansion of Businesses Currently Doing Business Within the State of California:** This regulatory proposal is unlikely to result in the expansion of businesses currently doing business in California. This proposal merely establishes the calculation for determining value of vehicles for purposes of lien sales.

**Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and State's Environment:** This regulatory proposal may benefit the health and welfare of California residents by increasing protections for consumers who may have vehicles subject to lien sale. The department has not identified a benefit to worker safety or the state's environment.