OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280

TITLE 13: DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The 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, regarding the Specialized License Plate Programs to implement provisions relating to sections 4466, 4609, 4850, 4851, 5024, 5105, 5155, 5156, 5159, and 5160 of the Vehicle Code.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or their duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or their duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than May 23, 2023, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651 and 5110 in order to implement, interpret, or make specific Vehicle Code sections 5155, 5156, and 5159.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

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.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

The department conducted a review of other state regulations and has concluded there are no other regulations that establish plate sponsor guidelines for the special interest or specialized license plate programs. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR STATE REGULATIONS

The proposed regulations are not mandated by federal law or regulations.

DOCUMENTS INCORPORATED BY REFERENCE
There are no documents incorporated by reference.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS
The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency*: None.
- *Other Non-Discretionary Cost or Savings to Local Agencies*: None.
- *Costs or Savings in Federal Funding to the State*: None.
- *Effects on Housing Costs*: None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.*: 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.
- *Small Business Impact*: This proposed action may impact small businesses.
- *Local Agency/School District Mandate*: 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.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states*: The department has made the initial determination that this action will not have a significant statewide adverse economic impact directly affecting businesses nor will it impact the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT STATEMENT
The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

- **Creation or elimination of jobs or creation of new businesses or elimination of existing businesses within the State of California**: As these proposed regulations for Specialized License Plates make clarifying amendments, the department has determined that this proposed action will neither create nor eliminate jobs within the State of California, nor will the proposal create new businesses or

eliminate existing businesses within California.

- **The Expansion of Businesses Currently Doing Business Within the State of California**: These regulations are unlikely to expand businesses within the State of California.

- **Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**: These proposed regulations refine, the application processes a state agency must complete for Specialized License Plates and make clarifying amendments. As a result, this action is unlikely to produce benefits to worker safety or the State's environment. However, the welfare of California residents may benefit when applicants for a Special Interest or Specialized license plate are clear on how to apply and the department is able to process those applications expediently and accurately.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS
A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

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, or 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 provisions of law.

CONTACT PERSON
Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Tracy Brazil, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
PO Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-6469
Facsimile: (916) 657-6243
E-Mail: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back–up person:

Shelly Johnson Marker, Chief of Staff
Department of Motor Vehicles
Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.