

Initial Statement of Reasons  
Title 13, Division 1, Chapter 1  
Article 3.6 – Business Partner Automation Program – Due Process

The Department of Motor Vehicles (department) proposes to amend sections 225.15, 225.24, 225.66, 225.69 and 225.72, and add section 225.73 in Article 3.6, Chapter 1, Division 1, Title 13 of the California Code of Regulations, relating to the Business Partner Automation (BPA) Program to administer provisions relating to Section 1685 of the Vehicle Code.

**BACKGROUND AND EXPLANATION OF PROBLEMS ADDRESSED**

**Background Summary:**

Historically, the department is the sole provider for collecting fees and issuing documents/indicia for vehicle registration to the public. Senate Bill 46 (Chapter 127, Statutes 2001-Polanco) established the Business Partner Automation (BPA) Program. SB 46 authorized the department to establish business partner relationships with private sector businesses for completing vehicle registration and titling transactions.

Section 1685 of the Vehicle Code establishes the BPA program and authorizes the department to issue permits for three types of private industry partners who may electronically transmit registration and titling information to and from the department in order to serve the public efficiently, particularly the vehicle buying public. Under established departmental regulations, first-line service providers enter into a contract with the department and also must obtain a permit to operate. The second-line business partner, who relies on the first-line provider to submit registration information to the department electronically, may do so with just a permit issued by the department. The department issues a permit for primary business locations and for each site location that a partner may establish. Vehicle Code section 1685 subdivision (f) authorizes the department to adopt regulations and procedures for adequate oversight and monitoring of qualified private industry partners. Regulations for this program have been in place for many years and periodically the department needs to update regulations.

The statute and the regulations contain provisions to protect department assets and to ensure information security for registration transactions. The entire BPA program alleviates the delay and expense of travel to a field office to complete vehicle registration and titling transactions for the customer and alleviates overcrowding of the field offices for the department.

**Problem Addressed by these Regulations:**

The department has identified one main area in which a problem exists. The current BPA regulations do not adequately include a due process (appeals and hearing) section. This proposed action will add in an appeals and hearing section and make necessary amendments to the other relevant sections of the existing regulations.

### **Necessity of Each Proposed Adoption to Accomplish the Stated Purpose**

#### **§ 225.15. BPA Permit Authority.**

Subsection (a) - The phrase "...and permit" is being added after "contract" at the end of subsection (a) for additionally accuracy.

Necessity: In order to align this section with the amended section 225.69 and added section 225.73, it is necessary for the department to add this phrase in this subsection.

Subsection (b) – The phrase "or Section 225.73" is added after "...Section 225.18" at the end of the first sentence of subsection (b).

Necessity: Since Section 225.73 is being added to the existing approved regulations and contains causes that would disqualify an applicant, it is necessary for the department to add this phrase in this subsection for consistency.

Subsection (c) "shall" is being amended to "may" in the first sentence; "will" to "may" in the second sentence; and the phrase "If otherwise eligible," is being added to the beginning of the second sentence, of this subsection.

Necessity: Since subsection 225.03(j) of the existing approved regulations state "The department will review a complete application package and decide whether or not to grant a contract and/or permit..." which provides for the needed departmental discretion when partnering with private entities who will have access to confidential information, therefore it is necessary for the department to amend this subsection to align with subsection 225.03(j) for consistency and clarity.

Subsection (d) the phrase "unless terminated pursuant to section 225.18" at the end of the first sentence is deleted.

Necessity: Added subsection 225.73(a) more correctly addresses the issue of permit validity and includes violations of Section 225.18 as containing causes for a permit to become invalid, therefore it is necessary for the department to make this deletion for more clarity.

#### **§ 225.24. Failure to Meet Security Requirements.**

The term "terminated" is amended to the phrase "suspend, revoke," after "...for the department to cancel," and before "or refuse to enter into..."

Necessity: Since Section 225.73 is being added to the existing approved regulations and contains the terms suspend and revoke but not terminate related to BPA contracts

and/or permits, it is necessary for the department to amend this phrase in this subsection for consistency.

**§ 225.66. Investigation and Review.**

Subsection (b) – the phrase “revoked, suspended,” is added after “...or permit is terminated, cancelled,...” in the first sentence. Also, the term “termination” is amended to “cancellation” in the last sentence.

Necessity: Since Section 225.73 is being added to the existing approved regulations and contains the terms revoked, suspended, and cancel but not termination related to BPA contracts and/or permits, it is necessary for the department to amend this phrase in this subsection for consistency.

**§ 225.69. Cancellation or Termination of a BPA Contract and Permit.**

Subsection (b) is deleted.

Necessity: Since the department is adding Section 225.73 which provides due process for the BPA partners, it is necessary for the department to delete subsection (b) for consistency and clarity.

Subsection (c) is renumbered to (b).

Necessity: Since subsection (b) has been deleted, it is necessary for the department to renumber.

New subsection (b) – the phrase “If the department eliminates the BPA program or makes substantial changes thereto,” is added at the beginning of the first sentence.

Necessity: The existing language was identified as unclear as to the department’s intended purpose for the language in this subsection, therefore it is necessary for the department to add the phrase for additional clarity.

Subsection (d) is renumbered to (c).

Necessity: Since original subsection (b) was deleted and original subsection (c) was renumbered to (b), it is necessary for the department to renumber original subsection (d) to subsection (c).

**§ 225.72. Site Closure.**

Subsection (a) – the phrase “termination, revocation,” is added after “...within 30 days of cancellation...” and before “or expiration of the BPA contract and/or permit:”.

Necessity: Since a first-line service provider's site can be closed for more than just cancellation or expiration of their BPA contract and/or permit, it is necessary for the department to add the phrase for additional clarity.

**§ 225.73. Issuance, Refusal, Suspension, Revocation, Compromise Settlement Agreements, and Automatic Cancellation of a BPA Permit.**

This entire section is added.

Necessity: Existing regulations governing the department's BPA program contain little due process guidance for applicants or permit holders, therefore it is necessary to add this section to the existing regulations to remedy the issue.

Since the BPA governing statute does not provide adequate guidance for due process for the BPA permit applicants or permit holders, it is necessary for the department to add the guidance in BPA regulations. In determining how to "structure" the due process provisions for the BPA program, the department looked to the Occupational License statute(s) located in the Vehicle Code. This choice made logical sense as several BPA permit holders also hold Occupational Licenses and by doing so, the department maintains consistency across departmental programs.

Subsection (a) allows the department, for reasonable cause shown, to refuse to issue a BPA permit or to suspend or revoke a BPA permit after notice and hearing for violation of the financial security requirements as required by 225.09, violation of their BPA contract as required by 225.12, violation of their BPA permit as required by 225.15, failure to establish honesty, integrity, good character and reputation as required by 225.18, failure to comply with information security requirements as stated in 225.24 and required in 225.51, failure to execute or comply with the EFT requirements as stated in 225.30, violation of use of customer or department information as stated in 225.33, violation of change requirements as stated in 225.36, failure to comply with oversight requirements as stated in 225.39, violation of business partner change requirements as stated in 225.42, failure to comply with paying the department the transaction fee as required in 225.48(a) and (b), failure to comply with the information security requirements as stated in 225.51, violation of the processing of transactions and controlling of inventory as required in 225.54, violation of the business records retention requirements as stated in 225.60, failure to comply with the audit requirements as stated in 225.63, failure to comply with the investigation and review requirements in 225.66(b) and (c), failure to comply with the site closure requirements in 225.72(a) and (b).

Necessity: In order for the department to refuse to issue a BPA permit to an applicant or to suspend or revoke the permit of a BPA permit holder there must reasonable cause and/or due process, therefore it is necessary for the department to adopt this subsection that provides guidelines that were not previously included in the BPA regulations.

Initial Statement of Reasons  
Business Partner Automation Program Due Process

Subsection (b) allows the department to refuse to authorize an employee or applicant for employment of a first-line business partner, second-line business partner, or first-line service provider to have access to the BPA program for failure to establish honesty, integrity, good character and reputation as required by Section 225.18. It also allow the department to suspend or revoke an employee of a first-line business partner, second-line business partner, or first-line service provider from having access to the BPA program for any cause under 225.18 after notice and hearing.

Necessity: Since the employees of a first-line business partner, second-line business partner, or first-line service provider of the department's BPA program have access to personal confidential information that the department is ultimately responsible for protecting, it is necessary for the department to adopt this subsection which provides for safeguards related to those employees/applicants for employment that were not previously included in the BPA regulations.

Subsection (c) adopts the Government Code (Chapter 5 [commencing with Section 11500] of Part 1 of Division 3 of Title 2) as the guidelines for the department to conduct hearings by related to this section.

Necessity: Since the existing BPA program regulations do not adequately include a due process (appeals and hearing) section, it is necessary for the department to adopt this subsection into the existing BPA regulations. The department currently utilizes Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code for the same purpose in other departmental programs, therefore to keep consistency, it is necessary to utilize the same guidelines here.

Subsection (d) allows the director of the department to enter into a compromise settlement agreement, which may include a period of probation, monetary penalties, or both, with a BPA permit holder on terms and conditions mutually agreeable without further hearing or appeal.

Necessity: Since the department utilizes compromise settlement agreements in its other programs (e.g. Occupational Licensing) for the same purpose, it is necessary to adopt this subsection in this program to maintain consistency.

Subsection (e) allows for the compromise settlement agreement to be entered into before, during, or after the hearing and is valid only if executed and filed pursuant to subsection (f) below before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

Necessity: Since the department handles compromise settlement agreements in the same manner in its other program, it is necessary for the department to adopt this subsection in order to maintain consistency.

Subsection (f) requires any compromise settlement agreement entered into be signed by the director, the respondent BPA permit holder, and the complainant, or by their authorized representatives.

Necessity: Since the department handles compromise settlement agreements in the same manner in its other program, it is necessary for the department to adopt this subsection in order to maintain consistency.

Subsection (g) allows the department to take any action authorized by law should the respondent to a compromise settlement agreement fail to perform all of the terms and conditions of the compromise settlement agreement rendering it void.

Necessity: Since the department handles compromise settlement agreements in the same manner in its other program, it is necessary for the department to adopt this subsection in order to maintain consistency.

Subsection (h) allows the department to temporarily suspend the permit issued to a BPA permit holder, for not more than 30 days, if the director finds that action is required in the public interest. A hearing shall be held and a decision issued within 30 days after the notice of any temporary suspension.

Necessity: Since the department approves the applications for a BPA permit, issues the BPA permit to its private industry business partners, and oversees the BPA program, it is necessary for the department to adopt this subsection in order to be able to protect the BPA permit holder's customers from any harm that may be caused if the department was unable to temporarily suspend the permit when action is found to be required. Additionally, an expedient hearing and decision is required to the protection of the BPA permit holder, therefore it is necessary to adopt the time guidelines for such a hearing and decision in this subsection.

Subsection (i)(1) allows the department to automatically cancel the BPA permit upon the abandonment of the BPA permit holder's established place of business site.

Necessity: Since abandonment of the established place of business site puts the department's controlled inventory assets and/or the vehicle owning public's personal information at risk, it is necessary for the department to adopt this subsection to be able to immediately cancel the BPA permit of any permit holder who has abandoned their established place of business site.

Subsection (i)(2) allows the department to automatically cancel the BPA permit for failure of the BPA permit holder to maintain an adequate bond as required by Vehicle Code section 1685(b)(2)(C) and Section 225.09.

Necessity: If a BPA permit holder is not maintaining the required bond the financial security it provides to the department and the BPA permit holder's customers is

compromised, therefore it is necessary for the department to adopt this subsection in order to allow for the immediate cancellation of the BPA permit.

Subsection (i)(3) allows the department to automatically cancel the BPA permit for voluntary or involuntarily surrender for any cause by the BPA permit holder, except that the surrender of the BPA permit, cessation of business by the BPA permit holder, or the suspension or revocation of the corporate status of the BPA permit holder, does not preclude the filing of an accusation for revocation or suspension of the surrendered BPA permit under Section 225.73, does not affect the department's decision to suspend or revoke the BPA permit. The department's determination to suspend or revoke the BPA permit may be considered in issuing or refusing to issue any subsequent BPA permit authorized by regulations to that BPA permit holder or to a business representative of that prior licensee.

Necessity: In order for the department to ensure public safety, it is necessary for the department to have a mechanism allowing for continuing jurisdiction of the BPA permit holder. This prevents the BPA permit holder from surrendering the permit and/or taking action that would lead to the cancellation of the permit and then claiming that discipline cannot take place because they no longer hold the permit. By allowing the department to seek permit discipline despite the surrender, the department will be able to take appropriate actions for culpable conduct and document past misdeeds for future applications.

Subsection (i)(4) allows the department to automatically cancel the BPA permit of a BPA permit holder whose corporate status has been suspended or revoked.

Necessity: Since applicants for a BPA permit (first-line business partner, first-line service provider, or second-line business partner, inclusive) are required to indicate the type of ownership their business is held as, pursuant to Section 225.03 (a)(1) - (5), on their application and for those applicants whose business is a corporation, they are required to provide the corporation name and number and the department approves the corporate status applicant based on its validity, it is necessary for the department to adopt this subsection to be able to protect the customers of the BPA permit holder from any harm that may arise from a suspended or revoked corporate status.

Subsection (i)(5) allows the department to automatically cancel the BPA permit for failure to possess a valid occupational license from the department (if applicable)

Necessity: Since applicants for a BPA permit (first-line business partner, first-line service provider, or second-line business partner, inclusive) are required to indicate their Registration Service or Dealer Occupational License number, pursuant to Section 225.03 (a)(1) - (5)Section and are required to submit a copy of their Occupational License pursuant to Section 225.03 (h), it is necessary for the department to adopt this subsection to be able to protect the customers of the BPA permit holder from any harm that may arise from a suspended or revoked Occupational License.

Subsection (j) allows a BPA permit holder whose permit has been revoked or whose application for a permit was refused to reapply for a BPA permit after not less than one year from the effective date of the decision revoking or denying the permit.

Necessity: Since the department utilizes this rule in its other programs (e.g. Occupational Licensing) for the same purpose, it is necessary to adopt this subsection in this program to maintain consistency.

**Economic Impact Assessment (Government Code section 11346.3):**

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

- **The Creation or Elimination of Jobs within the State of California:** As these proposed regulations provide adequate guidance for due process for the BPA permit applicants or permit holders, the department does not anticipate that this proposed action will have any impact on the creation or elimination of jobs within the State of California.
- **The Creation of New Businesses or the Elimination of Existing Businesses within the State of California:** As these proposed regulations provide adequate guidance for due process for the BPA permit applicants or permit holders, the department does not anticipate that these proposed regulations will create new businesses or eliminate existing businesses in the State of California.
- **The Expansion of Businesses Currently Doing Business within the State of California:** As these proposed regulations provide adequate guidance for due process for the BPA permit applicants or permit holders, these proposed regulations are unlikely to expand businesses within the State of California.

**Benefits of the Regulations to Fairness and Openness and Transparency in Business and Government:** This proposed action will promote fairness and increase the openness and transparency in business and government because the proposed action will adopt due process guidelines which include an appeals and hearing section. The due process guidelines will protect the BPA permit holder's customers from any harm that may be caused if the department was unable to temporarily suspend the permit when action is found to be required. Additionally, an expedient hearing process and appeals decision will also protect the BPA permit holder. It is unlikely these proposed regulations will have any impact on the State's environment.

**Additional Economic and Fiscal Impact Determinations:**

The department has made the following additional determinations regarding economic and fiscal impacts associated with this proposed regulation:

- **Cost or savings to any State agency:** None.



- **Other nondiscretionary cost or savings imposed on local agencies:** None.
- **Cost or Savings in Federal Funding to the State:** None.
- **Cost Impact on a Representative Private Person or Business:** None.
- **Effect on Housing Costs:** None.
- **Local Agency/School Districts Mandate:** The proposed regulation 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.
- **Small Business Impact:** This proposed action is likely to impact small businesses.

### **Departmental Determinations**

**Technical, Theoretical and/or Empirical Studies, Reports or Documents:** None relied upon.

**Benefits Anticipated from this Regulatory Action:** The benefits derived from these proposed regulations are ensuring adequate guidance for due process for the BPA permit applicants or permit holders. The Business Partner Automation Program benefits numerous motor vehicle owners by conveniently facilitating vehicle registration transactions.

**Reasonable Alternatives, Including Any That Would Lessen Adverse Impact on Small Business:** No alternatives were considered or presented, including any that would lessen any adverse impact on small businesses.

**Alternatives Considered:** No alternatives were considered that are less burdensome and equally effective at achieving these purposes.

**Comparable Federal and State Regulations:** There are no comparable federal or state regulations. Only the department is authorized to implement vehicle registration and titling programs with approved business partners.

**Evidence Supporting Determination of No Significant Adverse Economic Impact on Business:** There is no significant adverse economic impact expected as these proposed regulations are merely adding an appeals and hearing process.